

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

PJM Interconnection, L.L.C.

Docket Nos. ER06-78-000 and
ER06-78-001

ORDER ON FUNDING MECHANISM FOR ORGANIZATION
OF PJM STATES, INC.

(Issued December 20, 2005)

1. On October 28, 2005 as amended November 3, 2005, PJM Interconnection, L.L.C. (PJM) filed an amendment to its Open Access Transmission Tariff (OATT)¹ to provide a mechanism for funding the Organization of PJM States, Inc. (OPSI), the regional state committee (RSC) in the PJM region comprised of the regulatory commissions within PJM's footprint formed to interact with PJM and its members.² We will accept the proposed amendment to the PJM OATT effective January 1, 2006 subject to the revisions discussed herein.

¹ On October 28, 2005, PJM filed Original Sheet Nos. 269A and 269B to its FERC Electric Tariff, Sixth Revised Volume No. 1. On November 3, 2005, PJM filed Sixth Revised Sheet No. 24 and Substitute Original Sheet Nos. 268B and 268C to its FERC Electric Tariff, Sixth Revised Volume No. 1.

² OPSI's membership includes: Delaware Public Service Commission; District of Columbia Public Service Commission; Illinois Commerce Commission; Indiana Utility Regulatory Commission; Kentucky Public Service Commission; Maryland Public Service Commission; Michigan Public Service Commission; New Jersey Board of Public Utilities; North Carolina Public Service Commission; Public Utilities Commission of Ohio; Pennsylvania Public Utility Commission; Tennessee Regulatory Authority; Virginia State Corporation Commission; and West Virginia Public Service Commission.

I. Background

2. PJM states that the Commission has recognized the important role of the states in the formation, governance and development of regional transmission organizations (RTOs) in its key orders and policy statements.³ PJM explains that where, as here, an RTO covers a footprint encompassing a multi-state region, the Commission has sought to create new venues that would allow states to coordinate their regulatory policies on matters subject to their jurisdiction and provide opportunities to form a common state perspective on issues relating to wholesale power markets and interstate transmission. PJM states that specifically the Commission has proposed that state commissions form RSCs that would develop (in whatever form that suited them) formal decision-making structures and procedures.

3. PJM asserts that, in order to facilitate this objective, the Commission has invited RTOs to seek reimbursement of states' reasonable expenses in the formation and support of such bodies. PJM states that, although the Commission has stopped short of requiring the formation of RSCs, as it initially contemplated, there is every indication that the Commission continues to favor this approach.⁴ PJM states that this concept of collective regional state deliberative processes also has the support of Congress, which has included, for example, a legislative mandate in the Energy Policy Act of 2005 to convene joint state boards on a regional basis in order to study and develop recommendations regarding the use of economic dispatch in various regions of the country.⁵

³ See, e.g., *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,213-14 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs., ¶ 31,092 (2000), *aff'd sub nom., Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁴ PJM states that although the Commission has terminated the Standard Market Design Notice Of Proposed Rulemaking proceeding, citing the continued voluntary formation of RTOs in regions such as the PJM region and the Commission's intent to proceed with reform of the Pro Forma OATT, it has never indicated any intention to rescind any policy or recommendation in that proceeding intended to promote or otherwise facilitate the development of RTOs in a region where their growth and development has continued unabated. See *Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design*, 112 FERC ¶ 61,073 at P 6 (2005). PJM also states that the Commission recently has cited with approval Midwest Independent Transmission System Operator, Inc.'s and Southwest Power Pool's practice of including their respective RSC's cost in their administrative budgets. See *New England Governors*, 112 FERC ¶ 61,049 P 39 (2005).

⁵ Pub. L. No. 109-58, § 1298, 119 Stat. 594, 986 (2005).

II. Role of the Organization of PJM States, Inc.

4. PJM states that the fourteen regulatory commissions within the footprint of PJM have organized OPSI as a non-stock corporation in Delaware. PJM also states that OPSI's stated purpose is to "provide a means for the PJM States to act in concert, when deemed to be in the common interest..."⁶ PJM explains that on June 1, 2005, PJM and OPSI entered into a Memorandum of Understanding (MOU), in which they agreed that OPSI would function as a liaison group, meeting with PJM at least annually; collect information (which PJM agrees either to provide or explain its basis for withholding); monitor markets and events; consider PJM-related proposals affecting reliability, safety, facility siting and electricity prices; and submit proposals.

