

172 FERC ¶ 61,243
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and James P. Danly.

Indiana Municipal Power Agency, and
City of Lawrenceburg, Indiana

Docket Nos. EL20-30-000

v.

PJM Interconnection, L.L.C.,
American Electric Power Service Corp., and
Lawrenceburg Power, LLC

PJM Interconnection, L.L.C.

EL20-56-000

ORDER GRANTING, IN PART, AND DENYING, IN PART, PETITION FOR
DECLARATORY ORDER AND COMPLAINT, AND INSTITUTING PROCEEDING
UNDER SECTION 206 OF THE FEDERAL POWER ACT

(Issued September 17, 2020)

1. On March 6, 2020, Indiana Municipal Power Agency (IMPA) and the City of Lawrenceburg, Indiana (City) (together, Petitioners) filed, pursuant to section 306 of the Federal Power Act (FPA),¹ section 554 of the Administrative Procedure Act,² and rules 206 and 207 of the Commission's Rules of Practice and Procedure,³ a petition for declaratory relief and complaint (Petition), against PJM Interconnection, L.L.C. (PJM), American Electric Power Service Corp. (AEP), as designated agent for the AEP Operating Companies, and Lawrenceburg Power, LLC (Lawrenceburg Power) (together, Respondents) concerning the station power self-supply monthly netting provision of the PJM Open Access Transmission Tariff (Tariff).⁴ In this order, we grant, in part, and

¹ 16 U.S.C. § 825e (2018).

² 5 U.S.C. § 554(e) (2018).

³ 18 C.F.R. §§ 385.206, 385.207 (2019).

⁴ Petitioners' request for declaratory relief refers only to the self-supply monthly netting provision in section 1.7.10(d) of the PJM Tariff. PJM Interconnection, L.L.C., Intra-PJM Tariffs, Open Access Transmission Tariff, Attachment K-Appendix, Section 1-Market Operations, § 1.7.10(d) Other Transactions (21.0.0) (PJM Tariff).

deny, in part, the Petition. We also institute a proceeding pursuant to section 206 of the FPA, in Docket No. EL20-56-000, to require PJM to revise its Tariff, and any parallel provisions in the PJM Operating Agreement, consistent with the findings made in this order or show cause why such changes are not needed.

I. Background

A. Station Power

2. Station power is the electric energy required by a generator to operate and maintain its on-site facilities, including emissions control and water pumping equipment; lighting, heating, and air conditioning of plant control rooms and offices; and other office equipment needs.⁵

3. When a generation facility is on-line and producing sufficient energy from on-site equipment to satisfy its station power needs, it simply diverts a portion of its energy output in real-time to serve its own station power needs (i.e., the station power is supplied from energy that does not pass through the metering point between the generator's facility and the transmission system to which it is interconnected). In such an instance, the generation facility is not purchasing energy supply nor delivery service. But, when a generation facility is off-line and not producing, or online and not producing enough energy to fully meet its station power needs, the generation facility needs to acquire station power.

4. Historically, electric utilities were vertically integrated—they owned generation, transmission, and distribution facilities and sold these services as a bundled package in their service areas. These integrated utilities would not charge themselves for the use of station power—when a generation facility was not operating, station power was simply treated as negative generation and the facility received necessary station power from the utility's transmission and/or distribution facility. After the Commission issued Order No. 888,⁶ it was unclear how independent generators would be charged for their use of

However, there is an identical, parallel provision concerning the station power self-supply monthly netting provisions in the PJM Operating Agreement. PJM Interconnection, L.L.C., Intra-PJM Tariffs, Operating Agreement, OA Schedule 1-PJM Interchange Energy Market, Section 1-Market Operations, § 1.7.10(d) General (18.1.0) (Operating Agreement).

⁵ *Midwest Indep. Transmission Sys. Operator*, 139 FERC ¶ 61,113, at P 2 (2012) (*MISO*); see also PJM Tariff, § I.1 R-S, OATT Definitions (20.0.0) (defining “Station Power”).

⁶ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities*

station power when they were offline or were not producing enough energy to fully meet their station power needs. In response, the Commission approved various regional transmission organization and independent system operator (RTO/ISO) tariff provisions, including the PJM Tariff provision at issue in this proceeding, establishing netting intervals for station power.⁷

B. Relevant PJM Tariff Provision

5. The PJM Tariff, Attachment K-Appendix, section 1.7.10(d) details PJM's monthly netting provision for station power. Specifically, section 1.7.10(d)(i) provides that "[a] Market Seller may self-supply Station Power for its generation facility during any month: (1) when the net output of such facility is positive; or (2) when the net output of such facility is negative and the Market Seller during the same month has available at other of its generation facilities positive net output in an amount at least sufficient to offset fully such negative net output."⁸ "Net output" means the facility's gross energy output, less station power. Section 1.7.10(d)(i) explains that the determination of "net output" applies only to determine "whether the Market Seller self-supplied Station Power during the month and will not affect the price of energy sold or consumed by the Market Seller at any bus during any Real-time Settlement Interval during the month."⁹ Section 1.7.10(d)(i) explains that for each Real-time Settlement Interval when the Market Seller has a positive net output and delivers energy to the PJM transmission system, it will be paid the LMP at its bus for that interval for all energy delivered; conversely, when it has negative net output for a Real-time Settlement Interval and has received station

and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁷ *PJM Interconnection, L.L.C.*, 94 FERC ¶ 61,251 (*PJM II*), *reh'g denied*, 95 FERC ¶ 61,333 (2001) (*PJM III*); *see also*, *PJM Interconnection, L.L.C.*, 95 FERC ¶ 61,470 (2001) (*PJM IV*). Hereinafter, these cases will be referred to jointly as the "*PJM Station Power Cases*."

⁸ PJM Tariff, Attachment K-Appendix, Section 1-Market Operations, § 1.7.10(d) Other Transactions (19.1.0). Subsection (2) of section 1.7.10(d)(i) is generally referred to as "remote self-supply." Section 1.7.10(d)(iii) provides for remote self-supply from generation outside of PJM in limited circumstances.

⁹ *Id.*

power from the PJM transmission system, it will pay the LMP at its bus for that interval for all energy consumed.¹⁰

6. Section 1.7.10(d)(ii) explains that PJM will determine the extent to which “each affected Market Seller during the month self-supplied its Station Power requirements or obtained Station Power from third-party providers (including affiliates),” and “will incorporate that determination in its accounting and billing for the month.”¹¹ Further, section 1.7.10(d)(ii) states that if “a Market Seller self-supplies Station Power during any month in the manner described in subsection (1) of [section 1.7.10(d)(i)], Market Seller will not use, and will not incur any charges for, transmission service.”¹² If the Market Seller has remote self-supplied pursuant to subsection (2) of section 1.7.10(d)(i), it will pay for transmission service “equal to the facility’s negative net output from Market Seller’s generation facility(ies) having positive net output.”¹³ Unless other arrangements exist, transmission service is provided pursuant to Part II of the Tariff and charged at the hourly rate set forth in Schedule 8.

7. PJM’s Manual 28 sets forth, in accordance with the *PJM Station Power Cases*, additional details on PJM’s accounting procedures for the treatment of station power.¹⁴ Manual 28 explains that PJM performs monthly netting of generator output and station power consumption to determine whether certain billing adjustments¹⁵ are required. The manual states that any billing adjustments required for generators with net negative totals are calculated and included in the subsequent month’s billing cycle. Manual 28 clarifies that “[i]f a superseding arrangement for the treatment of station power exists between a generation owner and the applicable electric distribution company (EDC) in whose

¹⁰ *Id.*

¹¹ *Id.* § 1.7.10(d)(ii).

¹² *Id.*

¹³ *Id.*

¹⁴ PJM Interconnection, L.L.C., Manual 28: Operating Agreement Accounting, Section 13: Station Power Accounting Procedure, § 13.1 (2019) (PJM Manual 28).

¹⁵ These adjustments include: (1) adjustment to spot market energy billing (for third-party supply of station power); and (2) adjustment to non-firm point-to-point transmission service billing (for remote self-supply of station power). *Id.*

service territory the generator resides, then net station power consumption (i.e., negative net generation MW) is not reported to PJM for settlements purposes.”¹⁶

8. As to third-party, bilateral supply of station power, Manual 28 explains that: “For each individual business entity with ownership rights to one or more generators (or joint-owned shares of generators) in PJM, their net generation MWh are netted for the month to determine if a third-party retail purchase of station power occurred.”¹⁷ If it is determined that a third-party retail purchase of station power occurred, a PJM billing adjustment will “shift the financial responsibility for the wholesale value of the third-party sale of station power consumption from the generation owner to the appropriate EDC.”¹⁸ The generation owner is then given a spot market energy billing credit and the EDC is given a charge, and PJM will provide the EDC with MWh allocations, if desired, to facilitate the retail billing process between the EDC and the generation owner.

C. Relevant Entities and History of Dispute¹⁹

9. IMPA, a political subdivision of the State of Indiana, provides wholesale electric service to 61 cities and towns in Indiana and Ohio, including the City. IMPA entered a Network Integration Transmission Service Agreement (NITSA) with PJM in 2004, pursuant to which PJM provides transmission service to IMPA load located in the AEP zone that is not otherwise served by AEP.²⁰ IMPA’s network load under the NITSA

¹⁶ *Id.* (“In this case, compensation for station power consumption is handled bilaterally between the EDCs and the generation owners and PJM billing adjustments for station power are not applicable.”).

¹⁷ *Id.* § 13.1.1.

¹⁸ *Id.*

¹⁹ The following description of the relevant entities and history of the dispute that led to the instant Petition are derived from generally undisputed facts presented in the Petition and Respondents’ answers to the Petition.

²⁰ PJM Interconnection, L.L.C., PJM Service Agreements Tariff, PJM SA No. 4754, PJM SA No. 4754 among PJM and Indiana Municipal Power Agency (0.0.0); *PJM Interconnection, L.L.C.*, Docket No. ER17-2094-000 (Sept. 11, 2017) (delegated order) (accepting NITSA between PJM and IMPA).

includes 11 MW for “Lawrenceburg Plant (House Power),” i.e., the Plant’s station power.²¹

10. In 2007, AEP and IMPA entered into an Interconnection and Local Delivery Service Agreement (ILDSA), which established the terms and conditions of the local delivery services defined in the ILDSA that AEP provides to IMPA, separate from the transmission services provided by PJM.²² In 2017, AEP and IMPA revised the ILDSA to add Lawrenceburg Municipal Utilities (LMU), a member of IMPA. Because the ILDSA involves interconnection and local delivery service over AEP’s facilities located within the PJM region, it is a service agreement under Attachment H of the Tariff.²³

11. In 1982, IMPA entered into a power sales contract with the City, which provided that the City must take all electric power service it requires for its municipal electric system from IMPA; therefore, the City’s electric needs are part of IMPA’s wholesale load. The City owns and operates LMU, a municipal electric utility, which has been conferred, pursuant to Indiana state law, the sole right to furnish retail electric service within the boundaries of the City.²⁴

12. Lawrenceburg Power owns and operates the Lawrenceburg Plant (Plant), a 1,160 MW combined-cycle natural gas-fired generation facility, within the City. Lawrenceburg Power sells the entire output of the Plant, pursuant to its FERC-approved market-based rate tariff, into the PJM wholesale electric market.²⁵ The Plant’s generating units are interconnected directly and solely to 345 kV high-voltage interstate transmission facilities owned by Indiana Michigan Power Company (I&M), a subsidiary of AEP, regulated by the Commission and subject to the operational control of PJM. The Plant’s interconnection with I&M’s interstate transmission facilities is governed by PJM

²¹ *Id.* §§ 1.0 (Term of NITSA), 4.0 (Network Load).

²² Am. Elec. Power, Filing, Docket No. ER17-1278-000 (Mar. 21, 2017).

²³ PJM Interconnection, L.L.C., PJM Service Agreements Tariff, PJM SA No. 1436, PJM SA No. 1436 between AEP and IMPA (0.0.0).

²⁴ Ind. Code § 8-1-2.3.

²⁵ *Darby Power, LLC*, Docket No. ER17-256-000 et al. (Dec. 20, 2016) (delegated order) (accepting Lawrenceburg Power’s market-based rate tariff).

Interconnection Service Agreement No. 4623 (ISA), which was accepted by FERC in 2017.²⁶ The Plant does not have any interconnection to LMU.²⁷

13. Prior to January 1, 2019, Lawrenceburg Power (and its predecessor) were meeting the Plant's station power needs pursuant to a retail electric service agreement (Retail Contract) with the City and LMU. In December 2017, Lawrenceburg Power, after purchasing the plant from an affiliate of AEP, provided written notice to the City of its intent to terminate the Retail Contract effective January 1, 2019, and to begin serving its station power needs via the self-supply monthly netting option in the PJM Tariff. Lawrenceburg Power also requested that effective January 1, 2019, AEP remove recordation of electric supply to the Plant from IMPA's PJM load-serving entity (LSE) account—AEP complied with the request.²⁸

14. In December 2018, Lawrenceburg Power filed a complaint in U.S. District Court requesting an order declaring that Lawrenceburg Power is not required to be a retail customer of LMU to meet its station power needs. Lawrenceburg Power filed its claim for equitable relief under the FPA, arguing federal preemption arising out of the Supremacy Clause of the U.S. Constitution. The U.S. District Court held that the Supremacy Clause and the FPA did not create a private right of action for the equitable claim presented, and thus dismissed the case without reaching the merits of the dispute.²⁹ In February 2019, IMPA initiated dispute resolution under the PJM Tariff to address the question of whether the Plant's load (i.e., its station power needs) should remain in PJM's LSE account, arguing that the Plant must take its station power at retail from the City. The informal dispute process ended without resolution in December 2019.

²⁶ PJM Interconnection, L.L.C., PJM Service Agreements Tariff, PJM SA No. 4623, PJM SA No. 4623 among PJM, Lawrenceburg and Indiana Michigan (0.0.0). The Interconnection Agreement states that PJM's "rules applicable to Station Power shall control with respect to [the Plant's] consumption of Station Power." *Id.*

²⁷ A distribution-voltage line owned by LMU provides electricity to a warehouse on Lawrenceburg Power's property, but this line is electrically isolated from and not interconnected with the generation facilities at the Plant. LMU provides service to the warehouse pursuant to a separate retail tariff that is not in dispute in this proceeding, and which the parties agree is not relevant to the current dispute.

²⁸ The Plant's station power needs are listed as part of IMPA's network load in its NITSA.

²⁹ *Lawrenceburg Power, LLC v. Lawrenceburg Mun. Utils.*, 410 F. Supp. 3d 943 (2019) (*Lawrenceburg Power*).

II. Overview of Petition

15. Petitioners seek to enforce the rights of IMPA to provide contracted-for all-requirements wholesale electric service to the City, to obtain the wholesale electric service from PJM necessary to do so, and to have that power transmitted to the Plant under IMPA's NITSA with PJM, in order for the City to serve the Plant's station power load.³⁰ Petitioners also seek to enforce the rights of the City, under state and local law, to supply the Plant with station power at retail in accordance with the 30-minute intervals established by municipal ordinance.³¹ Petitioners assert that Respondents, through their actions and inactions, have violated and continue to violate the City's retail service rights.³²

16. Petitioners explain that after Lawrenceburg Power's termination of the Retail Contract with the City, AEP acquiesced to Lawrenceburg Power's request to remove the Plant's load from IMPA's LSE account.³³ Petitioners state that PJM is aware that Lawrenceburg Power is purporting to self-supply its station power pursuant to the PJM Tariff and is acting in furtherance of that claim by failing to provide IMPA the electricity and transmission of power to IMPA's designated network load at the Plant delivery point.³⁴ Petitioners argue they are entitled to relief within the plain language of FPA section 306 because Lawrenceburg Power, PJM, and AEP are acting in "contravention" of their respective obligations under the statute to serve IMPA's designated network load at the Plant, to record that supply in IMPA's LSE account, and to report it for billing purposes to PJM, so that the City can fulfill its right to provide retail station power service to Lawrenceburg Power at the Plant.³⁵ Petitioners further argue that Article 4 of the ILDSA provides that "AEP shall cooperate with PJM and [IMPA] to the extent necessary and appropriate to insure that data is available to PJM . . . for use in calculating

³⁰ Petition at 2-3.

