

155 FERC ¶ 61,154
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

TranSource, LLC

v.

Docket No. EL15-79-000

PJM Interconnection, L.L.C.

ORDER ESTABLISHING HEARING PROCEDURES

(Issued May 10, 2016)

1. On September 24, 2015, the Commission established hearing and settlement judge procedures regarding a complaint filed by TranSource, LLC (TranSource) on June 23, 2015, as supplemented on June 29, 2015 and July 7, 2015 (collectively, Complaint), pursuant to section 206 of the Federal Power Act (FPA),¹ against the PJM Interconnection, L.L.C. (PJM).² On February 10, 2016, pursuant to 16 U.S.C. § 824e and 18 C.F.R. §§ 385.206, 385.215 (2015), TranSource filed an amended and restated complaint (Amended Complaint), which TranSource states updates and expands the issues presented and the relief requested.³ As discussed below, the Commission finds

¹ 18 C.F.R. § 385.206 (2015).

² *TransSource, LLC v. PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,229 (2015) (September 2015 Order). The caption of the aforementioned order reflects the spelling that the complainant used in the Complaint. In this order, we use the corrected spelling from the Amended Complaint (i.e., TranSource) and we have corrected the name of the docket.

³ On March 22, 2016, the Chief Judge granted PJM's motion to hold the proceeding in abeyance pending Commission action on PJM's motion to dismiss the Amended Complaint.

that the issues raised in the Amended Complaint should be addressed in the hearing already established in this proceeding.

I. Background

2. TranSource, a merchant transmission developer, is seeking to build three network upgrades interconnected to the PJM transmission system (queue positions Z2-053 (Bridgewater-South River), Z2-069 (Bridgewater-Hoboken), and Z2-072 (Indian River-New Church)) to obtain Incremental Auction Revenue Rights (Incremental ARRs) and Incremental Capacity Transfer Rights (Incremental CTRs).⁴ At the core of the Complaint was an allegation that affected transmission owners have inflated the scope of the system enhancements needed to accommodate TranSource's requested upgrades. TranSource alleged that PJM violated its Open Access Transmission Tariff (Tariff) by refusing to provide TranSource work papers that underlie the System Impact Studies that PJM prepared to evaluate the upgrades necessary to accommodate TranSource's interconnection request. TranSource also contended that the scope of mitigation in the System Impact Studies is excessive and intended to stymie its requested network upgrades. TranSource further claimed that in performing the System Impact Studies, PJM fails to rely, to the extent reasonably practicable, on existing transmission planning studies.

3. In its Complaint, TranSource requested the following relief: (1) that the Commission order PJM to provide to TranSource all of the work papers used to determine the cost estimates associated with each circuit, including the PLS-CADD model;⁵ (2) a waiver of all deadlines set forth in section 206.2 of PJM's Tariff (Retaining

⁴ Under the PJM Tariff, a customer may request specific Incremental ARRs and agree to fund the upgrades necessary to provide for such Incremental ARRs on the PJM system. PJM, Intra-PJM Tariffs, OATT, Attachment K, Appendix § 7.8 (Elective Upgrade Auction Revenue Rights) (0.0.0). *See also* a parallel provision in Schedule 1, § 7.8 of the PJM Operating Agreement. Additionally, under the PJM Tariff, a participant that funds transmission upgrades may be entitled to receive Incremental ARRs associated with such upgrades; to the extent such upgrades are simultaneously feasible with outstanding ARRs. PJM, Intra-PJM Tariffs, OATT, Subpart C, Incremental Auction Revenue Rights § 231 (0.0.0).

⁵ PLS-CADD is a computer aided design application that allows for modeling of the physical characteristics of the power line and associated structures. The system allows engineers to model the expected new load and how it impacts the characteristics of the line. *See*, PJM's June 10, 2015 Answer, Attachment B, Affidavit of James G. Flaherty at P 9.

Queue Position), including the deadline for TranSource to post its deposit to retain its queue positions, for a period of time as the Commission found appropriate while the Commission considers the issues raised in the Complaint;⁶ and (3) Fast Track Processing.