5. PJM contends that OPSI presents an opportunity to mitigate the regulatory costs, uncertainties and delays that could result from the balkanization of state regulatory participation and review of wholesale electricity market issues in the PJM region over fourteen different jurisdictions. PJM notes that the Commission has recognized state authority affecting such matters as transmission and capacity planning is crucial to the development of efficient energy markets. PJM states that, to the extent that OPSI can help the states appreciate their mutual, regional interests, it will serve to curb parochialism and foster a cooperative approach to planning on a regional basis. PJM also states that, although in time OPSI could evolve into a regional layer of coordinated governance over a discrete scope of electricity issues, the present framework is relatively modest.

6. PJM explains that currently OPSI is run entirely by persons with many other responsibilities. PJM believes that OPSI needs a small support staff in order to avoid imposing an excessive burden on state officials, to provide a small cadre of neutral intermediaries among the state members, and to allow for some institutional continuity. PJM asserts that the funding requested for OPSI primarily serves to support this staff. PJM contends that, in order to preserve the regional character of OPSI as an organization, it is appropriate that the region fund it rather than the states. PJM states that an obvious and administratively convenient method for the "region" to fund OPSI is for the RTO to collect the costs of the RSC, and the Commission already has anticipated and solicited this approach. PJM also states that it intends to facilitate the development of an RSC that will play a constructive role in its region, and has developed this proposal in cooperation with OPSI.

⁶ Certificate of Incorporation of Organization of PJM States, Inc., dated May 19, 2005.

III. Proposed Rate Schedule 9-OPSI

7. After consultations with its stakeholders and OPSI, PJM proposes to collect OPSI's annual budget through a dedicated formula rate. Proposed Schedule 9-OPSI provides that each year OPSI will develop its budget for the following calendar year and submit it to the PJM Finance Committee for comment. No later than October 31 of each year, PJM will inform the Commission of OPSI's final budget and post the resulting OPSI Funding Rate on its internet site. OPSI's initial budget is \$425,000. PJM explains that in order to promote fiscal restraint and rate certainty, Schedule 9-OPSI provides that any budget submitted for a calendar year that includes an increase in excess of fifteen percent of the budget on file for the current calendar year will require the Commission's approval by means of a subsequent section 205 filing by PJM.

8. PJM proposes to charge each user of transmission provided by PJM each month a charge equal to the OPSI Funding Rate (OFR) times the total quantity in MWhs of energy delivered during such month by such user as a transmission customer under its tariff. PJM states that under proposed Schedule 9-OPSI the OFR is based on (i) an estimate of energy deliveries expected in the following calendar year and (ii) a true-up to account for actual under-or over-recovery of OPSI's budget during the prior calendar year. PJM will state separately the charge associated with Schedule 9-OPSI on a customer's bill, which will reflect the application of the OPSI Funding Rate to every megawatt-hour of energy delivered under the tariff.

9. PJM asserts that this approach balances the need for transparency and a reasonable degree of oversight over OPSI's budget against the need to preserve the independence of the organization from outside control over its budgetary purse strings or from similar conflicts of interest. PJM explains that the PJM Finance Committee has an opportunity to advise OPSI in preparing its budget, but does not approve it. PJM states that the review process will give stakeholders an adequate opportunity to complain about anything they perceive as excessive in PJM's annual informational filings. Schedule 9-OPSI provides that PJM will file with the Commission under section 205 for review any future annual OPSI budget seeking an increase of more than fifteen percent. PJM asserts that stating the charge associated with OPSI's activities separately will provide additional transparency with respect to OPSI's costs. PJM contends that a more elaborate review process is unnecessary and wasteful given the relatively low level of funding that OPSI requires.