³¹ *Id.*

³² Petitioners explain that the Plant is located within the exclusive franchised retail service territory of the City. *Id.* at 2-3, 12, 17 (explaining that the City has always provided retail station power service to the Plant).

³³ *Id.* at 15-16.

³⁴ *Id.*

³⁵ *Id.* at 18-19 (citing 16 U.S.C. § 825e).

[network service] transmission charges and [for each LSE (including IMPA) within the AEP pricing zone].”³⁶

17. Petitioners assert that there are no material issues of fact in dispute, and the Petition therefore concerns only two pure issues of law: (1) whether the provision of station power is a retail sale subject to state jurisdiction; and if so, (2) whether the provision of the PJM Tariff providing for the self-supply of station power by means of monthly netting is void and unenforceable. Petitioners assert that both questions of law should be answered in the affirmative.³⁷

18. Petitioners assert that the provision of station power, specifically when a generating facility is offline and not generating, is a retail sale subject to state jurisdiction.³⁸ Petitioners state that when an electrical generating plant is not operating, it necessarily must consume energy from another source to operate the plant’s electric equipment—i.e., station power. Petitioners argue that the provision of station power is a “quintessential retail sale” within the plain meaning of the FPA, because it is a sale directly to an end user (rather than for resale).³⁹ Petitioners assert that state and local authorities regulate the rates, terms, and conditions of service governing the supply of station power because it is a retail sale.⁴⁰

19. Petitioners state that the Commission has always rejected its wholesale sales jurisdiction as a basis for regulating station power.⁴¹ But, prior to 2010, Petitioners explain that the Commission claimed jurisdiction over the supply of station power incident to its jurisdiction over interstate transmission service. During this time, the Commission approved various RTO/ISO tariff provisions providing merchant sellers the right to self-supply station power by means of “netting,” including the PJM Tariff provision at issue in this proceeding.⁴² However, in 2010, Petitioners explain that the Commission did “an about face” and disclaimed jurisdiction over the supply of station

³⁶ *Id.* at 11 (citing PJM SA No. 1436 at Art. 4).

³⁷ *Id.* at 3.

³⁸ *Id.* at 17-18, 19-20.

³⁹ *Id.*

⁴⁰ *Id.* at 3.

⁴¹ *Id.* at 20 (citing *Calpine Corp. v. FERC*, 702 F.3d 41, 47 (D.C. Cir. 2012) (*Calpine*)).

⁴² *Id.* at 20-21.

power, other than any transmission service used to deliver that power,⁴³ after the D.C. Circuit challenged the Commission’s authority to regulate the supply of station power in *Southern California Edison*.⁴⁴ Petitioners state that in *Southern California Edison*, the D.C. Circuit reviewed a Commission decision approving a netting provision for station power in the CAISO Tariff and rejected the Commission’s attempt to justify its assertion of jurisdiction over the supply of station power based on its interstate transmission authority.⁴⁵ Petitioners state that the D.C. Circuit held that jurisdiction over station power could not turn on the “unprincipled” ground of “the length of the netting period” and rejected the Commission’s argument that when a generator is net positive during a netting period, “no sale” has occurred at retail.⁴⁶ Petitioners explain that on remand from the D.C. Circuit’s decision in *Southern California Edison*, in the *Duke Energy Orders* the Commission conceded that it lacked statutory authority to regulate station power and accepted that it is up to the states to determine the amount of station power that is sold in state-jurisdictional retail energy sales.⁴⁷ Petitioners explain that in *Calpine*, the D.C. Circuit affirmed the Commission’s jurisdictional determination and rejected claims that the Commission had to revise the CAISO Tariff—those tariff provisions could remain on file but were unenforceable.⁴⁸ Because the provision of station power is not within the Commission’s jurisdictional purview, Petitioners argue that it must be subject to state and local authority.⁴⁹

⁴³ *Id.* at 3-4, 21 (citing *Duke Energy Moss Landing LLC v. Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,183 (2010) (*Duke Energy Remand*), *reh’g denied*, 134 FERC ¶ 61,151 (2011) (*Duke Energy Rehearing*), *aff’d sub nom. Calpine*, 702 F.3d 41). Hereinafter, the *Duke Energy Remand* and *Duke Energy Rehearing* orders will together be referred to as the *Duke Energy Orders*.

⁴⁴ *S. Cal. Edison Co. v. FERC*, 603 F.3d 996 (D.C. Cir. 2010) (*Southern California Edison*).

⁴⁵ Petition at 21 (citing *Southern California Edison*, 603 F.3d 996; *Calpine*, 702 F.3d at 45).

⁴⁶ *Id.* at 21-22 (citing *Southern California Edison*, 603 F.3d at 1000-01).

⁴⁷ *Id.* (citing *Duke Energy Rehearing*, 134 FERC ¶ 61,151 at PP 24, 28).

⁴⁸ *Id.* at 23 (citing *Calpine*, 702 F.3d at 45, 50) (noting that the D.C. Circuit also rejected claims that the Commission’s jurisdictional ruling would improperly subject merchant generators to retroactive charges for station power).

⁴⁹ *Id.* at 23-24 (citing *FERC v. Elec. Power Supply Ass’n*, 136 S. Ct. 760, 780 (2016) (*EPSA*)).

20. Petitioners argue that it is immaterial to the jurisdictional question that the City delivers station power to the Plant over transmission facilities subject to the Commission's jurisdiction.⁵⁰ Petitioners assert that the Commission has found that "the delivery of station power could be over transmission under [the Commission's] jurisdiction, or involve local distribution facilities subject to state jurisdiction, or both."⁵¹

21. While the *Duke Energy* station power line of cases did not specifically address the PJM region, Petitioners assert that the jurisdictional rulings therein are nationwide in scope and apply equally to the PJM Tariff.⁵² Petitioners explain that subsequent to the *Duke Energy Orders*, MISO filed to amend its tariff consistent with the Commission's jurisdictional holding by removing language providing (a) for the self-supply of station power by means of netting and (b) that the federal tariff controls in the event of a conflict between federal and state tariffs concerning the retail purchase of station power. Petitioners state that in accepting MISO's tariff revisions, the Commission rejected arguments that the *Duke Energy Orders* did not apply to MISO and held that "[t]he jurisdictional holdings in [*Southern California Edison*] apply regardless of the identity of the transmission provider."⁵³

22. Because the Commission lacks jurisdiction over the supply of station power, Petitioners assert that it necessarily follows that the PJM Tariff provision "purporting to afford merchant sellers the ability to self-supply station power by means of monthly netting" is null, void, and unenforceable.⁵⁴ Petitioners assert that section 1.7.10(d) of the PJM Tariff is *ultra vires*, because the Commission has held that it does not have jurisdiction over the supply of station power. Petitioners argue that, although this PJM Tariff provision is the "filed rate," the filed-rate doctrine does not support Respondents' actions, because a regulated entity cannot rely on a filed, but void tariff that regulates a

⁵⁰ *Id.* at 25.

⁵¹ *Id.* (quoting *KeySpan-Ravenswood, Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 101 FERC ¶ 61,230, at P 20 (2002) (*KeySpan-Ravenswood*), *reh'g denied*, 107 FERC ¶ 61,142, *clarified*, 108 FERC ¶ 61,164 (2004)).

⁵² *Id.* at 4, 25-26 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,113 (2012) (*MISO*)).

⁵³ *Id.* at 26-27 (citing *MISO*, 139 FERC ¶ 61,113 at PP 23-24) (noting that the Commission disagreed that the jurisdictional holding should not apply to MISO because it is a multi-state RTO while CAISO is a single-state RTO).

⁵⁴ *Id.* at 4, 27-30.

matter beyond the Commission's jurisdiction.⁵⁵ Petitioners note that in *Columbia Gas*, the D.C. Circuit made clear that the Commission cannot "use the filed rate doctrine as . . . a jurisdictional bootstrap."⁵⁶ Petitioners argue that as to this dispute, the valid filed rate is the retail station power rate schedule contained in City ordinance.⁵⁷

23. Petitioners seek the following relief from the Commission:

(1) a declaration that the supply of station power is a retail sale over which the Commission lacks jurisdiction (other than as to FPA-jurisdictional transmission service used to transmit such supply);

(2) a declaration that, at least as of February 12, 2013,⁵⁸ section 1.7.10(d)(i) of the PJM Tariff, purporting to provide a merchant seller the right to self-supply station power by means of monthly netting, is null and void and unenforceable, and Lawrenceburg Power must take station power service under retail rates, terms, and conditions of service under state and local law;

(3) order and direct AEP to record IMPA's delivery of electricity to the City at the Plant in IMPA's PJM LSE account and to correct all such entries as of January 1, 2019, and to report this information to IMPA and PJM; and

(4) order and direct PJM to provide IMPA wholesale electric and network transmission service for the supply and transmission of power to its designated network load at the Plant delivery point as of January 1, 2019, and thereafter.⁵⁹

24. Petitioners assert that they are not asking the Commission to revise the PJM Tariff or any FERC-jurisdictional agreement, or to order PJM to rerun any market or make

⁵⁵ *Id.* at 4, 28-29 (citing *Columbia Gas Transmission Corp. v. FERC*, 404 F.3d 459 (D.C. Cir. 2005) (*Columbia Gas*); *Sec. Servs. Inc. v. K MART Corp.*, 511 U.S. 431, 433 (1994) (*Security Services*); *Calpine*, 702 F.3d at 45).

⁵⁶ *Id.* at 28-29 (quoting *Columbia Gas*, 404 F.3d at 462).

⁵⁷ *Id.* at 28.

⁵⁸ February 12, 2013 is the date the D.C. Circuit issued its mandate to the Commission following its decision in *Calpine* affirming the Commission's decisions in the *Duke Energy Orders*.

⁵⁹ *Id.* at 6-7, 30-31.

retroactive settlement adjustments.⁶⁰ Petitioners assert that when Lawrenceburg Power informed AEP that it intended to self-supply station power pursuant to the PJM Tariff, it knew it was at risk of paying duplicative charges for station power service.⁶¹ However, Petitioners state that once Lawrenceburg Power has paid for the retail station power as of January 1, 2019 and thereafter, IMPA is willing to work with Lawrenceburg Power to fairly resolve any double charges for such service and with PJM to ensure it is made whole for supply to the Plant since January 1, 2019.⁶²

III. Notice of Filing and Responsive Pleadings

25. Notice of the Petition was filed in the *Federal Register*, 85 Fed. Reg. 15,163 (Mar. 17, 2020), with comments due on or before March 30, 2020. On March 11, 2020, an Errata Notice was issued by the Commission, correcting the date on which the Petition was filed and updating the comment deadline, accordingly, to March 26, 2020.

26. On March 13, 2020, Lawrenceburg Power submitted a motion for extension of time to answer the Petition, requesting a 10-day extension of the answer period to April 6, 2020. On March 25, 2020, the Commission issued a notice of extension of time, explaining that the Commission's extension of non-statutory deadlines in Docket No. AD20-11-000 in response to the emergency conditions caused by the Novel Coronavirus Disease (COVID-19)⁶³ had granted the Respondents in this proceeding an extension of time until May 1, 2020 to file answers, comments, and interventions.

27. Timely motions to intervene were filed by Monitoring Analytics, LLC, acting in its capacity as Independent Market Monitor for PJM, Calpine Corporation, Old Dominion Electric Cooperative (ODEC), Exelon Corporation (Exelon), LS Power Associates, L.P., PJM Power Providers Group (P3), Electric Power Supply Association (EPSA), Talen Energy Corporation (Talen Energy), NRG Power Marketing LLC, American Municipal Power, Inc., East Kentucky Power Cooperative, Inc. (EKPC), Midwest Energy, Inc., PSEG Power LLC and PSEG Energy Resources & Trade LLC (together, PSEG), Dayton Power and Light Company (DP&L), Basin Electric Power Cooperative, Cogentrix Energy Power Management, LLC, Indiana Office of Utility Consumer Counselor, American Public Power Association, and Buckeye Power, Inc. (Buckeye Power). A timely notice of intervention was filed by the Indiana Utility Regulatory Commission

⁶⁰ *Id.* at 7.

⁶¹ *Id.* (citing *Calpine*, 702 F.3d at 50).

⁶² *Id.* at 7 n.12.

⁶³ See *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000, at 1 (Mar. 19, 2020).

(Indiana Commission). On May 2, 2020, a motion to intervene out-of-time was filed by the Independent Power Producers of New York, Inc.

28. On May 1, 2020, PJM, AEP, and Lawrenceburg Power filed answers to the Petition (PJM Answer, AEP Answer, and Lawrenceburg Power Answer, respectively). On May 1, 2020, Buckeye Power and the Indiana Commission filed comments in support of the Petition (Buckeye Power Comments and Indiana Commission Comments, respectively). On May 1, 2020, P3 and EPSA filed a joint protest (P3/EPSA Joint Protest), and DP&L, Exelon, ODEC, PSEG, EKPC, and Talen (together the Indicated Companies) filed a joint protest (Indicated Companies Joint Protest). On May 18, 2020, AEP filed a motion for leave to answer and answer (AEP Second Answer). On May 21, 2020, PJM filed a motion for leave to answer and answer (PJM Second Answer). On May 22, 2020, Buckeye Power and the Petitioners both filed motions for leave to answer and answers (Buckeye Power Answer and Petitioners Answer, respectively).

29. On June 5, 2020, Waterford Power, LLC (Waterford Power) filed a motion to intervene out-of-time and comments (Waterford Power Comments), and Lawrenceburg Power filed a motion to strike the Buckeye Power Comments and Buckeye Power Answer, motion for leave to answer, and answer (Lawrenceburg Power Second Answer). On June 18, 2020, Buckeye Power filed an answer in opposition to Lawrenceburg Power's motion to strike (Buckeye Power Opposition to Motion), and the Petitioners filed a motion for leave to answer and answer to Lawrenceburg Power's Second Answer (Petitioners Second Answer). On June 24, 2020, Petitioners filed a motion for leave to answer and answer to comments filed in Docket No. EL20-42-000. On July 8, 2020, Lawrenceburg Power filed a motion for leave to answer and answer (Lawrenceburg Power Third Answer).

A. Respondents' Initial Answers to Petition

1. Lawrenceburg Power Answer to Petition

30. Lawrenceburg Power states that wholesale generators in PJM have relied upon the PJM Tariff provision allowing generators to satisfy their station power needs using electric energy produced by their own generating units for over two decades. Lawrenceburg Power explains that its Plant has no physical interconnection with LMU or IMPA, and therefore neither LMU nor IMPA are capable of providing station power to the Plant. Lawrenceburg Power asserts that Petitioners are attempting to force it to continue to pay for a "fictional service," despite the fact that Lawrenceburg Power terminated its Retail Contract with LMU pursuant to the plain terms of that agreement.⁶⁴

⁶⁴ Lawrenceburg Power Answer at 4, 10 (noting that LMU has not alleged improper termination of the Retail Contract).