4. In its answer to TranSource's Complaint, PJM argued that the complaint should be dismissed for failing to state a claim upon which to base a cause of action. PJM asserted that TranSource had failed to satisfy the requirements of section 206 of the FPA and Rule 206 of the Commission's regulations because the Complaint was based on inaccurate and unsubstantiated facts and allegations and was procedurally flawed. Further, PJM represented that all data and work papers underlying the System Impact Studies had been previously provided to TranSource by PJM in full compliance with the PJM Tariff. PJM claimed that TranSource was seeking production of PLS.CADD files, which neither PJM nor the affected transmission owners used in creating the instant System Impact Studies. Therefore, PJM argued that PLS.CADD files were not related work papers which must be provided to TranSource under section 205.4.2 (Materials for Customers) of the PJM Tariff. In addition, PJM claimed that granting the waiver would adversely impact third parties lower in the queue whose projects may be dependent on the outcome of TranSource's requested upgrades.

5. The Independent Market Monitor for PJM (Market Monitor) filed a motion requesting "the establishment of an investigative process, including any or all of hearing, settlement judge procedures, investigation and/or technical conference in order to obtain full information about the facts and circumstances related to the Complaint."

6. In the September 2015 Order, the Commission found that the Complaint raised issues of material fact that could not be resolved based upon the record and that were more appropriately addressed in the hearing and settlement judge procedures ordered therein.⁷ The Commission stated that the central issue was whether the facilities identified in the System Impact Studies, for which TranSource would be required to pay, were necessary to accommodate TranSource's interconnection request. Under Order No. 2003 and PJM's "but for" test in its Tariff,⁸ interconnecting customers may only be

⁶ On July 14, 2015, PJM withdrew the projects because TranSource did not make the necessary deposit or execute the Facilities Study Agreement required to take the next step in the interconnection process. *See* TranSource July 17, 2015 Answer at 2.

⁷ September 2015 Order, 152 FERC ¶ 61,229 at PP 29-30.

⁸ September 2015 Order, 152 FERC ¶ 61,229 at P 30 (citing section 217.3 (Local and Network Upgrades) of PJM's Tariff states that new service customers must pay the costs of the upgrades necessary to accommodate their service requests *and* that would not

(continued...)

assessed the costs of those facilities necessary to accommodate their project. Material issues of fact had been raised as to whether the facilities met this definition and whether TranSource had the necessary data to evaluate whether those facilities were necessary to accommodate the interconnection.

7. Accordingly, the Commission set the complaint for investigation and a trial-type evidentiary hearing under section 206 of the FPA for all issues raised in the proceeding, including, but not limited to, how the cost estimates for the project were developed and whether PJM undertook an independent analysis of these costs. The Commission would address TranSource's request for waiver following the completion of the hearing and settlement judge procedures.

II. Amended Complaint

8. In its Amended Complaint, TranSource expands the issues presented and the relief requested in its Complaint. TranSource's Amended Complaint lists four counts against PJM, some of which overlap with TranSource's Complaint. In the first count, TranSource alleges that PJM failed to use a transparent and replicable process to model TranSource's upgrade requests. TranSource states that, after failing to make available to TranSource information necessary to anticipate the outcome of the System Impact Studies for its three queue positions, as required by FPA section 213(b), FERC Form 715, and section 205.4 (Completion of Studies) of the PJM Tariff, PJM wrongfully terminated TranSource's queue positions on July 13, 2015.

9. In the second count, TranSource alleges that PJM violated section 206.2 of PJM's Tariff by demanding that TranSource commit to upgrades identified in the System Impact Studies that were not physically or electrically necessary, and to make deposits for the three upgrade requests that are not proportional to the scope of upgrades contained in the reports. TranSource also alleges that PJM failed to prepare accurate system impact studies for each of TranSource's three queue positions using correct facility ratings within the time required by section 205 of the PJM Tariff. TranSource also claims PJM based the System Impact Studies on an infeasible base case which falsely assumed every element of the PJM grid was operating at its limit and could not represent the physical starting point for evaluating system impact, as well as that PJM based its cost estimates on worst-case rather than optimized assumptions.⁹

have been incurred but for such request. *See* PJM, Intra-PJM Tariffs, OATT, Part VI, Subpart B Agreements and Cost Responsibility § 217.3 (Local and Network Upgrades) (0.0.0) (effective June 1, 2007; superseded September 17, 2010)).

⁹ TranSource Amended Complaint at 10-11.