10. PJM states that it is also appropriate that Rate Schedule 9-OPSI be stated separately from PJM's rate for administrative services. PJM asserts that OPSI is totally independent of PJM. PJM argues that OPSI's status is analogous to that of the Mid-Atlantic Area Council (MAAC), an organization that PJM collects funding for through a separate charge calculated pursuant to Schedule 10. PJM contends that the Commission to date has not had jurisdiction over these regional reliability council costs yet the RTOs

have been used as a vehicle for collecting them pursuant to the Commission-approved tariff. PJM contends that this precedent is even more compelling when applied to OPSI. PJM also states that by keeping apart the mechanisms used to fund wholly separate organizations with separate missions, PJM is more able to keep its financial affairs transparent to its stakeholders and the public it ultimately serves. PJM requests that Rate Schedule 9-OPSI become effective January 1, 2006.

11. PJM explains that it prefers not to include in its general budget costs that it does not manage. PJM asserts that this is especially the case considering PJM's request to move from a formula rate to a stated rate for those charges within its control.⁷ PJM states it would be counterproductive, at a time of focus on fiscal control, for the RTO to have to absorb costs of entities outside of its control within a fixed-rate proposal designed to drive internal efficiencies and cost reductions. PJM states that for the reasons explained above, OPSI's budget should not be subject to PJM's discretionary authority. PJM contends that these types of costs should be isolated from general administrative costs so that PJM and the Commission can better evaluate PJM's progress in improving its cost management.

12. PJM states that it is aware that the Commission has questioned the necessity for a similar approach for collecting the RSC costs proposed for New England's RSC. PJM also states that most of the reasons provided above would also support ISO New England's approach.⁸ However, PJM asserts that OPSI's proposed budget is smaller and includes a mechanism providing stakeholder participation and input, encouraging fiscal restraint, and PJM's stakeholders overwhelmingly welcome OPSI's creation, purpose and participation in RTO affairs. PJM states that on September 29, 2005, the Members Committee endorsed the OPSI rate schedule with approximately 85 percent of the voting membership in favor.⁹ PJM notes that the PJM Finance Committee recommended that the Members Committee approve the proposal.

⁷ See PJM Interconnection, L.L.C., Docket No. ER05-1181-000.

⁸ *ISO New England, Inc.*, 109 FERC ¶ 61,383 at P 46 (2004) and *New England Governors*, 112 FERC ¶ 61,049 P 40 (2005).

⁹ PJM states that the rate schedule OPSI proposed to the PJM membership did not provide for the 15 percent escalation limit included in this filing. PJM states that OPSI elected to include this limitation in the instant rate schedule following PJM's September 29, 2005, Members Committee meeting in order to provide PJM and its members additional comfort that its costs would be kept in check.

IV. Notice of Filing

13. Notice of PJM's October 28, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 68,434 (2005), with protests and interventions due on or before November 18, 2005. Notice of PJM's November 3, 2005 amended filing was published in the *Federal Register*, 70 Fed. Reg. 70,607 (2005), with protest and interventions due on or before November 25, 2005.

14. Timely motions to intervene and notices of intervention were filed by the Pennsylvania Public Utility Commission, Public Service Commission of Maryland, Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company. Timely motions to intervene and protests were filed by American Municipal Power – Ohio, Inc. (AMP-Ohio) and PSEG Energy Resources & Trade LLC (PSEG). A timely notice of intervention and comments were filed by the Kentucky Public Service Commission (Kentucky PSC). Timely motions to intervene and comments were filed by the OPSI, Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (Constellation). OPSI filed an answer to the comments and protests on December 5, 2005.

V. Protests and Comments

A. Funding

15. AMP-Ohio and PSEG oppose the funding mechanism proposed to support OPSI. Additionally, Constellation, AMP-Ohio and PSEG raise concerns about the future costs of OPSI. Constellation does not object to the initial proposed budget for OPSI, it is concerned that given the stakeholder as well as Commission efforts to reduce the costs associated with the RTOs, it is inappropriate to permit OPSI to increase its budget by up to 15 percent annually, with no dollar cap in the aggregate. PSEG and Constellation argue that the budget increases should be reviewed by the Commission prior to becoming effective so that parties have the opportunity to comment on the prudence of the costs. Alternatively, Constellation argues that the Commission should require a lower threshold of increase, such as three to five percent, concomitant with an aggregate cap of no more than a \$45,000 increase over the initial filed budget that would trigger a requirement to file with the Commission for acceptance.