31. Lawrenceburg Power argues that Petitioners erroneously dismiss the Commission-jurisdictional aspects of station power by claiming that the Commission has no statutory authority to regulate the rates, terms, and conditions of service governing the supply of station power. Lawrenceburg Power explains that a generator can supply its station power various ways—self-supply, remote self-supply, third-party transactions—and that a generator’s approach to satisfying its station power needs may or may not involve a “sale” of electric energy.⁶⁵ Lawrenceburg Power states that nearly 20 years ago, the Commission issued its seminal order on how the FPA’s jurisdictional framework applies in the station power context—*PJM II*—and in that case, and in every case since, the Commission has consistently held that states have jurisdiction only over third-party purchases of station power and that the Commission has exclusive jurisdiction over self-supply of station power.⁶⁶

32. Lawrenceburg Power asserts that its self-supply of station power dictates the amount of physical output it can inject to the grid and directly affects the rates for its wholesale sales in the PJM market; therefore, this practice is squarely within the Commission’s exclusive jurisdiction as a practice affecting wholesale rates.⁶⁷ Lawrenceburg Power explains that when it self-supplies its station power “there is no sale (for end use or otherwise)” in the first instance, and therefore Indiana, much less LMU, can have no jurisdiction over that self-supplied station power.⁶⁸ Lawrenceburg Power asserts its self-supply of station power directly affects the wholesale rate, explaining that if it was required to purchase station power from LMU at the proposed retail rates, its cost of operating would increase significantly. As a result, Lawrenceburg Power argues the price at which it could offer power in the wholesale market would be impacted.⁶⁹ Lawrenceburg Power argues that if the Commission grants the Petition it will harm competition in the PJM wholesale electric market and hobble Lawrenceburg Power, directly impacting its ability to successfully sell output in the wholesale market and recover its costs.⁷⁰ Further, Lawrenceburg Power argues that forcing generators to satisfy their station power needs at retail prices will place PJM generators at a competitive

⁶⁵ *Id.* at 15-16.

⁶⁶ *Id.* at 16-17 (citing *PJM II*, 94 FERC ¶ 61,251).

⁶⁷ *Id.* at 3, 17-23 (explaining that a generator’s decision to self-supply its station power directly impacts the facility’s ability to generate output, its internal costs, and in turn, the price of wholesale power through which the facility recovers its costs).

⁶⁸ *Id.* at 17 (quoting *PJM II*, 94 FERC at 61,891).

⁶⁹ *Id.* at 19-20.

⁷⁰ *Id.* at 20-21.

disadvantage with generators in NYISO (who can avail themselves of self-supply),⁷¹ and create a patchwork of different station power charges across PJM, as different states adopt different station power frameworks. Lawrenceburg Power asserts these impacts are at odds with the central reason PJM adopted self-supply netting provisions for station power in the first place—to level the playing field between vertically integrated utilities and independent generators.⁷² Given concerns about adverse impacts to wholesale prices and competition, Lawrenceburg Power argues that the Commission must reject the Petition and reaffirm the validity of the PJM Tariff’s station power monthly netting provision.⁷³

33. Lawrenceburg Power claims that a state’s jurisdiction over retail purchases of station power from a third party does not lessen the Commission’s jurisdiction under the FPA. Lawrenceburg Power explains that the Commission has consistently asserted jurisdiction over self-supply of station power and transmission service to deliver such power, in the same orders in which it has acknowledged station jurisdiction over third-party purchases.⁷⁴ Lawrenceburg Power notes that Petitioners have not identified a single state in PJM purporting to regulate a generator’s self-supply of station power. Lawrenceburg Power explains that in 2019, the Public Utilities Commission of Ohio approved a retail station power tariff that harmonizes third-party retail station power service with the PJM Tariff’s self-supply provision.⁷⁵ By contrast, Lawrenceburg Power points out that neither the Indiana Legislature nor the Indiana Utility Regulatory Commission have attempted to regulate the provision of station power in Indiana.

34. Lawrenceburg Power argues that no federal or state statute grants authority to LMU to regulate the self-supply of station power by generators who participate in the PJM market.⁷⁶ Lawrenceburg Power argues that Petitioners argument that the Commission has already disclaimed jurisdiction over self-supplied station power as a

⁷¹ *Id.* at 21 (noting an anti-competitive imbalance would exist until the Commission completed section 206 proceedings to remove self-supply from all RTO/ISO tariffs).

⁷² *Id.* at 21-22.

⁷³ *Id.* at 22.

⁷⁴ *Id.* at 23 (referencing the *PJM Station Power Cases*).

⁷⁵ *Id.* at 24-25 (citing *Ohio Power*, Pub. Utils. Comm’n of Ohio, Case No. 18-1313-EL-ATA).

⁷⁶ *Id.* at 26-27 (arguing that the Indiana statutory provisions Petitioners cite do not provide the expansive regulatory rights claimed by Petitioners).

practice affecting wholesale rates is meritless and contrary to Commission precedent.⁷⁷ Lawrenceburg Power asserts that *PJM II* established the framework for applying the Commission’s “affecting” jurisdiction to station power and found that the self-supply of station power is within the Commission’s jurisdiction.⁷⁸ Lawrenceburg Power argues that the PJM Tariff is consistent with the FPA’s jurisdictional framework. Lawrenceburg Power explains that the PJM Tariff expressly permits a market seller to satisfy its station power needs through on-site self-supply, remote self-supply, or purchases from a third-party, and does not in any way require, limit, or dictate the terms of any third-party retail purchase.⁷⁹ Thus, Lawrenceburg Power argues that rather than interfering with the state’s jurisdiction, the PJM Tariff is carefully crafted to respect state jurisdiction.

35. Lawrenceburg Power states that the PJM Tariff is the valid filed rate and therefore generators are entitled to rely on it. Arguments to the contrary, Lawrenceburg Power asserts, are based on misinterpretations of Commission and court precedent. Specifically, Lawrenceburg Power argues that Petitioners read *Southern California Edison* and *Calpine* too broadly. Lawrenceburg Power states that those two cases only addressed the “narrow issue of whether the Commission’s jurisdiction over transmission permits it to dictate when a third-party purchase of station power constitutes a retail sale”—they did not diminish the Commission’s jurisdiction over station power self-supply.⁸⁰ Lawrenceburg Power states that the Commission’s assertion of jurisdiction over self-supply was not challenged on appeal in *Southern California Edison* or in *Calpine*, rather the appeals were narrowly focused on whether the Commission could set a netting interval for third-party retail purchases.⁸¹

36. Similarly, Lawrenceburg Power notes that *Southern California Edison* did not challenge the validity of Permitted Netting provisions in the CAISO Tariff, finding that the Permitted Netting provisions did not impose a netting period for “retail sales” and therefore were within the Commission’s jurisdiction to regulate.⁸² Lawrenceburg Power acknowledges that the court’s jurisdictional analysis went further in *Calpine* and cast doubt on the Commission’s ability to claim that third-party purchases of station power as

⁷⁷ *Id.* at 27 (citing Petition at 21-22).

⁷⁸ *Id.* at 27-28 (citing *PJM II*, 94 FERC ¶ 61,251).

⁷⁹ *Id.* at 28-30 (noting that with regard to third-party purchases of station power, the Tariff only addresses the transmission service necessary to delivery such power).

⁸⁰ *Id.* at 30-31.

⁸¹ *Id.* at 34-38.

⁸² *Id.* at 36-37 (citing *Southern California Edison*, 603 F.3d at 1000 n.7).

a practice that affects wholesale rates, but Lawrenceburg Power argues that that dicta only concerned third-party purchases, not self-supply. Lawrenceburg Power states that *Calpine* explicitly acknowledged that the Commission retains wholesale jurisdiction over a utility's allocation of power, arguing that self-supply is a physical practice allocating the amount of energy a generator sells at wholesale.⁸³ Lawrenceburg Power argues that the Petitioners ignore the fact that in the *MISO* case the MISO Tariff provisions maintained generators' right to self-supply station power and the Commission accepted it as just and reasonable, consistent with the jurisdictional determinations in *Calpine*.⁸⁴

37. Even assuming *Southern California Edison* and *Calpine* could be read as Petitioners argue, Lawrenceburg Power argues that intervening precedent—the Supreme Court's decision in *EPSA*—precludes the Commission from abdicating its jurisdiction over the self-supply of station power. Lawrenceburg Power argues that if demand response is a practice affecting wholesale rates, as *EPSA* found, then a wholesale generator's decision to self-supply its station power needs must be as well.⁸⁵ Lawrenceburg Power explains that *EPSA* upheld the Commission's jurisdiction over demand response on the grounds that “every aspect of the regulatory plan happens exclusively on the wholesale market and governs exclusively that market's rules,” which Lawrenceburg Power argues is the same with self-supply via the PJM Tariff.⁸⁶ In addition, Lawrenceburg Power states that Supreme Court precedent makes clear that states cannot enact measures “aimed directly at” a matter within the Commission's jurisdiction, which Petitioners attempt to do here.⁸⁷

38. Lawrenceburg Power asserts that Petitioners undermine their own argument by conceding that the Commission has “undeniable” jurisdiction over setting the netting interval for transmission.⁸⁸ Also, Lawrenceburg Power argues that the Petitioners failure to specifically challenge remote self-supply under the PJM Tariff, which is subject to the

⁸³ *Id.* at 37-38.

⁸⁴ *Id.* at 39 (citing *MISO*, 139 FERC ¶ 61,113 at PP 6, 20-28).

⁸⁵ *Id.* at 40-41 (citing *EPSA*, 136 S. Ct. at 774) (arguing that the decision to self-supply directly reduces the amount of power a generator puts into the wholesale market when it is generating).

⁸⁶ *Id.* at 41-42 (quoting *EPSA*, 136 S. Ct. at 776) (arguing that all aspects of the self-supply of station power occur within the confines of the PJM wholesale market and no state actor is required to facilitate self-supply).

⁸⁷ *Id.* at 43 (citing *Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591 (2015)).

⁸⁸ *Id.* at 43-46.

same monthly netting as self-supply, is a concession that the Commission has jurisdiction over station power generally.⁸⁹

39. Lawrenceburg Power argues that states in the PJM region have effectively accepted the monthly interval in the PJM Tariff for determining whether a retail sale occurs, noting that no state or state agency has challenged the monthly netting interval in the PJM Tariff since *Calpine*, nor has any state or state agency adopted a different netting interval than the monthly interval in the PJM Tariff.⁹⁰

40. Finally, Lawrenceburg Power argues that the Commission cannot grant the relief requested by Petitioners. Lawrenceburg Power argues that the Commission cannot null and void the station power provision in the PJM Tariff, but leave it on file as part of the effective Tariff. Lawrenceburg Power states that pursuant to the filed rate doctrine, the only mechanism to invalidate a duly filed Tariff and impose a different rate is via a finding that the Tariff is unjust and unreasonable pursuant to section 206 of the FPA.⁹¹ In addition, Lawrenceburg Power argues that the Commission can only provide prospective remedies, and therefore it cannot grant Petitioners' request to direct AEP to record the Plant's station power in IMPA's LSE account and to direct PJM to provide wholesale electric and network transmission service to IMPA.⁹²

2. PJM Answer to Petition

41. PJM takes no position as to the retail service dispute between the City and Lawrenceburg Power, but argues that the complaint with respect to PJM should be dismissed.⁹³ PJM explains that it has no involvement in the provision of retail service and does not apply section 1.7.10(d) of its Tariff to determine the existence or level of any retail service.⁹⁴ PJM states that it took no action with respect to the reporting of

⁸⁹ *Id.* at 47-48.

⁹⁰ *Id.* at 48-49 (noting examples in Ohio, Maryland, and Pennsylvania).

⁹¹ *Id.* at 50-52 (explaining that Petitioners failed to file their Petition pursuant to section 206 of the FPA and rather relied on section 306, which does not provide authority to grant the requested relief).

⁹² *Id.* at 53-54.

⁹³ PJM Answer at 1-2, 4.

⁹⁴ *Id.* at 2-3, 7.

station power at the Plant and therefore cannot be deemed to have acted in “contravention” of its obligations under section 306 of the FPA.⁹⁵

42. PJM asserts that the Commission should reject requests to declare section 1.7.10(d) null and void, because this provision governs the level of transmission service provided by PJM. PJM states that the Commission has exclusive jurisdiction over transmission service in interstate commerce, and that the Tariff provisions establishing the amount of transmission service associated with the delivery of station power suffer from no defect of authority, even though the states determine the presence and extent of any retail sale of station power.⁹⁶ PJM states that precedent is clear that the Commission may determine station power for transmission service differently than a state determines station power for retail service.⁹⁷ Accordingly, PJM argues that section 1.7.10(d) is not *ultra vires* and the Petition provides no basis for declaring it null, void, and unenforceable.⁹⁸

43. In addition, PJM argues that nothing in the Petition provides any basis for the Commission to direct PJM to provide transmission service to the Plant since January 1, 2019 any differently than prescribed by the Tariff in effect during that time period. PJM states that Petitioners’ request that PJM be ordered to provide “IMPA wholesale electric and network transmission service for the supply and transmission of power to the designated network load at the Plant,” appears in practical terms to be a request to determine transmission service to the Plant without the Tariff’s current monthly netting rule, so that “the determination of transmission service under the Tariff . . . equals the City’s separate determination of retail service under state and municipal law, and to do so *retroactively*.”⁹⁹ PJM states that this ignores its right to regulate the rates, terms, and conditions of Commission-jurisdictional transmission service.

44. Further, PJM argues that nothing in the Tariff nor PJM’s actions in accordance with the Tariff, can be read to thwart the provision of transmission service under IMPA’s

⁹⁵ *Id.* at 6-7.

⁹⁶ *Id.* at 2 (citing *Niagara Mohawk Power Corp. v. FERC*, 452 F.3d 822, 824 (D.C. Cir. 2006) (*Niagara Mohawk*); *Calpine*, 702 F.3d at 50)).

⁹⁷ *Id.* at 7-9 (citing *Southern California Edison*, 603 F.3d at 999, 1001-02; *Duke Energy Rehearing*, 134 FERC ¶ 61,151 at P 24).

⁹⁸ *Id.* at 9.

⁹⁹ *Id.* at 4-5 (explaining that application of the monthly netting rule in section 1.7.10(d)(i) largely eliminated transmission service to the Plant since January 1, 2019).

network service agreement. PJM states that AEP reporting station power values at the Plant as load served by IMPA or as negative generation for Lawrenceburg Power are both reporting conventions compatible with the Tariff provisions determining transmission service.¹⁰⁰ PJM notes that Manual 28 acknowledges that superseding arrangements for the treatment of station power may exist between a generation owner and the applicable EDC, and if so, net station power consumption (negative net generation MW) are not reported to PJM for settlement purposes, and compensation for station power consumption is handled bilaterally between the EDC and the generation owner.¹⁰¹

3. AEP Answer to Petition

45. AEP supports the request for declaratory relief, arguing that the PJM Tariff should have been amended years ago to comply with subsequent, controlling jurisprudence.¹⁰² AEP asserts that recent case law (*Southern California Edison*, *Calpine*, and *MISO*) “made clear that an [RTO/ISO] cannot determine whether state-jurisdictional retail sales of energy to serve power plants’ station power loads occur,” yet the PJM Tariff provision (which was approved prior to these cases) establishes a monthly netting interval for the self-supply of both energy and transmission for station power load.¹⁰³ AEP argues that the Commission should follow existing precedent and require PJM to change its Tariff to reflect the jurisdictional determinations in the recent caselaw.