10. In the third count, TranSource alleges that PJM violated the Commission's November 2014 Order¹⁰ by modeling each of TranSource's proposed projects as of November 25, 2014 instead of in accordance with the original queue priority dates, as required by the November 2014 Order. TranSource argues that PJM consequently improperly subordinated TranSource's service requests to proposed upgrades and interconnection requests that other entities submitted to PJM later in time. In the fourth count, TranSource alleges that PJM's processes for modeling TranSource's projects and allocating ARRs and upgrade costs unduly discriminated against TranSource, such that TranSource was not provided equal and open access to planning and constructing PJM's system or to ARRs.

11. In its Amended Complaint, TranSource requests the following relief from the Commission:

- (1) find that PJM incorrectly modeled TranSource's proposed upgrade requests in the System Impact Studies in violation of 16 U.S.C. § 8241(b) and the November 2014 Order;
- (2) find that the System Impact Studies were not properly performed and delivered to TranSource within the time required by section 205 of the PJM Tariff and direct PJM to withdraw them;
- (3) direct PJM to reinstate TranSource's upgrade requests in the PJM interconnection queue consistent with the Commission's November 2014 Order, which would be March 28, 2014 for queue position Z2-053 and April 22, 2014 for queue positions Z2-069 and Z2-072;
- (4) direct PJM to issue system impact studies on TranSource's queue positions within an expedited timeframe (no greater than 30 days after the Commission's final decision) that determine the impact of TranSource's upgrade requests on a nondiscriminatory basis, consistent with the transmission system data reported by the PJM Transmission Owners in their respective FERC Form 715s and with the 2018 RTEP

¹⁰ *Transource, LLC*, 149 FERC ¶ 61,169 (2014) (November 2014 Order) (order granting Transource's request for a waiver of the PJM Tariff to permit the conversion of ten Interconnection Requests pursuant to Attachment S to three Upgrade Requests pursuant to Attachment EE of the PJM Tariff).

Z2 Queue Base Case, and using a consistent, non-discriminatory, and transparent process like PJM does with other market participants;

- (5) order PJM to write and provide a process specifying the steps PJM has taken and will take to evaluate TranSource's upgrade requests, including the steps PJM took to determine the circuits PJM selected to be upgraded in connection with each of TranSource's upgrade requests;
- (6) order PJM to commission a neutral third-party expert to review the process documented pursuant to relief item 5 and to provide the neutral third-party expert with sufficient information to enable the expert to replicate PJM's analyses and conclusions;
- (7) direct PJM to contract with a qualified, independent third party in connection with the new system impact studies to provide estimates of the cost of the upgrades found to be physically and electrically necessary in the System Impact Studies;
- (8) direct PJM to develop written procedures identifying the specific steps PJM takes to evaluate Attachment EE Upgrade Requests and to submit these procedures to its stakeholders for a vote so the procedures can be incorporated into the OATT;¹¹
- (9) direct PJM to develop and submit to its stakeholders for a vote a proposal to include, for evaluations of Attachment EE Upgrade Requests, two phases of system impact studies prior to the Facilities Study so that requests by merchant transmission developers are handled in the same manner as requests for generation interconnection studies;
- (10) require PJM to award to TranSource every ARR that is made feasible by TranSource's investments in upgrades, regardless

¹¹ Attachment EE is for a customer that submits an upgrade request pursuant to section 7.8 (Incremental Auction Revenue Rights) of Schedule 1 of the PJM Operating Agreement.

of whether the upgrades were determined to be physically and electrically necessary to accommodate the ARRAs that TranSource requested;

- (11) award TranSource any monetary relief available, including disgorgement of any monies obtained by any participant to this proceeding that would not have been obtained but for PJM's improper conduct with respect to TranSource's upgrade requests; and
- (12) award TranSource all other relief the Commission deems appropriate to redress the harm incurred by TranSource.

12. TranSource also seeks a Fast Track determination under 18 CFR § 385.206(h) to prevent it from suffering further material harm from PJM's violations.

III. Notice of Filings and Responsive Pleadings

13. Notice of TranSource's filing was published in the *Federal Register*, 81 Fed. Reg. 8949 (2016), with interventions and protests due on or before March 1, 2016.

14. On February 25, 2016, pursuant to Rules 212 and 215 of the Commission's regulations, PJM and PJM Transmission Owners¹² each filed a motion to oppose the acceptance of the Amended Complaint.

15. On March 1, 2016, PJM filed a motion to dismiss the Amended Complaint or, in the alternative, answer the Amended Complaint, and recommendation of procedures for prompt disposition of the proceeding. On March 1, 2016, the PJM Transmission Owners filed a protest to the Amended Complaint.