16. PSEG contends that the OPSI funding mechanism includes a provision allowing OPSI to increase its annual budget by up to 15 percent year without any need for Commission review. PSEG contends that as a general matter, authorization of an unrestricted annual growth rate of 15 percent for an organization to be supported through RTO funding would be excessive. PSEG asserts that if OPSI is funded based on PJM transmission usage, the Commission should approve budget increases. PSEG contends that, at most, increases in levels up to the rate of inflation could be permitted without the

need for Commission review and that budget increases in excess of the rate of inflation should be filed with the Commission.

17. AMP-Ohio contends that this is just the latest in a series of actions to pancake additional costs on the supposedly deep pockets of load serving entities (LSEs). AMP-Ohio asserts that the fact that the cost is low (initially) does not justify its automatic imposition on load. AMP-Ohio states that there are fourteen state regulatory commissions participating in OPSI, and if the budgeted \$425,000 expense were paid by them, where the expense belongs in the first instance, the average annual cost for each commission would be only \$30,357. AMP-Ohio argues that more importantly, as we have seen with runaway RTO costs in general, when the entity that incurs the costs is free to shift them elsewhere for payment with little or no oversight, those costs have a habit of escalating well beyond a reasonable level.

18. Additionally, AMP-Ohio and PSEG protest the funding of OPSI, the members of which are state regulatory commissions, through transmission costs. AMP-Ohio argues that wholesale purchasers of PJM transmission should not be required to pay for the cost of state retail commission participation in the PJM stakeholder process. AMP-Ohio asserts that although PJM states that state regulatory authorities affect such areas as transmission and capacity planning, it is not at all clear that their participation in the PJM stakeholder process is related to those functions as opposed to representing “the interests of their constituents.” AMP-Ohio contends that state commissions frequently define their constituents by the scope of their regulatory authority. PSEG contends that the state commissions that OPSI represents are obligated by state law to ensure that the interest of end users (load) have been fully considered.

19. AMP-Ohio asserts that the Commission should reject PJM’s proposal and allow the state commissions to raise the modest necessary revenue under state-mandated procedures. AMP-Ohio explains that those assessed a share of these costs could recover them from retail and wholesale customers as circumstances justify and regulators permit.¹⁰ AMP-Ohio states that should the Commission determine that it is appropriate for PJM to pay the OPSI expenses and to do so through the imposition of a new Schedule 9 charge; the Commission should limit the application of that charge to entities that are subject to the jurisdiction of the state agencies. AMP-Ohio believes that such a limitation will have only a very minor affect on the individual charges.

20. PSEG argues that PJM’s proposal to seek funding constitutes a financing mechanism to benefit a particular interest group at the expense of all the transmission customers of PJM. PSEG contends that no other interest group has been distinguished in the same manner as OPSI for financial assistance. PSEG argues that by facilitating the

¹⁰ *Citing Niagara Mohawk Power Corp.*, 95 FERC ¶ 65, 411 (2001).

opportunity for state commissions to participate in the PJM stakeholder process through a funding mechanism built on the backs of other PJM stakeholders, and not providing similar funding opportunities to PJM market participants with different view points, the OPSI funding mechanism has the effect, or at least gives the appearance, of allowing OPSI to exercise undue influence over the PJM stakeholder process. PSEG asserts that at a minimum, elevating the status of OPSI in this manner suggests that the views of OPSI as a stakeholder are more important and are entitled to more weight than those of other PJM market participants.

B. State Commissions

21. The Kentucky PSC states that the Commission has encouraged the formation of Regional State Committees such as OPSI and has previously approved tariffs to fund them. The Kentucky PSC states that as a member of the Organization of MISO States (OMS) it is familiar with how it is funded and what it does, and, based on that experience, the Kentucky PSC urges the Commission to approve the proposed tariff revision for OPSI. Other state commissions have filed interventions.

