

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Houlihan Chen )  
Powhatan Energy Fund, LLC )  
HEEP Fund, LLC )  
CU Fund, Inc. )

Docket No. IN15-3-000

**COMMENTS  
OF PJM INTERCONNECTION, L.L.C.**

PJM Interconnection, L.L.C. and PJM Settlement, Inc. (collectively, PJM) hereby respectfully provide comment in the above-captioned proceeding.

**I. Background**

PJM is a Commission-established Independent System Operator and Regional Transmission Organization.<sup>1</sup> PJM is a transmission provider under, and the administrator of, the PJM Open Access Transmission Tariff (Tariff), operates the PJM Interchange Energy Market<sup>2</sup> and Reliability Pricing Model market, and coordinates the movement of wholesale electricity in the PJM Region.

On December 17, 2014, the Commission issued an Order to Show Cause and Notice of Proposed Penalty (Order to Show Cause) in which it directed the above-captioned respondents, Houlihan Chen, HEEP Fund, Inc., CU Fund, Inc. and Powhatan Energy Fund, LLC (the Respondents) “to show cause why they should not be found to have violated section 1c.2 of the Commission’s regulations and section 222 of the Federal Power Act (FPA) by engaging in fraudulent Up To Congestion (UTC) transactions in PJM Interconnection, L.L.C.’s energy

---

<sup>1</sup> *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,252 (1997), *reh’g denied*, 92 FERC ¶ 61,282 (2000); *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,345 (2002).

<sup>2</sup> Capitalized terms used and not otherwise defined herein have the meaning set forth in the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., Tariff, or the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region.

markets. . . [and] why they should not be assessed civil penalties” in the amounts reflected therein.<sup>3</sup> In addition, in the Enforcement Staff Report and Recommendation of the Commission’s Office of Enforcement that was attached as Appendix A to the Order to Show Cause, Commission staff recommended that the Commission direct the Respondents to show cause why they should not be required to disgorge \$1,080,576 (for Chen and CU Fund) and \$3,465,108 (for Powhatan and HEEP Fund) in unjust profits, plus interest, for the Up-to-Congestion Transaction market activity<sup>4</sup> that they have concluded amounts to fraudulent transactions in violation of 18 C.F.R. §1c.2 and 16 U.S.C. §824v(a).<sup>5</sup>

As the operator and administrator of the PJM Interchange Energy Market in which the Respondents’ fraudulent market activity was undertaken, it is clear PJM has an independent interest in this proceeding. PJM submits these comments because it has concerns with regard to the manner in which it would be directed to distribute any disgorged funds, particularly given the complexity involved with processing refunds of large dollar amounts to multiple Market Participants. Therefore, PJM submits for the record its concerns and requests with regard to the manner in which any disgorgement would be required to be repaid to PJM and then refunded back to Market Participants.

## **II. Comments**

While neither the Order to Show Cause nor the staff report indicates that the unjust profits should be paid back to PJM, in other cases in which a Market Participant has been directed to disgorge funds, they have been directed to return the money to PJM for distribution to the PJM Market Participants to whom the Commission has determined the money should be

---

<sup>3</sup> *Houlian Chen, et al.*, 149 FERC ¶ 61,261 at P 1 (2014) (Order to Show Cause).

<sup>4</sup> *Id.*, Appendix A at 84.

<sup>5</sup> *Id.* at PP 1, 3.

repaid.<sup>6</sup> Thus, PJM assumes that any such disgorgement ordered by the Commission in the underlying proceeding will require PJM to distribute the funds to the Market Participants to whom the Commission determines they are owed. To the extent the Commission concludes that disgorgement is appropriate in this matter and assuming the Commission will direct that any disgorgement be paid to PJM for the benefit of certain of its Market Participants, PJM requests that the Commission take into consideration the following and that it provide specific direction to PJM with regard to the same in its order.