¹² For purposes of this filing, the PJM Transmission Owners are: FirstEnergy Service Company on behalf of its affiliates American Transmission Systems, Incorporated, Pennsylvania Electric Company, Metropolitan Edison Company, Jersey Central Power & Light Company, Monongahela Power Company, West Penn Power Company, The Potomac Edison Company, and Trans-Allegheny Interstate Line Company (collectively, FirstEnergy); Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company (collectively, PHI Companies); PPL Electric Utilities Corporation (PPL); and Public Service Electric and Gas Company (PSE&G).

16. On March 15, 2016, TranSource filed an answer in opposition to PJM's motion to dismiss and requested leave to answer and answers the PJM Transmission Owners' protest. On April 1, 2016, PJM filed a reply to TranSource's answer.

17. On April 18, 2016, the Market Monitor filed an answer to PJM's April 1st reply.

A. Motions Opposing Amended Complaint

18. In their motions opposing the Amended Complaint, PJM and PJM Transmission Owners argue that TranSource should not be permitted to expand the evidentiary hearing in this case.¹³ PJM argues that expansion of the hearing in this case (by way of Rule 215) would be inappropriate as the Amended Complaint's new issues and new request for relief do not warrant a trial-type hearing. Similarly, PJM Transmission Owners argue that the Amended Complaint (1) goes beyond the scope of previously raised issues that were set for hearing and settlement judge procedures, (2) adds new claims, including claims that bypass the PJM stakeholder process and a claim seeking monetary relief from entities other than PJM, the sole respondent named in the Amended Complaint, and (3) is otherwise both procedurally improper and substantively unfounded.

B. PJM's Motion to Dismiss and PJM Transmission Owners' Protest

19. PJM and PJM Transmission Owners argue that the Commission should dismiss the Amended Complaint. PJM argues that the Amended Complaint does not meet the Commission's minimum standards for a complaint. PJM states that a complaint must clearly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements, and must explain how the action or inaction violates applicable statutory standards or regulatory requirements.¹⁴ PJM contends that the Amended Complaint's factual allegations are broad, conclusory, and unsupported and their legal assertions are vague. PJM Transmission Owners argue that the Amended Complaint should be rejected because Rule 215 does not contemplate the type of broad changes in relief sought by TranSource.

20. In the event the Commission declines to dismiss the Amended Complaint in its entirety, PJM argues that the Commission should dismiss or summarily deny each of the

¹³ Under Rule 215, if a motion is filed in opposition to the acceptance of an amendment within 15 days after filing of the amendment, the Commission may reject the amendment for good cause, if it acts within 20 days after the amendment is filed.

¹⁴ PJM March 1, 2016 Motion to Dismiss at 10 (citing Rule 206(b)(1)&(2), 18 C.F.R. § 385.206(b)(1)&(2)).

four counts of the Amended Complaint. Regarding Count 1, PJM argues that the Amended Complaint does not identify any PJM data or PJM work papers that PJM has not provided to TranSource that were used to prepare the System Impact Studies. PJM also argues that none of the sources cited by TranSource (i.e., FPA § 213(b), FERC Form 715, and § 205.4 of the PJM OATT) prescribe the standard asserted by TranSource -- that RTOs must provide information that enables customers “reasonably to anticipate the outcome” of System Impact Studies. PJM concedes that it has not provided TranSource certain PLS-CADD data files of the transmission owners, but argues that those data files were not used to prepare the System Impact Studies.

21. Regarding Count 2, PJM argues that TranSource’s vague and unsubstantiated criticisms do not show that PJM abused its discretion or violated the Tariff. Regarding Count 3, PJM argues that TranSource has not supported its incorrect assertion that PJM used a later queue date to assess TranSource’s IARR requests. PJM states that it has honored the original queue dates, i.e., March 28, 2014, for Queue Position Z2-053 and April 22, 2014, for Queue Positions Z2-069 and Z2-072, and that these are the dates that PJM used for purposes of the System Impact Studies. PJM asserts that it did not subordinate these TranSource requests to later-submitted New Service Requests, and TranSource offers nothing to show otherwise. Regarding Count 4, PJM argues that the claims are conclusory, vague and unsupported.