C. Commission Authority

22. PSEG argues that the proposal to fund OPSI is inconsistent with provisions of state law regarding the funding of state regulatory agencies, and the funding of state regulatory agencies and the manner in which the agencies spend their budgets are matters of state law. Thus, PSEG argues that the Commission will overstep its bounds if, in effect, it approves state agency spending for activities that the state agencies themselves have apparently not been funded to perform by the state legislatures. PSEG asserts that if, on the other hand, the respective state governments believe that the activities contemplated by OPSI are necessary for the commissions to carry out their responsibilities, the state governments can and should rely on existing mechanisms provided in the statutes to support them. PSEG states that in the case of the New Jersey Board of Public Utilities (BPU), for example, funding is obtained through an annual assessment on public utilities subject to BPU's jurisdiction.

23. PSEG asserts that in New Jersey, these charges will ultimately be passed through to end-use customers. PSEG contends that default service, called "basic generation service" (BGS) in New Jersey is procured through a yearly auction. PSEG states that bidders in that auction can be expected to include administrative charges associated with transmission service, such as the OPSI charges, in the bids they make in the auction. PSEG claims that because New Jersey consumers are already paying for the BPU assessment through distribution rates, the payment of additional amounts for BPU activities through the OPSI surcharge will cause amounts paid for state commission activities to exceed the levels intended by the New Jersey legislature. PSEG argues that the situation in New Jersey thus provides a clear example of a case in which the OPSI

funding mechanism undermines legislative intent regarding the budget of the State regulatory agency.

24. AMP-Ohio and PSEG argue that the proposed funding of OPSI would force LSEs to fund views they may oppose. PSEG argues that approval by the Commission of the OPSI funding scheme would constitute an unconstitutional exercise of power over free speech.

D. OPSI's Comments

25. OPSI states that in addition to the common stake that PJM and the states have in improving regional wholesale market design and operations, the states also have jurisdictional obligations and a longstanding and critical stake in transmission planning, siting and construction. OPSI asserts that all transmission siting is ultimately a local issue. OPSI argues that states necessarily have a direct stake in the regional transmission planning process and how it affects personal and public property, land use and environmental concerns. OPSI explains that it views itself as critical in helping states address regional and local issues in a collaborative fashion. OPSI states that to the extent that this effort is successful, it should yield direct benefits to wholesale market stakeholders, and further the policy objectives of the Commission.

26. OPSI states that in the event of annual escalation of OPSI's funding of more than 15 percent, the budget will be submitted to the Commission for approval, pursuant to section 205 of the Federal Power Act (FPA). OPSI explains that this provision (Schedule 9-OPSI, section (c)) was drafted in response to issues and suggestions raised by PJM stakeholders during the review of the proposed funding tariff.

27. OPSI contends that it is incorrect to characterize this tariff as providing OPSI with funds with "little or no oversight" as AMP-Ohio suggests. OPSI states that PJM members have and will continue to have a transparent view of OPSI's funding process, and will have an adequate remedy before the Commission in the event they wish to raise objections to a proposed increase of more than 15 percent per annum.

28. OPSI argues that AMP-Ohio's suggestion that OPSI funding should be limited to entities subject to the jurisdiction of the state agencies misses the point. OPSI asserts that although its members are drawn from all of the state utility regulatory commissions within the PJM footprint, OPSI does not itself exercise any state jurisdictional powers.

29. OPSI states that federal/state jurisdictional boundaries are complex and there is a clear need for states to work together collectively on wholesale market issues. OPSI cites as a prime example, the timely resolution of transmission planning and siting issues that will involve both the exercise of state and federal jurisdiction and will benefit wholesale

and retail markets and the users of the grid. OPSI believes that the existence and operation of regional state entities such as OPSI helps to provide a forum for regional cooperation.

VI. Procedural Matters

30. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely unopposed motions to intervene and notices of intervention serve to make the entities that filed them parties to this proceeding.

31. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept OPSI's answer because it has provided information that assisted us in our decision-making process.

VII. Discussion

32. We will accept PJM's filing subject to the condition that PJM agrees to revise the filing in certain respects to ensure it is just and reasonable. At the outset, we commend the regulatory commissions within PJM's footprint for their effort in establishing a RSC, and we agree that the newly formed OPSI has much to offer in formulating policies for the PJM region. OPSI's funding proposal has broad support among stakeholders. The funding mechanism was recommended for approval by the PJM Finance Committee. Following the Finance Committee's recommendation, the proposal was supported by 85 percent of the membership. We believe that developing the funding mechanism through the stakeholder process fostered a more open and transparent budgeting process that created the climate for a resolution on the funding proposal to be achieved.