46. However, while AEP agrees with Petitioners’ request for declaratory order on the jurisdictional question, AEP asserts that the complaint against AEP should be dismissed, because AEP was simply complying with the applicable filed rate and did not act unlawfully or interfere with Petitioners’ rights.¹⁰⁴ AEP explains that while it agreed in principle with Petitioners that the City had the right to serve Lawrenceburg Power’s station power at retail, AEP could not overlook the terms of the Tariff and the

¹⁰⁰ *Id.* at 5-6.

¹⁰¹ *Id.* at 6 (citing PJM Manual 28 at § 13.1).

¹⁰² AEP Answer at 3 (citing *Southern California Edison*, 603 F.3d 996; *Calpine*, 702 F.3d 41; *MISO*, 139 FERC ¶ 61,113).

¹⁰³ *Id.* at 3-4 (noting that the Commission can determine whether transmission service was used).

¹⁰⁴ *Id.* at 2-3, 7, 8-9, 12. AEP notes that it continued to provide IMPA with the same monthly meter data it had received prior to Lawrenceburg Power’s decision to “self-supply,” so that the City would be able to continue billing Lawrenceburg Power for station power pursuant to its retail rates. *Id.* at 6-7.

Commission's authority to penalize it for failing to comply with the filed Tariff.¹⁰⁵ AEP argues that while it is reasonable to argue that the PJM Tariff provision at issue became extra-jurisdictional upon issuance of the *Southern California Edison* and *Calpine* decisions, or upon the Commission's decision in *MISO*, the Commission cannot expect a public utility to disregard a filed tariff based only on its own interpretation of the applicability of such subsequent jurisprudence, especially when the impact of those decisions on the instant dispute was subject to litigation in U.S. District Court.¹⁰⁶

47. Further, AEP notes that it is possible to read the PJM Tariff provision on self-supply in harmony with the holdings in *Southern California Edison*, *Calpine*, and *MISO* and not extra-jurisdictional, if it only is read to govern for purposes of *federal* charges for wholesale energy and transmission.¹⁰⁷ AEP argues that nothing prevents a generator from claiming to "self-supply" on a federal tariff but also being billed for, and compelled to pay for, retail services it receives under state or local law.¹⁰⁸ AEP notes that nothing in the PJM Tariff prohibits an LSE from applying retail charges for station power consumption, and nothing prevents a PJM generator from asking to have its station power load be treated like retail load to avoid double billing.¹⁰⁹

48. Although the PJM Tariff can be read as not being extra-jurisdictional, AEP nonetheless argues that it should be amended.¹¹⁰ However, AEP argues that the Commission should not declare the entire provision null and void, because such a request ignores the fact that PJM does have the right to determine how much FPA-jurisdictional

¹⁰⁵ *Id.* at 6, 8-9.

¹⁰⁶ *Id.* at 10 (noting that Lawrenceburg Power filed litigation against the City in the Southern District of Indiana arguing that the cases cited had no effect on the station power provisions in the PJM Tariff).

¹⁰⁷ *Id.* at 10-11.

¹⁰⁸ *Id.* at 7, 12-13 (citing *Calpine*, 702 F.3d at 50) (explaining that in *Calpine* the D.C. Circuit rejected the argument that it was arbitrary for the Commission not to act to change the CAISO Tariff because it could result in a generator being billed twice for energy—once by the CAISO and once at retail by the LSE).

¹⁰⁹ *Id.* at 10-11.

¹¹⁰ AEP notes that no amendments to any existing interconnection service agreements would be necessary, because these agreements' reference back to the PJM Tariff would no longer be problematic. *Id.* at 13 n.20.

transmission service is consumed by a retail station power customer.¹¹¹ Therefore, AEP supports a stakeholder process for crafting appropriate revisions to the PJM Tariff.

49. AEP asserts that it will comply with any accounting corrections ordered by the Commission, but explains that correcting the recordation of IMPA's delivery of electricity to the City at the Plant in IMPA's LSE account would require corresponding credits to Lawrenceburg Power for "self-supplied" station power and any related services it purchased from PJM.¹¹²

B. Intervenor Comments and Protests

50. Buckeye Power explains that it and one of its member cooperatives, Washington Electric Cooperative (WEC), have been involved in an ongoing dispute with Waterford Power, a merchant generator located within WEC's service territory, regarding WEC's right to supply and set the rates, terms, and conditions of retail station power service at Waterford Power's plant since 2017.¹¹³ Buckeye Power states that Waterford Power has been relying on the PJM Tariff self-supply monthly station power netting provision to avoid paying WEC for the supply of station power.

51. Buckeye Power supports Petitioners' request for declaratory relief, noting that the Commission has disclaimed jurisdiction over the supply of station power and agreeing with Petitioners that the self-supply monthly netting provisions of the PJM Tariff are and have been a nullity, at least since the D.C. Circuit's mandate in *Calpine*.¹¹⁴ Buckeye Power asserts that merchant generators such as Waterford Power were on notice after the *Calpine* decision that they were subject to retail rates and charges for the provision of station power.

52. Buckeye Power asserts that the declaratory relief sought in the Petition would bring "much needed clarity on the rights and responsibilities concerning the supply of

¹¹¹ *Id.* at 13-14.

¹¹² *Id.* at 14-15 (arguing that it would be most appropriate for PJM to make both adjustments, with AEP supplying the necessary data).

¹¹³ Buckeye Power Comments at 1-4.

¹¹⁴ *Id.* at 4-5 (citing *Duke Energy Remand*, 132 FERC ¶ 61,183, *reh'g denied*, *Duke Energy Rehearing*, 134 FERC ¶ 61,151, *aff'd sub nom. Calpine*, 702 F.3d 41). Buckeye Power asserts that the Commission's *MISO* decision removed any possible ambiguity as to the scope and reach of the jurisdictional determinations in the *Duke Energy Orders*. *Id.* at 5 (citing *MISO*, 139 FERC ¶ 61,113 at P 23).

station power within PJM.”¹¹⁵ Buckeye Power states that declaratory relief will assist in resolving its three-year long dispute with Waterford Power, as well as provide needed direction for other cooperatives in Ohio who have merchant generation located within their service territories, other retail electric service providers within PJM that have exclusive retail service rights, and all other affected market participants.¹¹⁶

53. The Indiana Commission also supports Petitioners’ request for declaratory relief and similarly asserts that state jurisdictional authority over station power retail sales has been settled as a matter of law for the last decade.¹¹⁷ The Indiana Commission explains that the Commission lacks any basis on which to regulate retail station power netting and charges (i.e., sales to end users).¹¹⁸ The Indiana Commission argues that the Commission’s jurisdictional authority over interstate transmission is not a basis by which to regulate station power, as confirmed by the D.C. Circuit in *Southern California Edison* and the Commission in the *Duke Energy* decisions.¹¹⁹ Similarly, the Indiana Commission argues that the Commission has long acknowledged that its wholesale jurisdiction does not allow for the regulation of station power.¹²⁰ In addition, the Indiana Commission argues that the Commission has rejected the claim that the provision of station power is within its jurisdiction because it “affects or relates” to wholesale service.¹²¹ The Indiana Commission explains that in *EPSA*, the Supreme Court was careful to define the scope of what might be construed as “affecting” jurisdiction to rules or practices that “directly affect” wholesale rates, so as to avoid assuming near-infinite breadth of the FPA.¹²² Further, the Indiana Commission notes that in *EPSA* the Supreme Court explained that to uphold a rule under “affecting” jurisdiction, it must also determine that the rule does not regulate retail electric sales, which are reserved to the regulatory authority of the

¹¹⁵ *Id.* at 6.

¹¹⁶ *Id.*

¹¹⁷ Indiana Commission Comments at 2-7 (citing *Southern California Edison*, 603 F.3d 996).

¹¹⁸ *Id.* at 9 (citing *EPSA*, 136 S. Ct. at 774).

¹¹⁹ *Id.* at 10-11.

¹²⁰ *Id.* at 9-10 (citing *PJM II*, 94 FERC ¶ 61,251).

¹²¹ *Id.* at 11-12 (citing *Calpine*, 702 F.3d at 47 (citing *PJM II*, 94 FERC at 61,894)); *see also id.* at 12 (citing *Duke Energy Rehearing*, 134 FERC ¶ 61,151 at P 20).

¹²² *Id.* at 11-12 (citing *EPSA*, 136 S. Ct. at 774).

states.”¹²³ Finally, the Indiana Commission argues that there is no conflict between netting to determine transmission usage and netting to determine retail station power charges such as would warrant Commission preemption over the regulation of retail station power—an argument rejected by the D.C. Circuit in *Southern California Edison*.¹²⁴

54. P3 and EPSA protest the Petition and argue that the Commission should assert exclusive jurisdiction over station power netting pursuant to the PJM Tariff and make clear that its exclusive jurisdiction preempts shorter netting intervals proscribed by state authorities.¹²⁵ P3 and EPSA agree with Lawrenceburg Power’s arguments that the Supreme Court’s recent decision in *EPSA* calls into question the continued validity of the D.C. Circuit’s decision in *Southern California Edison* and the subsequent *Duke Energy Orders*.¹²⁶ P3 and EPSA argue that that the netting provision in the PJM Tariff proscribes a wholesale rate, in the sense that settlement adjustments for station power are effectively after-the-fact reductions in a generator’s wholesale sales, and involve a practice which, like wholesale demand response compensation, directly affects or relates to wholesale rates.¹²⁷

55. In the alternative, if the Commission is unwilling to assert exclusive jurisdiction, P3 and EPSA argue that the Commission should at least reject the request to declare the station power provision of the PJM Tariff null and void and simply clarify that the provision has no preemptive effect when a state authority has established a netting interval for the retail provision of station power that is different from the monthly netting interval in the Tariff.¹²⁸ P3 and EPSA argue that *MISO* provides no support for declaring the PJM Tariff null and void, because the MISO Tariff provisions the Commission accepted were intended to clarify that the MISO netting interval does not preempt a state-established netting interval—the Commission did not find the MISO netting provision null and void or unenforceable.¹²⁹ P3 and EPSA note that PJM Manual 28

¹²³ *Id.* at 12 (citing *EPSA*, 136 S. Ct. at 775).

¹²⁴ *Id.* at 9, 13 (citing *Southern California Edison*, 603 F.3d at 1002).

¹²⁵ P3/EPSA Joint Protest at 2, 4.

¹²⁶ *Id.* at 4 (citing *EPSA*, 136 S. Ct. 760).

¹²⁷ *Id.*

¹²⁸ *Id.* at 2, 5-7 (noting that the Commission made no such declaration with respect to the CAISO Tariff provisions in its *Duke Energy Orders*).

¹²⁹ *Id.* at 5-6 (citing *MISO*, 139 FERC ¶ 61,113 at P 20).

already recognizes that a generator may take station power service under a retail tariff.¹³⁰ When a state authority has imposed a shorter netting interval for retail station power sales, a generator will have no incentive to continue to participate in station power netting under the PJM Tariff, as it will result in a double-charge. Finally, P3 and EPSA argue that any relief granted by the Commission should be prospective only, as nullifying the station power provisions of the PJM Tariff back to February 12, 2013 would be grossly inequitable to market participants that have relied in good faith on the continuing effectiveness of those provisions and made business decisions based on that reliance.¹³¹

56. Indicated Companies argue that the Commission should deny the Petition for declaratory relief and otherwise deny the complaint, because this proceeding is essentially a contractual and retail rate dispute regarding interpretation of state and local laws.¹³² Indicated Companies argue that the prior District Court decision related to this dispute did not find that the Commission is the proper forum to address the issues raised, but rather merely found that the FPA and the Supremacy Clause did not create a private right of action and thus the District Court did not have authority to grant the equitable relief Lawrenceburg Power requested.¹³³ Indicated Companies argue that whether state law requires Lawrenceburg Power to purchase retail station power service from Petitioners is a question unrelated to the station power provisions of the PJM Tariff.¹³⁴ Indicated Companies argue that Petitioners have not carried their burden to demonstrate that the longstanding, widely utilized PJM Tariff provision regarding station power netting is unjust and unreasonable. Indicated Companies explains that section 1.7.10(d) does not preclude a different netting interval by a state for purposes of establishing whether a retail sale has taken place, but rather focuses on functions appropriately performed by PJM: how LMP charges and credits are calculated and how transmission charges are calculated.¹³⁵ Indicated Companies argue granting Petitioners requested

¹³⁰ *Id.* at 6-7.

¹³¹ *Id.* at 7-8 (noting that even in cases where an RTO/ISO is found to have acted unlawfully, the Commission has properly denied retroactive relief based on the understanding that market participants cannot revisit their past economic decisions or retroactively alter their conduct) (citations omitted).

¹³² Indicated Companies Protest at 2-5.

¹³³ *Id.* at 5-6 (citing *Lawrenceburg Power*, 410 F. Supp. 3d at 957).

¹³⁴ *Id.* at 5.

¹³⁵ *Id.* at 3, 6.

relief could impact the settled transactions of thousands of supply resources in the PJM region.¹³⁶

C. Additional Responses

1. AEP Second Answer

57. AEP argues that contrary to the assertions of P3, EPSA, and Lawrenceburg Power, the Supreme Court’s decision in *EPSA* neither undermines nor invalidates the holdings in *Southern California Edison* or *Calpine*, but rather it “clarifies that the Commission’s jurisdiction is limited to activities with *direct* impacts on wholesale rates.”¹³⁷ AEP explains that PJM’s monthly netting provision does not impact the quantity of power sold at wholesale by a generator and thus has no impact on wholesale rates.¹³⁸ AEP explains that the monthly netting interval determines only whether a generator qualifies for “self-supply” over the course of the month, which operates independent of PJM’s determination of the quantity of wholesale energy sold by a generator during each five-minute settlement interval.¹³⁹ AEP rejects Lawrenceburg Power’s argument that FERC has retained “exclusive jurisdiction” over “self-supply” on the grounds that “self-supply” results in an allocation of a generator’s own power pursuant to Commission jurisdiction. AEP explains that while the PJM Tariff may deem “positive net output” over a month “self-supply,” that does not mean it allocates power in that manner—allocation is dictated by the Tariff’s settlement intervals and Commission accounting regulations.¹⁴⁰ AEP argues that field preemption is not plausible, because nothing in the FPA provides for Commission jurisdiction over self-supply, and conflict preemption has been specifically rejected by the *Calpine* decision.¹⁴¹ Finally, AEP asserts that Lawrenceburg Power’s argument that wholesale demand response—which was found Commission-jurisdictional in *EPSA*—is similar to “self-supply” is based on the incorrect notion that PJM is reducing the quantity of power sold by Lawrenceburg

¹³⁶ *Id.* at 4.

¹³⁷ AEP Second Answer at 2 (citing *EPSA*, 136 S. Ct. at 774).

¹³⁸ *Id.* at 2-9.

¹³⁹ *Id.* at 2-3 (noting that the monthly netting interval could not be used to determine the quantity of wholesale power sold under relevant accounting regulations).

¹⁴⁰ *Id.* at 7-8.

¹⁴¹ *Id.* at 8-9 (citing *Calpine*, 702 F.3d at 50).