22. PJM and the PJM Transmission Owners also argue that several of TranSource’s new requests for relief should be dismissed or summarily denied. First, PJM states that TranSource has no path to monetary relief in this proceeding given that monetary damages are beyond the scope of the Commission’s authority under Part II of the Federal Power Act.¹⁵ PJM also asserts that TranSource expressly agreed in its executed System Impact Study Agreement that it is not entitled to consequential damages or lost profits from any asserted delay or non-performance by PJM or a transmission owner in connection with preparation of the system impact studies.¹⁶ PJM also argues that TranSource’s mere reference to “disgorgement” does not open any path to relief, as TranSource has not alleged or shown that any entity has earned unjust profits from a violation by such entity, which is the predicate for ordering disgorgement and

¹⁵ PJM March 1, 2016 Motion to Dismiss at 13.

¹⁶ PJM March 1, 2016 Motion to Dismiss at 13-14 (citing Amended Complaint at Attachment C (System Impact Study Agreement at P 12)).

accordingly, such request should be dismissed.¹⁷ PJM also contends that TranSource has not offered any evidence showing entitlement to such relief.

23. PJM Transmission Owners argue that TranSource fails to establish any claim for monetary relief, let alone a claim for such relief from parties it has not even named in its Amended Complaint. PJM Transmission Owners argue that, if the Commission accepts TranSource's request for relief, participants who are not PJM, including the PJM Transmission Owners, would be deprived of their fundamental right to due process, which requires that they be afforded notice "reasonably calculated, under all the circumstances," and an opportunity to be heard before being deprived of their property.¹⁸ PJM Transmission Owners argue that there is no credible argument that they or any other non-PJM participants to this proceeding were on notice that they might be subject to deprivation of property through TranSource's complaint against PJM. PJM Transmission Owners also contend that TranSource has not alleged a basis for a claim against entities other than PJM, let alone made a proffer of evidence to support such a claim.

24. PJM and PJM Transmission Owners also argue that TranSource's request that the Commission order PJM to develop and file changes to its Tariff should be dismissed. PJM contends that, to the extent these new requests for relief ask the Commission to order PJM to submit Tariff changes under FPA section 205, they seek action beyond FERC's authority. Alternatively, PJM states that, to the extent these new requests for relief ask the Commission to order PJM under FPA section 206 to revise its Tariff, TranSource has not alleged or shown that any provision of the existing Tariff is unjust and unreasonable. PJM Transmission Owners state that these procedures affect all stakeholders in PJM and any change to those procedures should be addressed through the stakeholder process where all interested parties can participate.

25. PJM argues that the Amended Complaint provides nothing in support of its request that the Commission order a neutral or independent third party to perform certain of PJM's responsibilities. PJM states that the Commission approved PJM as an RTO and in so doing found that PJM satisfied the independence criterion of the RTO rules. PJM states that the Commission also found that PJM satisfied the requirement of

¹⁷ PJM March 1, 2016 Motion to Dismiss at 14 (citing *Powhatan Energy Fund, LLC*, 151 FERC ¶ 61,179 at P 188, *order denying clarification*, 153 FERC ¶ 61,090 (2015); *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156 at P 43, *modified by Compliance with Statutes, Regulations, and Orders*, 125 FERC ¶ 61,058 (2008)).

¹⁸ PJM Transmission Owners Protest at 14 (citing *Lopez v. United States*, 201 F.3d 478, 480 (D.C. Cir. 2000)).

18 C.F.R § 35.34(k)(7) that an RTO must be responsible for transmission planning and expansion. Moreover, PJM states the governing Tariff provisions assign to PJM the responsibility to perform the studies at issue in this case, and the Commission has expressly recognized that these Tariff provisions “indicate[] that PJM may exercise its judgment and discretion in conducting” such assessments. PJM states that the Amended Complaint offers no evidence whatsoever that PJM has not acted independently in conducting studies or preparing cost estimates.

26. PJM also argues that the Amended Complaint offers no justification for TranSource’s new demand that it be awarded more IARRs than the Tariff provides for such upgrade requests. PJM states that section 7.8 of the Appendix to Tariff Attachment K permits a party to request IARRs in an amount specified by that party, between sources and sinks specified by that party. PJM states that, if the party then chooses to fund the construction of the upgrades needed to accommodate that request, then it receives the IARRs that it requested. PJM states that the IARR approach is distinct from the procedures for a merchant transmission project, under which the developer designs and proposes a transmission upgrade or expansion, and (if it builds the project) is awarded the transmission rights created by its project. PJM states that TranSource seems to request a hybrid of these two approaches, by which it would receive more transmission revenue rights than it requested.