33. With respect to the argument that wholesale purchasers of PJM transmission should not be required to pay for the cost of a RSC, we disagree. The costs PJM seeks to recover are legitimate business expenses of an RTO. PJM covers 14 regulatory commissions and has to interact with the regulatory commissions and their members on a regular basis. For example, PJM's Regional Transmission Expansion Planning process identifies expansions that are necessary for reliability as well as those that will reduce costs. Siting and other issues relating to such expansions reside with the states. The formation of OPSI will help PJM to regularize its processes of interacting with the states to achieve the objectives of the RTO. OPSI, further, has the potential to bring public policy perspectives to PJM's deliberations on issues such as the adequacy of resources to meet projected growth levels in the region. While OPSI is not a participant in the PJM market as a buyer or seller of energy or energy services, OPSI will consider PJM-related proposals affecting issues such as reliability, facility siting and transmission planning. Thus, we find that the collaboration between OPSI and PJM and other stakeholders will facilitate improvement in PJM's market design, which benefits all market participants and approve the proposal.

34. The arguments that it is inappropriate to fund OPSI through the RTO or permit a 15 percent increase based on transmission usage are not convincing. In Order No. 2000, the Commission agreed with the National Association of Regulatory Utility Commissioners that state commissions “should fully participate in RTO formation and development.” The formation of OPSI provides state regulatory commissions the opportunity to fully participate in RTO formation and development. Additionally, we find that the advisory input from all stakeholders, including OPSI, is essential to the development of transmission arrangements and competitive markets in the PJM region. Well-functioning markets benefit all market participants including load.

35. In addition, the OPSI funding provision contains a safeguard against the recovery of excessive costs. The proposal includes PJM and stakeholder review of the yearly budget before PJM begins to collect any charges giving PJM and stakeholders review of the budget and an opportunity to object. As discussed below, we will require as a condition of approving this filing that the time period for such review be increased. As a further backstop, the proposed rate schedule requires that any OPSI budget submitted for a calendar year that includes an increase in excess of fifteen percent of the budget on file for the current calendar year will require the Commission’s approval by means of a section 205 filing by PJM.

36. We find that the OPSI annual budget proposal will permit stakeholders to properly evaluate the prudence of expenditures pursuant to an informational filing or, if applicable, a section 205 filing. OPSI commits to use the staff of member agencies to conduct much of the analysis and draftsmanship in pleadings submitted to the Commission in order to achieve cost savings. This is consistent with the OMS procedures and this approach will minimize the need for OPSI to request additional budget appropriations. Moreover, given that the OPSI annual budget will be deliberated through the PJM stakeholder process, all interested parties will have opportunity to object to OPSI’s costs each year.

37. However, we find that PJM has not shown that its proposal is just and reasonable as filed because it provides too little time for PJM and its stakeholders to review a proposed budget. We will require that PJM’s tariff include a deadline for providing OPSI’s proposed annual budget to the Finance Committee no later than June 1 of each year rather than August 1 as proposed. This will provide stakeholders additional time to review the annual budget elements and overall costs and raise any concerns prior to implementation.

38. Additionally, given that OPSI is in its initial stages of development, and that PJM’s mechanism for recovery of its costs may well change, we will require PJM to file a report on how the funding mechanism is operating three years from the date of this order. A three-year period will provide OPSI, PJM and the PJM ratepayers an opportunity to reevaluate the existing funding mechanism to ensure that it meets the parties’ objectives as a result of organization policies and procedure changes over time.

39. The Commission is not overstepping its authority by approving the funding mechanism for OPSI. PJM is an RTO with rates approved by the Commission. PJM has made a rate filing under section 205 of the FPA. We find that the funding of an RSC is a reasonable business expense of PJM to transact business that will benefit PJM's ratepayers. OPSI will allow PJM to more effectively and efficiently coordinate its interaction with the 14 regulatory commissions with which it must deal in the PJM region by providing a conduit for information between the states and the RTO. Absent an organization like OPSI, PJM would have to interact with these state agencies on a less efficient one-on-one-basis. OPSI will benefit all market participants by mitigating regulatory costs uncertainties and delays. OPSI will also benefit market participants by coordinating consideration of issues such as reliability, facility siting, and transmission planning and by facilitating improvements in PJM's market design.