Power by using monthly netting.¹⁴² AEP also asserts that *EPSA* stands for the principle that the Commission “may not regulate retail electricity sales,” no matter how direct the impact on wholesale rates, and there is clear precedent that sales to station power load are retail sales.¹⁴³

58. AEP disagrees with PJM that Manual 28 moots the need to change the PJM Tariff or the *pro forma* interconnection service agreement. AEP argues that the Tariff, Manual 28, and the *pro forma* interconnection service agreement can be read to indicate that a generator has the “right” to choose either the self-supply option or a “superseding arrangement.” However, AEP asserts that it and PJM both believe that the Tariff does not, and cannot, convey that right to choose, and therefore the Tariff must be revised to eliminate this misunderstanding.¹⁴⁴

2. PJM Second Answer

59. PJM explains that it supports AEP’s recommendation that the Commission direct a stakeholder process to develop appropriate revisions to the Tariff, as a “more measured approach” compared to Petitioners’ request that the Tariff be declared null and void.¹⁴⁵ PJM reasserts its unquestionable authority over PJM transmission service associated with the supply of station power and explains that PJM’s implementation of the existing Tariff is consistent with that authority.¹⁴⁶ PJM states that the lawfully permitted difference between measurements of transmission usage and retail usage poses practical issues that lend themselves to development through a stakeholder process. Further, PJM argues that such an approach is consistent with the Commission’s prior action in the *Duke Energy Remand* in response to *Southern California Edison*.¹⁴⁷

60. PJM asserts that Buckeye Power’s request that the Commission resolve its dispute dating back to January 30, 2017 highlights the fatal retroactive ratemaking flaws inherent

¹⁴² *Id.* at 10-11 (citing Lawrenceburg Power Answer at 40).

¹⁴³ *Id.* at 3, 10-11 (citing *EPSA*, 136 S. Ct. at 775 (“FERC cannot take an action transgressing that limit no matter how direct, or dramatic its impact on wholesale rates”)).

¹⁴⁴ *Id.* at 11-12 (noting that Lawrenceburg Power asserts this right to choose).

¹⁴⁵ PJM Second Answer at 2-3.

¹⁴⁶ *Id.* at 3.

¹⁴⁷ *Id.* at 4 (citing *Duke Energy Remand*, 132 FERC ¶ 61,183; *Southern California Edison*, 603 F.3d 996).

in the Petition.¹⁴⁸ PJM argues that to the extent Buckeye Power seeks changes to any past rate or charge assessed by PJM under the Tariff, that relief sought is plainly unlawful.¹⁴⁹ PJM states that section 1.7.10(d) is the duly filed rate for the determination of transmission service charges for station power and any change to those rates going back to 2013 would contravene the filed rate doctrine and constitute impermissible retroactive ratemaking.¹⁵⁰ PJM explains that the PJM Tariff provision at issue in this proceeding was not before the court in *Calpine* and therefore the *Calpine* court's mandate did not invalidate the PJM Tariff provision.¹⁵¹ PJM asserts that cases addressing the Commission's remedial authority when it finds a tariff violation and to correct past legal error are inapplicable here, because there has been no claim that PJM violated the Tariff and no court decision finding legal error in section 1.7.10(d).¹⁵² PJM explains that neither PJM nor any PJM market participant have previously been afforded the opportunity to address or defend the proper application and interpretation of the PJM Tariff's monthly netting provision.¹⁵³ Finally, PJM states that the elimination of monthly netting for transmission charges, or shortening the netting period to match a shorter period used in a retail rate, would constitute a rate increase which could not be ordered retroactively.¹⁵⁴

3. Buckeye Power Second Answer

61. Buckeye Power states that the record shows that this proceeding is not limited to a geographically "narrow" dispute between Lawrenceburg Power and Petitioners; rather, there are multiple, recurrent disputes in disparate geographic areas of PJM concerning the purported validity of the station power monthly netting provision in section 1.7.10(d) and therefore the declaratory relief sought by Petitioners is necessary and warranted.¹⁵⁵ Buckeye Power argues that Lawrenceburg Power cannot rely on the filed rate doctrine to

¹⁴⁸ *Id.* at 5-9.

¹⁴⁹ *Id.* at 6.

¹⁵⁰ *Id.* (citing *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1230 (D.C. Cir. 2018)).

¹⁵¹ *Id.* at 6-7.

¹⁵² *Id.* at 7 (citations omitted).

¹⁵³ *Id.* at 8.

¹⁵⁴ *Id.* at 8-9 (citations omitted).

¹⁵⁵ Buckeye Power Answer at 2-5.

bolster its defense and argue for prospective relief alone, because the Tariff language Lawrenceburg Power seeks to rely on is beyond the Commission's jurisdiction.¹⁵⁶ Further, Buckeye Power argues that since the *Calpine* mandate in February 2013, generators have been on constructive—if not actual—notice that the Commission cannot regulate the provision of station power because it is a retail sale subject to state and local regulation.¹⁵⁷ In addition, Buckeye Power states that the argument raised in the PJM Second Answer—that Buckeye Power seeks retroactive changes to PJM transmission charges—is simply incorrect, as all Buckeye Power seeks is to support Petitioner's request for declaratory relief on the jurisdictional question.¹⁵⁸ Buckeye Power asserts that the Commission need not amend the PJM Tariff to provide the requested declaratory relief.¹⁵⁹

4. Petitioners Answer

62. Petitioners assert that no party has advanced any consideration that alters the fact that when a generating facility is not producing electricity, it is consuming electricity as an end-user, which makes the provision of station power a retail sale.¹⁶⁰ Further, Petitioners state that no party has advanced any consideration that alters the jurisdictional standard for retail sales. Petitioners assert that PJM's reliance on the monthly netting rule in section 1.7.10(d) is unavailing because transmission service under section 1.7.10(d)(ii) is contingent upon a generator's right to self-supply under section 1.7.10(d)(i), and section 1.7.10(d)(i) is null and void for want of Commission jurisdiction.¹⁶¹ Petitioners reject AEP's argument that the PJM Tariff provision "remained in effect" and AEP was "bound to abide by [it]," arguing that the Tariff provision was and is void because it is beyond the Commission's jurisdiction and therefore unenforceable.¹⁶²

¹⁵⁶ *Id.* at 5-6.

¹⁵⁷ *Id.* at 5-8.

¹⁵⁸ *Id.* at 8-9 (arguing that the Commission should dismiss concerns about market upheaval/resettlement, because generators who elected to use the netting provision in the PJM Tariff were on notice since 2013 that they may be subject to retail charges and assumed the risk of double payment).

¹⁵⁹ *Id.* at 9-10.

¹⁶⁰ Petitioners Answer at 2.

¹⁶¹ *Id.* at 5-6.

¹⁶² *Id.* at 6 (citing *Columbia Gas*, 404 F.3d at 462-63).

63. Petitioners argue that Lawrenceburg Power’s reading of the Commission’s *Duke Energy* order and *MISO* order as not diminishing the Commission’s jurisdiction over self-supply is untenable.¹⁶³ Petitioners explain that Lawrenceburg Power’s argument that the Commission can exercise jurisdiction over the provision of station power because “no sale” has occurred (an argument based on assertions made in the *PJM Station Power Cases*) was rejected by *Southern California Edison* and is no longer good law.¹⁶⁴ Petitioners assert that, contrary to Lawrenceburg Power’s claim, *Southern California Edison* and *Calpine* did not leave the Commission’s jurisdiction over self-supply intact.¹⁶⁵ Rather, Petitioners clarify that the Commission found, after *Southern California Edison*’s jurisdictional findings, that “a generator would need to purchase station power at retail when *it previously could have self-supplied its station power requirements* under the [monthly netting provisions] of the CAISO Station Power Protocol.”¹⁶⁶ Petitioners state that the Commission did not limit itself to addressing the narrow issue of whether the Commission or the states regulate “third-party station power purchases,” as Lawrenceburg Power argues, but instead expansively held that the Commission has no jurisdiction to regulate the provision of station power either by means of establishing self-supply netting intervals or otherwise.¹⁶⁷

64. Petitioners explain that this Petition has nothing to do with Permitted Netting, i.e., “netting that takes place on-site at a single generation facility *only when the generator is running*.”¹⁶⁸ Petitioners clarify that this case only concerns the regulation of station power when the Plant is not running and a generator seeks to self-supply via netting intervals, which is different from Permitted Netting.¹⁶⁹ Petitioners state that when a

¹⁶³ *Id.* at 6-7.

¹⁶⁴ *Id.* at 7-8 (citing *Southern California Edison*, 603 F.3d at 1000-01); *see also id.* at 13-14 (arguing that “no sale” argument is nonsensical because when the Plant is not running it cannot magically supply its own station power).

¹⁶⁵ *Id.* at 9 (citing Lawrenceburg Power Answer at 34).

¹⁶⁶ *Id.* (quoting *Duke Energy Rehearing*, 134 FERC ¶ 61,151 at P 28).

¹⁶⁷ *Id.* at 9-10 (citing *Duke Energy Rehearing*, 134 FERC ¶ 61,151 at P 24).

¹⁶⁸ *Id.* at 11 (quoting *Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,072, at P 23 (2008), *clarified*, 126 FERC ¶ 61,050 (2009), *vacated sub nom. Southern California Edison*, 603 F.3d 996).

¹⁶⁹ *Id.* (citing *Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,072 at P 23 n.34). Petitioners note that Lawrenceburg Power inconsistently describes station power

generator is not running, it must acquire electricity to consume to meet its station power needs, which is a retail sale.¹⁷⁰

65. Petitioners argue that Lawrenceburg Power wrongly asserts that in the *MISO* proceeding, MISO maintained in its tariff the right to self-supply station power. Rather, petitioners contend that MISO's tariff modification eliminated that right by adding language requiring that generators must meet their station power needs "consistent with Applicable Laws and Regulation," meaning the state-jurisdictional aspects of station power.¹⁷¹ Petitioners assert that after *Southern California Edison*, the *Duke Energy Orders*, and *Calpine*, the Commission's prior determination that the Commission could regulate the supply of station power (such as those in the *PJM Station Power Cases*) are no longer good law and Lawrenceburg Power's reliance on those prior determinations are without merit.¹⁷²

66. Petitioners state that the Commission has already expressly held that it cannot regulate the provision of station power incident to its jurisdiction over wholesale sales or practices affecting such sales.¹⁷³ Further, Petitioners argue that Lawrenceburg Power's claim that the provision of station power directly affects wholesale rates by altering the rate at which the facility can offer power in the market, by changing the facility's cost of operating, is without merit. Petitioners explain that there are "an infinitude" of practices and costs that affect wholesale rates, but "station power [being] a necessary input to energy production [does] not constitute a sufficient 'nexus' with wholesale transactions to justify the assertion of jurisdiction."¹⁷⁴ Petitioners assert that Lawrenceburg Power's "competitive disadvantage" argument was similarly rejected in *Calpine*.¹⁷⁵

67. Petitioners argue that even if the Commission were inclined to reverse its prior determination that it does not have jurisdiction over the provision of station power

self-supply as just a billing convention in some instances and as an actual physical practice in other instances. *Id.* at 11-12.

¹⁷⁰ *Id.* at 11-14.

¹⁷¹ *Id.* at 14 (citing *MISO*, 139 FERC ¶ 61,113 at P 39 n.111).

¹⁷² *Id.* at 15.

¹⁷³ *Id.* at 15-17 (citing *Calpine*, 702 F.3d at 47, 49; *Duke Energy Remand*, 132 FERC ¶ 61,183 at P 20).

¹⁷⁴ *Id.* at 17-18 (citing *Calpine*, 702 F.3d at 47).

¹⁷⁵ *Id.* at 18 (citing *Calpine*, 702 F.3d at 47).

incident to its jurisdiction over wholesale sales or practices affecting such sales, it cannot because pursuant to section 201(b) of the FPA, it is without jurisdiction to regulate retail sales, including retail sales of station power.¹⁷⁶ Because station power is a retail sale, Petitioners argue that the prior D.C. Circuit and Commission decisions disclaiming jurisdiction over station power are fully consistent with the Supreme Court's decision in *EPSA*.¹⁷⁷ Petitioners argue that station power is “in no way comparable” to the practice of wholesale demand response that was at issue in *EPSA*, because with wholesale demand response—an offer to curtail electric use upon request—the Supreme Court held that there was no sale of electricity.¹⁷⁸

68. Petitioners assert that numerous arguments raised by Lawrenceburg Power relate to state law issues that the Commission need not decide.¹⁷⁹ Petitioners state that Lawrenceburg Power's argument about the City not being physically capable of providing station power to the Plant because it is only interconnected to the transmission system controlled by PJM says nothing about who regulates the sale of station power.¹⁸⁰

69. Petitioners clarify that they seek only to have the Commission declare section 1.7.10(d)(i) null and void, which purports to provide the right to self-supply station power, not section 1.7.10(d) in its entirety, and thus arguments about section 1.7.10(d) not being *ultra vires* as it relates to transmission charges are misdirected.¹⁸¹ Petitioners argue that PJM is in fact interfering with IMPA's network transmission service rights to delivery wholesale power to LMU at the Plant, because section 1.7.10(d)(ii) provides for the calculation of transmission charges by means of monthly netting *contingent* upon a seller self-supplying pursuant to section 1.7.10(d)(i)—which is null and void. Petitioners argue that it necessarily follows that transmission

¹⁷⁶ *Id.* at 18-21

¹⁷⁷ *Id.* at 19 (citing *EPSA*, 136 S. Ct. at 767-68).

¹⁷⁸ *Id.* at 19-21 (citing *EPSA*, 136 S. Ct. at 769-70, 778).

¹⁷⁹ *Id.* at 22-28 (addressing arguments by Lawrenceburg Power about whether the City has the exclusive right to serve the Plant's station power needs; whether the city is a state commission or state regulatory authority within the meaning of the FPA; whether the state has acquiesced to the PJM Tariff's monthly netting provisions; etc.).

¹⁸⁰ *Id.* at 22-24.

¹⁸¹ *Id.* at 28-29.

service to the Plant must be determined without the Tariff's current monthly netting rule.¹⁸²

70. Petitioners assert that the Indicated Companies argument that this is “essentially a dispute regarding interpretation of station and local laws” is wholly wrong. They contend that the core dispute in this Petition is the validity of the PJM Tariff.¹⁸³

71. Petitioners argue that the Commission need not act pursuant to section 206 of the FPA and revise the Tariff in order to provide the relief requested.¹⁸⁴ Petitioners explain that, like the D.C. Circuit found in *Calpine*, the Commission need not address the justness and reasonableness of the Tariff in order to implement the jurisdictional findings of *Southern California Edison*—the relevant Tariff provision is simply null and void if it is extra-jurisdictional.¹⁸⁵ Petitioners reject PJM and Lawrenceburg Power's arguments that the PJM Tariff was unaffected by the *Duke Energy Orders*, because the PJM Tariff specifically was not at issue and PJM did not participate in that proceeding. Petitioners assert that the jurisdictional holding in *Southern California Edison* applies “regardless of the identity of the transmission provider.”¹⁸⁶ Petitioners argue that various parties' arguments against retroactive relief are misguided, as once the mandate issued in *Calpine*, the PJM Tariff provision on monthly station power netting was null and void, all market participants were on notice of this fact, and the Commission cannot now under the guise of equity reach back and enforce Tariff rights beyond its jurisdiction.¹⁸⁷

72. Petitioners assert that its request that AEP record IMPA's delivery of electricity to the Plant in IMPA's LSE account should not be contingent on a corresponding credit to Lawrenceburg Power, because Lawrenceburg Power had actual notice of the City's

¹⁸² *Id.* at 30-32.

¹⁸³ *Id.* at 32-35.

¹⁸⁴ *Id.* at 35-37, 40-42 (arguing that Petitioners' requested relief has nothing to do with PJM's right to regulate unbundled transmission service).