27. In its motion, PJM also urges the Commission to reconsider its prior decision to set TranSource’s Complaint for an evidentiary hearing. PJM contends that putting off a resolution of this dispute until after a hearing, initial decision, and Commission opinion could result in significant harm to later projects from potential re-studies and cost reallocations.¹⁹ To avoid such a result, PJM requests that the Commission (1) dismiss the entire complaint for failure to meet the Commission’s minimum standards for a complaint, or deny the entire complaint on the current record for TranSource’s failure to meet its burden under section 206; (2) convert this case from a Subpart E evidentiary hearing to a paper hearing based on the record; (3) require additional settlement judge procedures; or (4) narrow the hearing to facilitate a relatively faster resolution of this case.

¹⁹ PJM states that there are already four New Service Requests that would be impacted if TranSource’s withdrawn requests were reinstated with their original queue dates. These include the following active queue projects: Queue Nos. AA1-119, AA2-122, AA2-128, and AB1-002. PJM states that, as more time passes, and more New Service Requests are submitted, the number of affected projects will grow.

C. TranSource's Answer

28. TranSource argues that the Commission has already decided that TranSource's Complaint satisfies the Commission's requirements for proceeding to an evidentiary hearing and PJM and PJM Transmission Owners fail to show that the more-detailed Amended Complaint no longer satisfies those requirements. TranSource contends that the Amended Complaint meets the Commission's threshold requirements under Rule 206 by identifying statutory and regulatory requirements and errors with sufficient specificity to place PJM on notice of the allegations against it. TranSource states that it cited the statutory and tariff provisions PJM is alleged to have violated and identified and explained how PJM's actions or inactions violated those provisions. TranSource argues that the Commission should therefore allow this case to proceed to an evidentiary hearing.

29. TranSource also argues that PJM's and PJM Transmission Owners' arguments with respect to the requested relief are premature and should be rejected. TranSource does not dispute that monetary damages are beyond the scope of the Commission's authority under Part II of the FPA or that it has not yet shown that any entity earned unjust profits. TranSource states that it is only asking the Commission to award it such equitable relief should the evidence show that any entity received unjust profits because of PJM's violations. TranSource also states that it is not seeking to turn any intervenors into *de facto* respondents. TranSource states that PJM Transmission Owners, as parties, are on notice of TranSource's claims. Furthermore, TranSource states that there is no support for the argument that a complainant may only obtain relief against an entity that is named as a respondent.

30. TranSource also argues that its request for third-party verification is reasonable given TranSource's allegations that PJM engaged in unduly discriminatory conduct. Moreover, TranSource argues, its requested relief is supported by Order Nos 890²⁰ and

²⁰ TranSource Answer at 18 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, 136 FERC ¶ 61,051 at 471 (Order No. 890) (information provided to customers "should enable customers, other stakeholders, or an independent third party to replicate the results of planning studies and thereby reduce the incidence of after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion"), *aff'd*, 121 FERC ¶ 61,297 (2007), *aff'd*, 123 FERC ¶ 61,299 (2008), *aff'd*, 126 FERC ¶ 61,228, *aff'd*, 129 FERC ¶ 61,126 (2009)).

2003.²¹ TranSource also argues that it has not requested that PJM award ARRs in any manner that is inconsistent with its Tariff.

31. TranSource argues that its request for the Commission to direct PJM to develop and submit processes to its stakeholders for a vote is entirely within the Commission's authority and compelled by the Commission's obligations under section 206. TranSource states that the Commission has—and has exercised—discretion to accept complaints where the complainant has not previously resorted to the stakeholder process.²²

32. TranSource also opposes PJM's proposed alternative tracks for resolution of this case. TranSource states that central to its Amended Complaint is its need for information to understand and replicate the System Impact Studies for its upgrade requests. TranSource states that such information can only be obtained and verified through discovery and an evidentiary hearing and neither TranSource nor the Commission has sufficient information to proceed through a paper hearing.

D. PJM's Reply

33. In its reply, PJM reiterates its request that the Commission either dismiss or deny both the Complaint and the Amended Complaint, or establish more focused procedures to bring a speedier resolution to this case.