First, PJM typically refunds money to Market Participants through billing adjustments in their month-end billing statements. The amount of time that it takes PJM to process a billing adjustment depends on whether the adjustment can be done through straight forward reversals of transactions in PJM's settlements database or whether manual calculations need to be completed which can be very time consuming, taking weeks or months to complete depending on the number of months for which the refunds are due and the number of Market Participants to whom the refunds are owed. For that reason, it is PJM's preference that the Commission order that the disgorgement be based on the Respondents' Up-to Congestion Transaction activity on an hourly basis, per Operating Day, rather than a lump sum that must be refunded on a pro-rata based on total activity for the month or other applicable period. Accordingly, PJM requests that the Commission direct Commission staff to provide PJM with a breakdown of the amount to be disgorged on an hourly basis, per Operating Day at issue.

Second, to the extent that refunds are owed to entities that are no longer PJM Members and thus have no market activity in PJM, PJM needs direction from the Commission regarding what it should do with such refunds. Specifically, should PJM try to locate these entities and

---

<sup>6</sup> *North America Power Partners*, 133 FERC ¶ 61,089 at P 16 (2010).

return the refund money to the last known chief executive officer or other contact person reflected in PJM's records for that entity, or should PJM instead distribute these funds to the entities who remain PJM Members who are owed refunds in this proceeding on a pro-rata basis based on the quantity of the disgorged funds that would otherwise have been allocated to those entities?

Third, PJM requests that the Commission suspend any requirement that PJM distribute the refunds, and direct or allow PJM to hold the disgorgement monies in escrow, until such time as a final order has been received from a court of competent jurisdiction if the Respondents appeal the Commission's disgorgement order. This request is necessary to avoid a situation wherein PJM pays the refunds out to Members as directed in the order, then has to attempt to collect the money back from them if a court overturns the Commission's order or the Commission reverses itself on reconsideration, but the entity is no longer a PJM Member or refuses to return the money. As the Commission is well aware, PJM has had to deal with this exact scenario in recent history and is in litigation seeking to recover from former Members \$23 million of a \$37 million refund that it was directed to pay to its Members.<sup>7</sup>

Fourth, PJM requests that the Commission indicate in its order the date from which interest should be calculated on the disgorgement, or provide PJM with a specific breakdown of the total amount due including interest, on an hourly basis from each of the Respondents.

Fifth, PJM requests that the Commission specify in its order that any portion of the disgorged funds that are owed to an inactive PJM Member with no current market activity or to a former PJM Member who is in default on obligations owed to PJM can first be applied to reduce the amount of their defaults to PJM, and that only to the extent that there are excess funds due to

---

<sup>7</sup> See e.g., *PJM v. City Power* (D. Del., 12-cv-1779); *PJM Interconnection, L.L.C., et al. v. City Power Marketing, LLC, et al.*, C.A. No. N12C-11-062 CEB.

any such Market Participants after the refunds are applied to reduce their default obligations, will PJM be required to issue any payment to such Market Participants.

Finally, there were a total of seven entities that PJM referred to the Office of Enforcement in the same August 2010 referral that precipitated the Commission's investigation of the Respondents in the underlying proceeding. With the issuance of its order in this underlying proceeding, the Commission will have resolved the referrals with respect to five of the seven entities. PJM asks that the Commission indicate in its order whether these five entities are entitled to receive the portion of the disgorged funds that are due to be refunded to them or whether they should be excluded from any such refunds.

### **III. Conclusion**

For the reasons stated above, PJM respectfully requests that the Commission consider the comments provided herein.

Craig Glazer  
Vice President – Federal Government Policy  
PJM Interconnection, L.L.C.  
1200 G Street, NW  
Suite 600  
Washington, D.C. 20005  
(202) 423-4743  
[Craig.Glazer@pjm.com](mailto:Craig.Glazer@pjm.com)

Respectfully submitted,

*Jacquelynn Hugee*

Jacquelynn Hugee  
Associate General Counsel  
PJM Interconnection, L.L.C.  
2750 Monroe Blvd.  
Valley Forge Corporate Center  
Audubon, PA 19403  
(610) 666-8208  
[Jacquelynn.Hugee@pjm.com](mailto:Jacquelynn.Hugee@pjm.com)

Counsel for PJM Interconnection, L.L.C

Dated: April 1, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that I this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Audubon, PA this 1<sup>st</sup> day of April, 2015.

*Jacquelyn Huges*  
Jacquelyn Huges