¹⁸⁵ *Id.* at 35-37.

¹⁸⁶ *Id.* at 37-38 (citing *MISO*, 139 FERC ¶ 61,113 at P 23).

¹⁸⁷ *Id.* 38-40 (noting that the *Duke Energy Orders* did not result in any rerunning of the CAISO markets).

assertion of its exclusive right to supply retail station power to the plant before it sought to avail itself of the PJM Tariff's monthly netting self-supply provision.¹⁸⁸

5. Lawrenceburg Power Second Answer

73. Lawrenceburg Power argues that before the Commission can reach the question of whether the FPA places jurisdiction over the self-supply of station power with the Commission or with the states, the Commission must first decide whether LMU is a "state" for purposes of the FPA.¹⁸⁹ Lawrenceburg Power asserts that the answer is no, and therefore the Petition must be denied on that basis alone.¹⁹⁰ Specifically, Lawrenceburg Power argues that the FPA does not recognize the right of a municipality to regulate generating facilities when there is no sale of electric energy.

74. Lawrenceburg Power also argues that Petitioners' concession that the Commission has jurisdiction over Permitted Netting necessarily leads to Commission jurisdiction over *all* self-supplied station power. Lawrenceburg Power states that Permitted Netting is a way of calculating a generator's net power output during a metered interval when the generator is running (gross power output minus station power load).¹⁹¹ Lawrenceburg Power argues that Permitted Netting is just another means of self-supplying station power that is not meaningfully distinguishable from when a generator is not running.¹⁹² Lawrenceburg Power argues that a generator's self-supply of station power is a practice directly affecting wholesale rates, because the Commission must account for a generator's self-supplied station power to determine how much electric energy the generator sold at wholesale in a settlement interval.¹⁹³ Lawrenceburg Power notes that its Plant is configured with two generating units that can, and do, provide station power to each other "behind-the-meter," and that both units are rarely offline at the same time.

75. Lawrenceburg Power argues that neither *Southern California Edison* nor *Calpine* conflicts with the Commission's continued assertion of jurisdiction over self-supplied

¹⁸⁸ *Id.* 42-43.

¹⁸⁹ Lawrenceburg Power Second Answer at 5.

¹⁹⁰ *Id.* at 5-9. Lawrenceburg Power states that the FPA does not recognize the rights of a municipality to regulate generating facilities or their station power, particularly when there is no sale of electric energy.

¹⁹¹ *Id.* at 9-15.

¹⁹² *Id.* at 11 (citing *Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,072 at P 24).

¹⁹³ *Id.* at 12.

station power as a practice affecting wholesale rates, as those cases dealt with the distinct legal issue of the Commission’s jurisdiction over “third-party retail purchases of station power.”¹⁹⁴ Lawrenceburg Power states that any language in those decisions that goes beyond the finding that specific, narrow jurisdiction question is dicta.

76. Lawrenceburg Power states that Petitioners’ jurisdictional theory seeks to allow states to charge retail rates for wholesale transactions, which would have implications far beyond the self-supply of station power, and which would put independent generators at a competitive disadvantage.¹⁹⁵ Further, Lawrenceburg Power argues that Petitioners cannot use PJM network integration transmission service to bootstrap municipal rate jurisdiction, when LMU cannot by itself physically supply the Plant with station power.¹⁹⁶ Lawrenceburg Power asserts that neither IMPA nor LMU has the right, federal or otherwise, to force Lawrenceburg Power to pay for “fictional” station power service.¹⁹⁷

77. Lawrenceburg Power asserts that a stakeholder process is unnecessary and will simply perpetuate the regulatory uncertainty created by the Petition. Lawrenceburg Power asserts that if the Commission grants the Petition, numerous contentious stakeholder processes will spring up organically, because invalidation of the station power provision will require numerous other changes, including related to the settlement of real-time energy markets.¹⁹⁸

6. Petitioners Second Answer

78. Petitioners state that Lawrenceburg Power’s argument that the FPA only allows states, not municipalities, to regulate retail rates is contrary to the statute, applicable Commission precedent, and judicial precedent.¹⁹⁹ Petitioners argue that the FPA

¹⁹⁴ *Id.* at 13 (citing *Southern California Edison*, 603 F.3d 996; *Calpine*, 702 F.3d 41).

¹⁹⁵ *Id.* at 14 (arguing that granting the Petition could enable states/municipalities to subsidize certain generators or classes of generators, such as vertically integrated utilities, by providing material support that allows them to clear the PJM markets).

¹⁹⁶ *Id.* at 15-17 (arguing that contractual agreements impose no obligations on Lawrenceburg Power).

¹⁹⁷ *Id.* at 18-19.

¹⁹⁸ *Id.* at 20-21.

¹⁹⁹ Petitioners Second Answer at 4.

recognizes state sovereignty over the regulation of retail sales, but “how a state exercises and apportions its retail rate authority is a matter left to the state.”²⁰⁰ Petitioners argue that Congress preserved state authority to delegate retail rate regulation to municipalities in enacting Part II of the FPA.²⁰¹

79. In addition, Petitioners argue that the presence of two generating units at the Plant is irrelevant to the jurisdictional question presented in this proceeding, because this is not about “behind-the-meter” self-supply. Petitioners note that Lawrenceburg Power admits that there are times when both generating units at the Plant are offline and the Plant requires power from the interconnected transmission system to meet its station power needs—i.e., retail sales subject to state law.²⁰² Petitioners state that Lawrenceburg Power “admits that this case is about the plant’s ‘reliance on its own net positive output to satisfy its front-of-the-meter self-supply needs.’”²⁰³

80. Finally, Petitioners argue that there is nothing “novel” about a municipal joint action agency (IMPA) providing all-requirements service by means of network transmission service to meet its members’ (LMU) retail load at the Plant. Petitioners reiterate that its NITSA, a FERC-filed service agreement under the Tariff, expressly includes the Plant’s station power as part of IMPA’s network load and IMPA is entitled to enforce its service rights pursuant to section 306 of the FPA. Further, Petitioners argue that the fact that the City could terminate its contract with IMPA is irrelevant to the jurisdictional issue, and that even if LMU’s ability to serve the Plant were in jeopardy, LMU would take the necessary steps to facilitate service, as Indiana law requires.²⁰⁴

7. Lawrenceburg Power Third Answer

81. Lawrenceburg Power clarifies that it does not assert that municipalities never have retail rate regulation authority, but rather that they cannot regulate generating facilities

²⁰⁰ *Id.* at 4-5 (citing *New Orleans Pub. Serv. Inc. v. City Council*, 491 U.S. 350, 365 (1989)).

²⁰¹ *Id.* at 5-6 (citations omitted).

²⁰² *Id.* at 7-8 (citing Lawrenceburg Power Second Answer at 11-12; Lawrenceburg Power Answer, Johnson Aff. ¶ 7).

²⁰³ *Id.* at 8 (citing Lawrenceburg Power Second Answer at 12) (noting that “net positive output” means reliance of PJM’s station power self-supply monthly netting provision).

²⁰⁴ *Id.* at 9-10.

when there is no sale of electric energy.²⁰⁵ Lawrenceburg Power also rejects Petitioners' assertion that the fact that there are two generating units at the Plant is irrelevant to this proceeding. Lawrenceburg Power reiterates that this proceeding is about both Lawrenceburg Power's behind-the-meter self-supply of station power and its reliance on its own net positive output to self-supply in the hours when both generating units are offline.²⁰⁶

D. Motion to Strike

82. Lawrenceburg Power seeks to strike the Buckeye Power Comments and Buckeye Power Answer on the basis that these filings "make claims and assert facts against a non-respondent that are entirely beyond the scope of [Petitioners'] dispute with [Respondents]."²⁰⁷ Lawrenceburg Power and Waterford Power assert that Buckeye Power seeks to "co-opt" the Petition and inappropriately litigate its dispute with Waterford Power, when it should have filed a separate complaint pursuant to section 206 of the FPA.²⁰⁸ Waterford Power asserts that Buckeye Power's "request[] for adjudication" was made "without complying with the Commission's complaint rules [...], without providing Waterford Power with the opportunity to be made aware of the claims against it and all the facts supporting those claims, and without providing Waterford Power with an opportunity of right to respond to those claims."²⁰⁹

83. In response, Buckeye Power argues that the motion to strike should be denied, because the material Lawrenceburg Power seeks to strike is relevant, useful, and not prejudicial.²¹⁰ Buckeye Power asserts that its filings are relevant to the jurisdictional dispute at issue in this proceeding, because they show that there is a risk of similar disputes related to station power throughout the PJM footprint (i.e., this is not a one-off controversy). Buckeye Power notes that it is a proper intervenor in this proceeding and that, as an intervenor, its comments are material, warranted, and useful and should not be

²⁰⁵ Lawrenceburg Power Third Answer at 3-5.

²⁰⁶ *Id.* at 5-6.

²⁰⁷ Lawrenceburg Power Second Answer at 2.

²⁰⁸ *Id.* at 2-4; Waterford Power Comments at 4.

²⁰⁹ Waterford Power Comments at 5.

²¹⁰ Buckeye Power Opposition to Motion at 2.

struck.²¹¹ Buckeye Power clarifies that it is not a complainant in this proceeding and that “it was *not* seeking any enforcement relief from the Commission.”²¹²

IV. Discussion

A. Procedural Matters

84. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

85. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2020), we grant the motions to intervene out-of-time of the Independent Power Producers of New York, Inc. and Waterford Power, given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

86. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2020), prohibits answers to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers to the protests and answers filed in this proceeding, with the exception of the June 24, 2020 answer filed by Petitioners, because they have provided information that assisted us in the decision-making process. We are not persuaded to accept the June 24, 2020 answer filed by Petitioners, because it responds to comments that are not on the record in this proceeding, and therefore it would not assist us in the decision-making process. We also accept Waterford Power’s late-filed comments, which are more appropriately considered an answer to comments.

87. We deny Lawrenceburg Power’s motion to strike the Buckeye Power Comments and Buckeye Power Answer. Motions to strike are “disfavored and the movant carries a heavy burden, such that ‘objectionable material will not be struck unless the matters sought to be omitted from the record have no possible relationship to the controversy, may confuse the issues, or otherwise prejudice a party.’”²¹³ We find that Lawrenceburg Power has not met its “heavy burden” to show that Buckeye Power’s filings meet these criteria. Buckeye Power’s filings address issues squarely within the scope of this

²¹¹ *Id.* at 2-6.

²¹² *Id.* at 6-7.

²¹³ *La. Pub. Serv. Comm’n v. Entergy Servs., Inc.*, 163 FERC ¶ 51,117, at P 74 (2018) (quoting *Power Mining, Inc.*, 45 FERC ¶ 61,311, at 61,972 n.1 (1988) (citations omitted)).

proceeding. Further, we do not agree with Lawrenceburg Power's characterization of the Buckeye Power filings as attempts to "co-opt" the Petition and get adjudication of a separate controversy that should have been filed pursuant to section 206 of the FPA.²¹⁴ Buckeye Power makes clear that, "as an intervenor in this proceeding, [it] only seeks to support the declaratory relief requested by [Petitioners]."²¹⁵ Therefore, the motion to strike is denied, and we will allow the Buckeye Power Comments and Buckeye Power Answer into the record.

B. Substantive Issues

88. As discussed below, we grant Petitioners' request for a declaratory order and clarify that the Commission does not have jurisdiction over the supply of station power. We deny Petitioners' request for a declaratory order finding the station power monthly netting provision in the PJM Tariff null, void, and unenforceable. We also deny all other related relief requested by Petitioners. However, while we deny Petitioners' request to declare the PJM Tariff null and void, we find that aspects of the PJM Tariff may be unjust, unreasonable, or unduly discriminatory or preferential in light of our declaratory order regarding jurisdiction over station power supply. Accordingly, we institute a proceeding, in Docket No. EL20-56-000, pursuant to section 206 of the FPA, and require PJM to propose changes to its Tariff consistent with this order or to show cause why changes are not necessary.²¹⁶

1. Request for Declaration That Supply of Station Power is a Retail Sale Over Which the Commission Lacks Jurisdiction

89. As discussed below, we find that when a generating facility is not online and not producing electricity to supply its station power needs, it is consuming electricity as an end-user and thus, consistent with the boundaries of the Commission's jurisdiction under

²¹⁴ See Lawrenceburg Power Second Answer at 2-4.

²¹⁵ Buckeye Power Answer at 9-10.

²¹⁶ The record in Docket No. EL20-30-000 is hereby incorporated into Docket No. EL20-56-000.

the FPA,²¹⁷ the provision of station power is a retail sale subject to state jurisdiction.²¹⁸ The Commission retains jurisdiction over any FPA-jurisdictional transmission service used to transmit such supply.

90. A brief history of relevant station power precedent is helpful here. In the early 2000s, the Commission approved numerous RTO/ISO tariff provisions, including the PJM Tariff provision at issue in this proceeding, authorizing a generator to net the station power it consumed against its wholesale sales.²¹⁹ The Commission found that, where a generating facility is net positive (sold more energy than it consumed as station power over the netting interval), the generator is using only its own generating resources and therefore there is no sale for end use or otherwise and the state lacks jurisdiction.²²⁰ However, when the generating facility is net negative (consumed more energy as station power than it sold over the netting interval), the Commission found that the provision of station power is a sale for end use not subject to the Commission's jurisdiction.²²¹

91. In 2004, in response to the *PJM Station Power Cases*, and the related cases in NYISO and MISO, Duke Energy Moss Landing LLC filed a complaint challenging the treatment of station power procurement and delivery in the CAISO Tariff.²²² In ruling on

²¹⁷ *EPSA*, 136 S. Ct. at 767 (“Accordingly, the Commission may not regulate either within-state wholesale sales or . . . retail sales of electricity (*i.e.*, sales directly to users).”) (citing *New York v. FERC*, 535 U.S. 1, 17 (2002)).

²¹⁸ The same is true if a generating facility is online and producing electricity but is not producing sufficient electricity to fully meet its station power needs. However, such a scenario is unlikely.

²¹⁹ See generally *PJM II*, 94 FERC ¶ 61,251, *reh'g denied*, *PJM III*, 95 FERC ¶ 61,333; *KeySpan-Ravenswood v. NYISO*, 99 FERC ¶ 61,167, *reh'g*, 100 FERC ¶ 61,201, at P 3 (2002); *KeySpan-Ravenswood*, 101 FERC ¶ 61,230 at P 3, *aff'd sub nom Niagara Mohawk*, 452 F.3d 822; *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,073 (2004), *reh'g denied*, 110 FERC ¶ 61,383, *reh'g denied*, 112 FERC ¶ 61,211 (2005).

²²⁰ *PJM II*, 94 FERC at 61,891.