E. Market Monitor Answer

34. In its answer, the Market Monitor argues that the Commission should deny PJM's requests to dismiss the Complaint and Amended Complaint. The Market Monitor states that, although it was appropriate to attempt to obtain sufficient disclosure of information on a voluntary basis in settlement judge proceedings, such disclosure did not occur and now appears will not occur without compulsory process. The Market Monitor states that significant issues relating to transparency and independent and proper administration raised by TranSource have not been resolved. The Market Monitor does not agree that it has been established that the list of information PJM identifies comprises all of the

²¹ TranSource Answer at 18 (citing *Standardization of Generator Interconnection Agreements and Procedures*, 104 FERC ¶ 61,103, at P 83 (2003) (Order No. 2003) (“Transmission Providers must provide all underlying assumptions and data files so that the Interconnection Customer or its subcontractor can independently conduct Interconnection Studies”), *aff'd*, 106 FERC ¶ 61,220 (2004), *aff'd*, 109 FERC ¶ 61,287, *aff'd*, 111 FERC ¶ 61,401 (2005)).

²² TranSource Answer at 20.

information that must be provided to resolve the issues raised in the 2015 Complaint. The Market Monitor states that critical questions of “how the cost estimates for the project were developed, and whether PJM undertook an independent analysis of these costs,” identified in the September 2015 Order have not yet been explored.

IV. Discussion

A. Procedural Matters

35. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene and notice of intervention serve to make the entities that filed them parties to this proceeding.

36. Rule 213(a) (2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2) (2015), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept PJM’s, TranSource’s, and the Market Monitor’s answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

37. We find that the Amended Complaint raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing already established in this proceeding. These issues are closely related to the issues raised in the Complaint, which the Commission set for hearing in the September 2015 Order.

38. We deny PJM and PJM Transmission Owner’s request to dismiss the Amended Complaint. The Amended Complaint raises four sufficiently concrete issues for litigation. While PJM and PJM Transmission Owners object to certain of the proposed remedies, we find that resolving remedial issues at this point is premature. The ALJ and the parties need to consider the appropriate remedies based on the violations determined during the hearing. They also should consider remedies that will have the least effect on the predictability of PJM’s interconnection process.

39. In the Amended Complaint, TranSource also has included requests for the Commission to order PJM to initiate stakeholder processes to consider changes to Attachment EE, Upgrade Requests.²³ We find the question of initiating stakeholder

²³ TranSource asks the Commission to: (1) direct PJM to develop written procedures identifying the specific steps PJM takes to evaluate Attachment EE Upgrade Requests and to submit these procedures to its stakeholders for a vote so the procedures

(continued...)

processes should not be set for hearing. The ALJ, however, should consider whether PJM's current planning process with respect to Attachment EE, Upgrade Requests is unjust or unreasonable and needs to be revised. Because TranSource's request for revisions to the PJM tariff implicates and directly impacts a wider group of industry participants than the Complaint, we direct the presiding judge to accept any interventions filed within 21 days of the date of this order to provide all interested industry participants the opportunity to participate in the proceeding with respect to such planning provisions.

40. Finally, we also deny PJM's request that the Commission dismiss the Complaint or reconsider its decision to set TranSource's Complaint for an evidentiary hearing. We find that PJM's request is an untimely and thus statutorily barred request for rehearing of the September 2015 Order. In the September 2015 Order, the Commission found that the Complaint raised issues of material fact that could not be resolved based upon the current record and that were more appropriately addressed in an evidentiary hearing. Having failed to seek rehearing of the September 2015 Order, PJM cannot challenge here that order's finding and its decision to set the Complaint for an evidentiary hearing. Accordingly, PJM's request is denied.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure, and the regulations under the Federal Power Act (18 C.F.R. Chapter I), TranSource's Amended Complaint should be included in the public hearing previously ordered in this proceeding, as discussed in the body of this order.

can be incorporated into the OATT; and (2) direct PJM to develop and submit to its stakeholders for a vote a proposal to include, for evaluations of Attachment EE Upgrade Requests, two phases of system impact studies prior to the Facilities Study so that requests by merchant transmission developers are handled in the same manner as requests for generation interconnection studies. *See* TranSource Amended Complaint at 14.

(B) Any interested persons not currently parties to this proceeding desiring to be heard in this proceeding should file a notice of intervention or motion with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214) within 21 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.