40. We find PSEG's argument that the proposed funding mechanism constitutes an unconstitutional exercise of power over free speech, is misplaced. The OPSI funding mechanism is a legitimate business expense of PJM to help coordinate its necessary activities with the states. The Commission's establishment of a reasonable rate for a regulated entity is not in any way equivalent to the government compulsion of association or speech.¹¹ The *United Foods* case,¹² cited by PSEG, is inapposite. In that case, the Court found that a government requirement that businesses fund an advertising campaign violated the first amendment by compelling a party to subsidize speech with which it did not agree. But that case involved dues paid specifically to fund speech. In this case, PJM's is providing funding to make its job of working with the states easier and more efficient.¹³ The ability of any participant to express its views will not be constrained by this proposal.

41. We do not find that PJM's expenditures here will adversely impact participation in New Jersey's annual BGS auction and intrude on state prerogatives regarding funding of the BPU, as asserted by PSEG. The funding provided by PJM is designed to make PJM's

¹¹ See *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974) (mere fact that a business is subject to state regulation does not by itself convert its action into that of the state); *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492 (1988) (state acceptance of private standards code does not make the private standards-setter a governmental entity for purposes of the first amendment).

¹² *U.S. Department of Agriculture v. United Foods*, 533 U.S. 405 (2002).

¹³ Indeed, in *United Foods*, the Court recognized that a compelled subsidy is permissible when it is ancillary or germane to a valid cooperative endeavor. An RTO is such a cooperative venture which requires PJM to work cooperatively with all 14 regulatory commissions within its geographic territory.

dealings with its 14 regulatory commissions more efficient. Such funding is for a different purpose and is independent of any funding by the State of New Jersey for the BPU. Moreover, given that the funding proposal involves \$425,000 spread out among all transmission users in the PJM region that small amount should have minimal, if any, effect on the BGS auction in New Jersey.¹⁴ We find no compelling evidence that the mechanism to fund OPSI will greatly increase costs for customers participating in the BGS auction and accept the proposal subject to the changes discussed herein.

42. As to the suggestion that the views of OPSI will have more weight than those of other stakeholders, any views of OPSI filed with the Commission will be given no more weight than any joint filing by the states would have been given. Any filing by OPSI will be given careful review by the Commission, as do filings by other participants in the process, but any final decision made by the Commission will be made under the appropriate standard of the FPA.

VIII. Waiver

43. PJM states that it has served a copy of the October 28, 2005 and November 3, 2005 filing on all PJM Members and on all state utility regulatory commissions in the PJM Region by posting this filing electronically and requests waiver of the requirement to post by mailing paper copies. PJM states that it has served a copy of the November 3, 2005 filing on all persons on the service list for this docket, either electronically or in paper copy, in accordance with the designations for such persons on the Commission's service list. The Commission grants the requested waiver subject to PJM providing paper copies consistent with the Commission's regulations to anyone who requests a paper copy.

The Commission orders:

(A) The tariff sheets filed by PJM on October 28, 2005 listed in footnote 1 above are rejected as moot.

¹⁴ Since 2002 the New Jersey BPU has auctioned off the provider of last of resort service – also known as BGS – to New Jersey customers. According to the BGS auction web site the four New Jersey Electric Distribution Companies– Public Service Gas & Electric Company, Atlantic City Electric Company, Jersey Central Power & light Company and Rockland Electric Company – have procured several billion dollars of electric supply to serve their BGS customers through a statewide auction process held in February. The Auction Process has consisted of two auctions that are held concurrently, one for larger customers on an hourly price plan and one for smaller commercial and residential customers on a fixed-price plan. See www.BGS-Auction.com.

(B) The tariff sheets filed by PJM on November 3, 2005 listed in footnote 1 above setting forth the OPSI funding mechanism are accepted subject to conditions as discussed above in the body of the order.

(C) To implement this filing, PJM must file revised tariff sheets within 30 days of the issuance of this order as discussed above in the body of the order.

(D) PJM's request for waiver of the requirement to post by mailing paper copies is granted to the extent discussed above.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.