²²¹ *Id.* at 61,889-92. The Commission clarified that when a generator self-supplies its station power on-site, there is no need for transmission service; however, when a generator remote self-supplies or purchases from a third-party, transmission service would be required. *Id.*

²²² *Duke Energy Moss Landing LLC v. Cal. Indep. Sys. Operator Corp.*, 109 FERC ¶ 61,170 (2004), *reh'g denied*, 111 FERC ¶ 61,451 (2005), *rev'd and remanded*, *Southern California Edison*, 603 F.3d 996; *Duke Energy Remand*, 132 FERC ¶ 61,183,

the complaint, the Commission rejected arguments that California had the legal authority to determine what constitutes a retail sale, asserting that the relevant jurisdictional question had already been answered in the *PJM Station Power Cases*.²²³ On appeal, the D.C. Circuit in *Southern California Edison* vacated the Commission's decision and remanded for further proceedings.²²⁴ The court stated that FERC has "the undeniable right to approve the netting methodology to determine how much electricity generators deliver to and take from the grid *for transmission purposes*."²²⁵ However, the court questioned the Commission's ability to set a netting period to determine whether a retail sale has taken place, noting that the length of the netting period—which the court deemed "arbitrary and unprincipled . . . as a jurisdictional standard"—would ultimately determine whether a retail sale had occurred.²²⁶ Further, the court stated:

[W]e do not understand why FERC is empowered to conclude that a retail sale has *not* taken place unless it can claim the transaction is, instead, a wholesale sale or a transmission. To simply declare that the state lacks jurisdiction because FERC believes no retail sale has taken place really begs the jurisdictional question. Unless a transaction falls within

reh'g denied, Duke Energy Rehearing, 134 FERC ¶ 61,151, *affirmed sub. nom. Calpine*, 702 F.3d 41.

²²³ *Duke Energy*, 111 FERC ¶ 61,451 at PP 10-13 ("The Commission . . . has the authority to determine whether transactions involving station power (including determining whether a generator has self-supplied station power or whether the generator has instead purchased station power at retail and, importantly, whether the generator has used transmission facilities or local distribution facilities to move station power to it) are subject to Commission jurisdiction pursuant to section 201(b)(1) of the [FPA].").

²²⁴ *Southern California Edison*, 603 F.3d at 1002.

²²⁵ *Id.* at 998 (emphasis added).

²²⁶ *Id.* at 1000. For example, assume a generator produced 1 MW of output a day for 30 days and then was offline on day 31 and took 1 MW of station power from the grid. If a one-month netting interval was used, that generator was deemed to have "self-supplied" its station power from its own facility, because its gross output was 30 MW over the month, and its station power consumption was only 1 MW (net positive 29 MW). If the netting interval used were one day, rather than one month, the generator would have been deemed to have self-supplied on days 1-30, but on day 31 it was offline and not capable of supplying its own station power and thus it took 1 MW of supply from a third-party. Thus, the netting interval determines whether or not the same MW on day 31 is treated as "self-supply" or as a third-party transaction.

FERC's wholesale or transmission authority, it doesn't matter how FERC characterizes it.²²⁷

92. The court in *Southern California Edison* rejected the Commission's explanation that if during a netting interval a generator is net positive, then no retail sale has occurred. On remand, the Commission concluded that, pursuant to the holding in *Southern California Edison*, the RTOs/ISOs are free to set a netting period for FPA-jurisdictional transmission related to the supply of station power, but the states are free to set a different netting period to determine whether a retail sale of station power has occurred.²²⁸

93. On rehearing, parties argued that the Commission's *Duke Energy Remand* order "improperly sets aside the Commission's well-established policy governing the self-supply of station power."²²⁹ The Commission denied rehearing, explaining that the D.C. Circuit decision in *Southern California Edison* required a change in policy compelled by the court's determination of the scope of the Commission's jurisdiction.²³⁰ Further, the Commission rejected arguments on rehearing that it had failed to consider whether it could assert jurisdiction over station power based on its plenary authority over wholesale electricity and transmission. The Commission explained that the D.C. Circuit made clear that "the Commission had effectively, and improperly, set the netting period for retail energy sales" based on its jurisdiction over interstate transmission.²³¹ Further, the Commission noted that it had previously rejected arguments that the third-party provision of station power "affects or relates to" wholesale services and that "the provision of station power is analogous to other wholesale services."²³² The Commission conceded that different federal and state netting intervals might result in a situation "where a generator would need to purchase station power at retail when it previously could have self-supplied its station power requirements under the current terms of the

²²⁷ *Id.* at 1000-01.

²²⁸ *Duke Energy Remand*, 132 FERC ¶ 61,183 at PP 2, 16 ("State-jurisdictional retail sales of station power are properly the subject of state-jurisdictional tariffs, which need not be and would not be filed with the Commission."); *Southern California Edison*, 603 F.3d at 1002 (recognizing that under differing netting periods the Commission could conclude that no transmission for station power took place in a month in which California would recognize retail sales of that power, but that this was not a conflict).

²²⁹ *Duke Energy Rehearing*, 134 FERC ¶ 61,151 at P 17.

²³⁰ *Id.* P 18.

²³¹ *Id.* P 20.

²³² *Id.*

[CAISO Tariff].”²³³ In *Calpine*, the D.C. Circuit upheld the Commission’s determination that it did not have jurisdiction over the length of the netting interval used to determine whether a retail sale occurred.²³⁴ Following *Calpine*, in *MISO*, the Commission explained that the D.C. Circuit’s jurisdictional holdings in *Southern California Edison* “apply regardless of the identity of the transmission provider.”²³⁵

94. Taken together, *Southern California Edison*, the *Duke Energy Orders*, and *Calpine* make clear that an RTO/ISO cannot determine whether a state-jurisdictional retail sale of station power has occurred, whether by means of monthly netting or otherwise. The determination of whether a retail sale has occurred, and therefore the authority to establish a netting interval to determine whether a retail sale has occurred, is appropriately within the jurisdiction of the states.

95. We disagree with Lawrenceburg Power that the Petitioners read the *Southern California Edison* and *Calpine* precedent too broadly, and that the Commission’s jurisdictional determination in *PJM II* remains undisturbed.²³⁶ Lawrenceburg Power argues that, in *Southern California Edison* and *Calpine*, the D.C. Circuit narrowly rejected the Commission’s “attempt to regulate third-party purchases of station power via its transmission jurisdiction,” but “preserved the Commission’s jurisdiction to regulate the netting of self-supply to determine a generator’s output.”²³⁷ Thus, Lawrenceburg Power asserts that the Commission still has jurisdiction to determine whether a retail sale has occurred based on the use of netting. These arguments lack merit. *Southern California Edison* specifically addressed the Commission’s ability to establish a netting interval to determine whether a generator self-supplied its power. The court stated that the Commission’s one-month netting period “determine[s] whether a retail sale took place,” and thus “whether a retail sale occurs depends . . . on the length of the netting

²³³ *Id.* P 28.

²³⁴ *Calpine*, 702 F.3d at 42, 50

²³⁵ *MISO*, 139 FERC ¶ 61,113 at P 23; *see also id.* P 24 (explaining that whether an RTO is a multi-state RTO or single-state RTO is irrelevant to the D.C. Circuit’s jurisdictional holdings in *Southern California Edison*).

²³⁶ Lawrenceburg Power Answer at 16-17 (arguing that since the Commission’s “seminal” station power order 20 years ago—*PJM II*—the Commission has consistently held that the states have jurisdiction only over third-party purchases of station power and that the Commission has exclusive jurisdiction over self-supply of station power).

²³⁷ Lawrenceburg Power Answer at 34-40; *see also* Lawrenceburg Power Second Answer at 13.

period.”²³⁸ The court found this to be an arbitrary and unprincipled jurisdictional standard which “begs the jurisdictional question.”²³⁹ The court said that, “[u]nless a transaction falls within FERC’s wholesale or transmission authority, it doesn’t matter how FERC characterizes it.”²⁴⁰ Similarly, in *Calpine*, the D.C. Circuit upheld the Commission’s determination that it did not have jurisdiction over the length of the netting interval used to determine whether a retail sale occurred.²⁴¹ Consistent with this precedent, we do not have jurisdiction to utilize netting to determine whether a retail sale has occurred. That determination is left to the states.

96. Similarly, contrary to Lawrenceburg Power’s arguments, the Commission has not retained exclusive jurisdiction over the self-supply of station power as a practice affecting wholesale sales.²⁴² On remand following the decision in *Southern California Edison*, the Commission declined to assert jurisdiction over the supply of station power on other grounds, including on the grounds of its jurisdiction over wholesale sales. The Commission pointed out that it had previously rejected arguments that the provision of station power “affects or relates to” wholesale services and that “the provision of station power is analogous to other wholesale services.”²⁴³ In *Calpine*, the court found that the Commission’s determination on remand with respect to its wholesale jurisdiction was not arbitrary and capricious.²⁴⁴ The court explained that, in *PJM II*, the Commission confronted the question of whether it had wholesale jurisdiction over the third-party provision of station power and found that it did not (as it was not a sale for resale). Similarly, the court explained that, in *PJM II*, the Commission addressed whether it had jurisdiction over the third-party provision of station power because it “affects or relates” to wholesale services, and found that it did not, because there was not a sufficient nexus with wholesale transactions to justify asserting jurisdiction.²⁴⁵ The court also rejected the

²³⁸ *Southern California Edison*, 603 F.3d at 1000.

²³⁹ *Id.* at 1000-01.

²⁴⁰ *Id.* at 1001.

²⁴¹ *Calpine*, 702 F.3d at 42, 50.

²⁴² Lawrenceburg Power Answer at 3, 17-23 (arguing that that the self-supply of station power dictates the amount of physical output it can inject to the grid and directly affects the rates for its wholesale sales in the PJM market).

²⁴³ *Duke Energy Rehearing*, 134 FERC ¶ 61,151 at P 20.

²⁴⁴ *Calpine*, 702 F.3d at 50.

²⁴⁵ *Id.* at 48 (citing *PJM II*, 94 FERC at 61,894).

view that interval netting directly impacts the amount of energy available for sale at wholesale, stating:

[T]he tariff's netting interval does not 'allocate power' between energy consumed as station power and energy available at wholesale; it simply determines under what conditions generators will be assessed transmission and retail charges for their use of station power. This question is one of *cost*, not allocation of power. While the regulation of transmission charges is undoubtedly within FERC's jurisdiction, retail charges are not.²⁴⁶

97. We also do not agree with Lawrenceburg Power, P3, and EPSA's argument that, even if *Southern California Edison* and *Calpine* divested the Commission of jurisdiction over station power self-supply netting, the Supreme Court's decision in *EPSA* calls into question the continued validity of that determination and requires the Commission to assert exclusive jurisdiction over self-supply monthly netting of station power via its jurisdiction over practices affecting wholesale rates.²⁴⁷ Lawrenceburg Power argues that, if demand response is a practice affecting wholesale rates, as *EPSA* found, then a wholesale generator's decision to self-supply its station power needs must be as well.²⁴⁸ Similarly, P3 and EPSA argue that settlement adjustments for station power are effectively after the fact reductions in a generator's wholesale sales, and involve a practice which, like wholesale demand response compensation, directly affects or relates to wholesale rates.²⁴⁹ These arguments are unpersuasive.

98. As stated above, the Commission already has rejected the theory that the provision of station power "directly affects" wholesale rates and therefore is subject to Commission jurisdiction.²⁵⁰ The Supreme Court's decision in *EPSA* does not warrant a different

²⁴⁶ *Id.* at 50.

²⁴⁷ Lawrenceburg Power Answer at 40-41; P3/EPSA Protest at 4.

²⁴⁸ Lawrenceburg Power Answer at 40-41.

²⁴⁹ P3/EPSA Protest at 4.

²⁵⁰ *Duke Energy Rehearing*, 134 FERC ¶ 61,151 at P 20; *see also PJM II*, 94 FERC ¶ 61,251 at 61,894-96 (rejecting argument that because station power is an essential input to generating wholesale energy, the provision of station power is a wholesale transaction subject to the Commission's jurisdiction or is a practice directly affecting wholesale sale subject to the Commission's jurisdiction, noting that the

result. In *EPSA*, the Court explained that the rules governing wholesale demand response programs meet the “directly affects” standard because compensation for wholesale demand response directly affects wholesale prices.²⁵¹ The Court also found that, with wholesale demand response, the Commission was not attempting to regulate retail electricity sales.²⁵² The Court made clear that the FPA reserves authority over retail sales to the states, and the Commission “cannot take action transgressing that limit no matter how direct, or dramatic, its impact on wholesale rates.”²⁵³

99. Unlike the wholesale demand response program at issue in *EPSA*, the self-supply of station power *does not* directly affect wholesale rates. As the court in *Calpine* explained, a self-supply netting interval does not allocate power between energy consumed as station power and energy available at wholesale and thus does not affect how much energy a generator can sell at wholesale, contrary to Lawrenceburg Power’s argument.²⁵⁴ Moreover, the supply of station power is a sale for end use—i.e., a retail sale—which the Supreme Court made clear is within the jurisdiction of the states, no matter how direct the impact on wholesale markets.²⁵⁵ Thus, we need not reevaluate the Commission’s earlier station power precedent in light of the holding in *EPSA*.

100. Lawrenceburg Power also argues that, because Petitioners conceded that the Commission has jurisdiction over “Permitted Netting,” they have conceded Commission jurisdiction over all self-supply station power netting.²⁵⁶ We do not agree. “Permitted Netting,” as that term was originally defined in the CAISO Tariff, refers to netting behind-the-meter generation to determine a generator’s net power output during a metered interval when a generator is online and producing electricity. Permitted Netting is different from the self-supply monthly netting at issue in this proceeding. With Permitted Netting, a generating facility is using its own real-time electric generation to supply its station power behind-the-meter—it is not receiving station power supply from the interconnected grid. Self-supply monthly netting, on the other hand, concerns the

Commission has no jurisdiction over sales for end use and station power is a sale for end use).

²⁵¹ *EPSA*, 136 S. Ct. at 775.

²⁵² *Id.* at 775-76.

²⁵³ *Id.* at 775.

²⁵⁴ *Calpine*, 702 F.3d at 49-50.

²⁵⁵ *EPSA*, 136 S. Ct. at 775.

²⁵⁶ Lawrenceburg Power Second Answer at 9-15.

ability of a generating facility to net the electric energy it consumes from the interconnected grid when it is *offline* and *not producing* against its wholesale sales. When a generating facility is offline and not producing energy and seeks to acquire power from the interconnected grid for its station power, *this* is a retail sale of electric energy for end use. There is no such sale with Permitted Netting.

101. The fact that the Plant is solely interconnected to the PJM transmission system, and thus any retail sale of station power must be transmitted across FPA-jurisdictional transmission facilities, rather than local distribution facilities, does not change the determination of whether a retail sale of station power has occurred or who has jurisdiction over that determination. The D.C. Circuit and the Commission have both made clear that the question of who has jurisdiction over the *sale* of station power is separate from the question of who has jurisdiction over the *transmission* of the station power and that those two questions may be answered differently. Also, the D.C. Circuit has explained that there is no conflict created by different netting periods for those different determinations (i.e., a state may determine whether a retail sale has occurred based on a different netting period than that used by PJM to determine whether FPA-jurisdictional transmission has occurred).²⁵⁷

102. Lawrenceburg Power makes various arguments about the revenue it will forego if it must pay LMU at retail for its station power and the validity of the rates LMU seeks to charge at retail and whether they are reflective of the true cost to purchase the power at wholesale and pay for transmission.²⁵⁸ Lawrenceburg Power also makes arguments about whether LMU has the exclusive right to service Lawrenceburg Power's station power needs,²⁵⁹ and the alleged impropriety of certain actions taken by LMU and/or the

²⁵⁷ *Southern California Edison*, 603 F.3d at 1002 (“As we have noted, in an unbundled market, transmission and power are procured through separate transactions. And, as we recognized in *Niagara Mohawk*, the netting periods for power and transmission need not be the same.”) (citations omitted); *Calpine*, 702 F.3d at 50 (“While the regulation of transmission charges is undoubtedly within FERC’s jurisdiction, retail charges are not.”); *see also KeySpan-Ravenswood*, 101 FERC ¶ 61,230 at P 20 (“To the extent that transmission facilities are involved, such delivery service will be subject to NYISO’s OATT. Any delivery of station power over local distribution facilities, and the compensation for such delivery is a matter properly for the New York Commission and not for this Commission.”).

²⁵⁸ *See e.g.*, Lawrenceburg Power Answer at 19-20.

²⁵⁹ *Id.* at 26-27 (arguing that the Indiana statutory provisions Petitioners cite do not provide the expansive regulatory rights claimed by Petitioners).

City related to Lawrenceburg Power's termination of the Retail Contract.²⁶⁰ None of these arguments are relevant to the question of whether the Commission has jurisdiction to determine whether a retail sale of station power has occurred. Similarly, Lawrenceburg Power's argument that certain PJM states have not exercised their jurisdiction to maintain a retail rate schedule for station power, and that some have adopted netting intervals aligned with the PJM Tariff, do not affect our jurisdictional determination herein.²⁶¹ Further, arguments about the justness and reasonableness of the retail rates, and about what entity within the state of Indiana has authority to provide retail service, are more appropriately raised before the relevant state regulatory body. The Commission does not have the authority to determine when, and on what terms, a retail sale of station power is made. Finally, in reiterating that we do not have jurisdiction over the provision of station power supply, we need not reach Lawrenceburg Power's question of whether the FPA allows a state to delegate its retail rate authority to a municipality, such as LMU.²⁶²

2. Request for Declaration That, As of February 12, 2013, Section 1.7.10(d)(i) of the PJM Tariff is Null, Void, and Unenforceable

103. We deny Petitioner's request for a declaration that, as of February 12, 2013, section 1.7.10(d)(i) of the PJM Tariff is null, void and unenforceable. Although the Commission does not have jurisdiction to determine whether a retail sale of station power has occurred, as discussed in detail in Section IV.B.1, above, it does have jurisdiction to determine whether Commission-jurisdictional transmission has been used to supply station power.²⁶³ Section 1.7.10(d)(i) is used by PJM to determine Commission-jurisdictional transmission charges related to the supply of station power.²⁶⁴

²⁶⁰ *Id.* at 11-15.

²⁶¹ *See e.g.*, Lawrenceburg Power Answer at 24-25.

²⁶² *See* Lawrenceburg Power Second Answer at 5; Petitioners Second Answer at 4-5.

²⁶³ *Duke Energy Remand*, 132 FERC ¶ 61,183 at P 16 (“[T]he Commission determines the amount of station power that is transmitted on the Commission-jurisdictional transmission grid and the states determine the amount of station power that is sold in state-jurisdictional retail sales.”); *Calpine*, 702 F.3d at 50.

²⁶⁴ PJM Tariff, Attachment K-Appendix, § 1.7.10 (d)(i)-(ii) (“The determination of a generation facility's or a Market Seller's monthly net output under this subsection (d) will apply only to determine whether the Market Seller self-supplied Station Power during the month and will not affect the price of energy sold or consumed by the Market Seller. . . . In the event that a Market Seller self-supplies Station Power Station Power

Thus, it would be improper to declare section 1.7.10(d)(i) null and void in its entirety, as requested by Petitioners. Indeed, Petitioners admit that the Commission determines the amount of station power that is transmitted on the Commission-jurisdictional grid, and that the Commission sets netting intervals for purposes of determining Commission-jurisdictional transmission charges associated with station power.²⁶⁵

104. Petitioners argue that PJM's reliance on the monthly netting rule in section 1.7.10(d) is unavailing, because transmission service under section 1.7.10(d)(ii) is contingent upon a generator's right to self-supply under section 1.7.10(d)(i), and section 1.7.10(d)(i) is null and void for want of Commission jurisdiction.²⁶⁶ This argument lacks merit. Section 1.7.10(d)(i)'s determination of whether a generator has self-supplied is, appropriately, used by PJM to determine whether transmission charges will be applied pursuant to section 1.7.10(d)(ii) for the transmission of any station power supply during the monthly netting interval outlined in 1.7.10(d)(i).

105. Further, Petitioners argue that transmission service to the Plant must be determined without the Tariff's monthly netting rule.²⁶⁷ We disagree. The Commission has jurisdiction to set a netting interval for transmission service charges for the transmission of station power across Commission-jurisdictional facilities, and that interval need not be the same as the interval used by any state to determine whether retail sales of station power occurred. Further, no party has shown that, or attempted to show that, pursuant to section 206 of the FPA, the current monthly netting interval for transmission charges in the PJM Tariff is unjust and unreasonable. Nor has any party

during any month in the manner described in subsection (1) of subsection (d)(i) above, Market Seller will not use, and *will not incur any charges for, transmission service*. In the event . . . Market Seller self-supplies Station Power during any month in the manner described in subsection (2) of subsection (d)(i) above . . . , Market Seller *shall use and pay for transmission service* for the transmission of energy in an amount equal to the facility's negative net output.”) (emphasis added); *see also* PJM Answer at 2, 3, 7-9.

²⁶⁵ Petition at 4, 6 (specifically excluding from its request for a declaratory order on the jurisdictional question “any FPA jurisdictional transmission service used to transmit such supply”); Petitioners Answer at 10 (“*Other than for purposes of assessing any Commission-jurisdictional transmission charges associated with the delivery of station power, there are no Commission-regulated wholesale netting intervals applicable to the self-supply of station power.*”).

²⁶⁶ Petitioners Answer at 5-6.

²⁶⁷ *Id.* at 30.

alleged that PJM violated its current Tariff in assessing past transmission charges related to station power.

3. Section 206 Proceeding

106. While the monthly netting provision in section 1.7.10(d) of the PJM Tariff is appropriately used to determine Commission-jurisdictional transmission charges associated with station power, it cannot be used to determine whether a retail sale of station power has occurred, as jurisdiction over that determination lies with the states. The record in this proceeding shows that Lawrenceburg Power, and others, have relied on section 1.7.10(d) of the PJM Tariff to assert the right to choose to self-supply station power pursuant to the PJM Tariff and preempt a state's independent determination of whether retail sales of station power have occurred. Such reliance on section 1.7.10(d) conflicts with the finding that the Commission lacks jurisdiction to determine whether a retail sale has occurred.

107. Because the PJM Tariff's self-supply monthly netting provision can be read to, and indeed has been relied on by certain PJM generators to assert the right to, determine whether a retail sale of station power has occurred and avoid the retail purchase of station power, which is inconsistent with the Commission's jurisdiction, we find that PJM's Tariff may be unjust, unreasonable, unduly discriminatory, or preferential. Accordingly, we institute a proceeding, pursuant to section 206 of the FPA, in Docket No. EL20-56-000, to address this concern. The Commission requires PJM, within 60 days of the date of publication of notice of the Commission's initiation of the section 206 proceeding, to either propose revisions to its Tariff consistent with our order here, including clarifying that section 1.7.10(d) applies only to Commission-jurisdictional transmission charges, or to show cause why such changes are not necessary.²⁶⁸

108. The revisions proposed by PJM should clarify that the monthly netting provision in section 1.7.10(d)(i) of the Tariff does not determine whether a retail sale of station power has occurred in that month. In addition, the Tariff provisions should make clear that PJM has no responsibility for the determination of any state-jurisdictional retail rates. We also encourage PJM to review the *pro forma* Form of Interconnection Service Agreement (*pro forma* ISA) provisions governing station power consumption to ensure that those provisions are consistent with the revised Tariff provisions and propose any changes to the *pro forma* ISA as necessary.²⁶⁹ Additionally, in light of the jurisdictional

²⁶⁸ Any changes to section 1.7.10(d) of the PJM Tariff should also be reflected in the parallel provision in the PJM Operating Agreement.

²⁶⁹ See, e.g., PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, Attachment O - Form of Interconnection Service Agreement (9.0.0), Appendix 2 – Standard Terms and Conditions for Interconnections, § 8.4 Metering Data

holding herein, PJM should consider whether it has sufficient information to implement section 1.7.10(d), and if not, propose revisions to its Tariff to require generation and transmission owners to provide sufficient information.²⁷⁰ In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than publication of the notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months after the publication date.²⁷¹ We will establish a refund effective date of five months from the date of the *Federal Register* notice of the Commission's initiation of section 206 proceedings in Docket No. EL20-56-000.

109. Section 206(b) of the FPA also requires that if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. We expect that that we should be able to render a decision within five months of the submission of PJM's filing proposing changes to its Tariff consistent with our order herein.

4. Other Requested Relief

110. We reject Petitioners' request to order AEP to record IMPA's delivery of electricity to the City at the Plant in IMPA's PJM LSE account and to correct all such entries as of January 1, 2019, and thereafter, and to report this information to IMPA and PJM.

111. Petitioners explain that, when Lawrenceburg Power asserted its right to self-supply its station power via the PJM Tariff, Lawrenceburg Power requested that AEP stop recording electric supply to the Plant in IMPA's PJM LSE account—AEP acceded

(0.0.0); *see also* Lawrenceburg Power Answer at 8 (“Lawrenceburg Power’s ISA recognizes [the right to self-supply station power], clearly stating that ‘[PJM’s] rules applicable to Station Power shall control with respect to a Generation Interconnection Customer’s consumption of Station Power.’”); AEP Second Answer at 12 (“But many generators believe that the PJM Tariff and ISA *do* convey a right to choose [to self-supply station power].”).

²⁷⁰ *See e.g.*, Midcontinent Indep. Sys. Operator, FERC Electric Tariff, Schedule 20 – Treatment of Station Power, § II.3 (33.0.0) (“Generation Owner must provide the Transmission Provider with sufficient information to allow the Transmission Provider to implement Schedule 20.”).

²⁷¹ 16 U.S.C. § 824e(b).

to the request.²⁷² Petitioners argue that not recording station power service to the Plant in IMPA's LSE account conflicts with IMPA's network transmission service rights under its NITSA with PJM, and the reporting and billing rights under IMPA's ILDSA with AEP, as well its rights to and obligations to provide the City with full requirements service.²⁷³ Petitioners explain that IMPA's NITSA provides for transmission service from PJM to IMPA's load, and specifically identifies the Plant's station power load as part of IMPA's network load.²⁷⁴ Similarly, Petitioners argue that Article 4 of IMPA's ILDSA requires that AEP cooperate with PJM and IMPA to insure that data is available to PJM for use in calculating network service transmission charges for IMPA.²⁷⁵ At the same time, Petitioners assert that they are not asking the Commission to direct PJM to rerun the market or make any retroactive settlement adjustments, and they are not contesting the accuracy of the meter data for the amount of electricity delivery to the Plant.²⁷⁶

112. Because Petitioners are not contesting the meter data or any market settlements, their request for relief is solely related to how the meter data should have been recorded and reported to PJM. As PJM explains, recording the Plant's station power MWh values as load served by IMPA or as negative generation by Lawrenceburg Power are "*both* reporting conventions compatible with the Tariff provision on determination of transmission service" and do not "dictat[e] IMPA's retail service."²⁷⁷ Further, AEP notes that, as of January 1, 2019, it continued providing IMPA with the same monthly meter data it had received prior to Lawrenceburg Power's decision to self-supply, so that IMPA could continue billing the City at wholesale and the City could continue billing Lawrenceburg Power for station power pursuant to retail rates.²⁷⁸ AEP explains that, if it were to go back and change entries in IMPA's LSE account as of January 1, 2019, it would need to give Lawrenceburg Power a corresponding credit, unless the Commission

²⁷² Petition at 15.

²⁷³ *Id.* at 18-19.

²⁷⁴ *Id.* at 10.

²⁷⁵ *Id.* at 11.

²⁷⁶ *Id.* at 7, 17 n.54.

²⁷⁷ PJM Answer at 5-6.

²⁷⁸ AEP Answer at 6-7, 12 (noting that nothing prevents a generator from claiming to "self-supply" under a federal tariff while also being compelled to pay for retail service it receives under state or local law).

were to make clear that the City can bill Lawrenceburg Power for retail service despite the election of self-supply under the Tariff.²⁷⁹

113. We find no evidence in the record that the reporting conventions used for the IMPA load at the Plant as of January 2019 prevented IMPA from receiving the information it needed to charge the City at wholesale or for the City to charge Lawrenceburg Power at retail for the station power supplied. While Lawrenceburg Power may have selected the self-supply option under the PJM Tariff, given that the states retain jurisdiction over the supply of station power, nothing about the election of self-supply pursuant to the Tariff prevents IMPA from asserting its right to charge Lawrenceburg Power at retail for the station power received. Further, Petitioners do not identify any statute, Tariff, or Operating Agreement provision that AEP has violated by recording the station power at the Plant as it did, and indeed we find no such violation. Therefore, deny this request.²⁸⁰

114. We similarly reject Petitioners' request to order PJM to provide IMPA wholesale electric and network transmission service for the supply and transmission of power to its designated network load at the Plant delivery point as of January 1, 2019, and thereafter. As to this request, Petitioners explain that they recognize the Commission's right to regulate the rates, terms, and conditions of Commission-jurisdictional transmission service used to supply retail station power service; however, they object to PJM's failure to provide IMPA the wholesale electricity and agreed-upon network transmission service necessary to deliver wholesale power to the City at the Plant in order for the City to serve the Plant's station power need.²⁸¹ We find that nothing in the record indicates that PJM violated its Tariff provisions governing station power transmission service to the Plant or refused to provide such service.

115. As PJM explains, PJM's application of the Tariff's monthly netting provision for transmission service was not contrary to PJM's NITSA with IMPA, as that agreement provides that such service is subject to the rates, terms, and conditions for service outlined in the Tariff.²⁸² PJM states that this request essentially seeks to match the determination of transmission service at the plant for station power since January 1, 2019 to the state's determination of retail sales for station power, and route that transmission

²⁷⁹ *Id.* at 14-15 (noting, however, that it does not take issue with Petitioners' request).

²⁸⁰ The fact that AEP and PJM may not object to granting such relief is irrelevant to whether such relief is warranted. *See* Petitioners Answer at 2 n.6.

²⁸¹ Petition at 6-7 n.10.

²⁸² PJM Answer at 9.

service through IMPA's network service agreement with PJM.²⁸³ Further, PJM states that none of PJM's actions "thwart[ed] the provision of transmission service under IMPA's network service agreement."²⁸⁴ As we stated above, PJM appropriately uses the monthly netting provision in section 1.7.10(d) to determine transmission charges and there is no requirement that the calculation of transmission service used to supply station power match the determination by the state of the amount of station power sold at retail.²⁸⁵ Therefore, we reject this request.

The Commission orders:

(A) The Petition is hereby granted, in part, and denied, in part, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL20-56-000, as discussed in the body of this order.

(C) PJM is hereby directed to submit a filing, within 60 days of the date of publication of notice of the Commission's initiation of Docket No. EL20-56-000, either to: (1) submit the proposed revisions to the PJM Tariff and Operating Agreement, as discussed in the body of this order; or (2) show cause why such changes are not necessary.

(D) Any interested person desiring to be heard in Docket No. EL20-56-000 must file a notice of intervention or motion to intervene, as appropriate, 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 (2020)) within 21 days of the date of this order.

²⁸³ *Id.* at 4-5.

²⁸⁴ *Id.* at 5.

²⁸⁵ See *Southern California Edison*, 603 F.3d at 1002 ("As we have noted, in an unbundled market, transmission and power are procured through separate transactions. And, as we recognized in *Niagara Mohawk*, the netting periods for power and transmission need not be the same.") (citations omitted).

(E) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of section 206 proceedings in Docket No. EL20-56-000.

(F) The refund effective date established in Docket No. EL20-56-000 pursuant to section 206(b) of the FPA will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (E) above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.