

169 FERC ¶ 61,112
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

PJM Interconnection, L.L.C.

Docket Nos. ER19-1922-000

ER19-603-002

American Electric Power Service Corporation

EL19-18-001

v.

(not
consolidated)

PJM Interconnection, L.L.C.

ORDER ON COMPLIANCE FILINGS AND REQUEST FOR CLARIFICATION

(Issued November 21, 2019)

1. On May 21, 2019, in Docket No. ER19-1922-000, PJM Interconnection, L.L.C. (PJM) submitted revisions to Appendix 2 of its *pro forma* Interconnection Construction Service Agreement (ICSA) to comply with a Commission order issued on May 10, 2019 (the Complaint Compliance Filing).¹ On May 24, 2019, in Docket No. ER19-603-002, PJM submitted an amended ICSA among PJM, Guernsey Power Station, LLC (Guernsey), and Ohio Power Company (AEP Ohio) (Guernsey ICSA) to comply with a Commission order issued on May 10, 2019 (the Guernsey ICSA Compliance Filing).² On June 11, 2019, American Electric Power Service Corporation (AEPSC) filed a protest, comments, and request for clarification regarding the Complaint Order and the Complaint Compliance Filing and Guernsey ICSA Compliance Filing.

2. As discussed below, we deny AEPSC's request for clarification. We also accept the Complaint Compliance Filing and Guernsey ICSA Compliance Filing, effective May 10, 2019 and May 13, 2019, respectively.

¹ *American Electric Power Service Corp. v. PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,121 (2019) (Complaint Order).

² *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,120 (2019) (Guernsey Agreement Order).

I. Background

A. Complaint Order

3. On November 19, 2018, AEPSC, on behalf of its PJM transmission owners, filed a complaint against PJM alleging that the PJM *pro forma* Interconnection Service Agreement (ISA) and ICSA were unjust and unreasonable because they did not comport with Commission policy established in Order No. 2003,³ and clarified in Order No. 845.⁴

4. On May 10, 2019, the Commission issued the Complaint Order. In the Complaint Order, the Commission granted in part and denied in part the complaint. The Commission found the provisions related to the Option to Build in PJM's Open Access Transmission Tariff (Tariff) to be unjust and unreasonable because they did not contain an indemnification provision for facilities constructed under the Option to Build, consistent with Order No. 2003.⁵ Accordingly, the Commission directed PJM to file revised Tariff records that include an indemnity provision in the *pro forma* ICSA consistent with the indemnity provision required by the Commission in Order No. 2003. Also in the order, the Commission required PJM to revise its *pro forma* ICSA, Appendix 2, section 3.2.3.8 (Interconnection Customer Drawings), consistent with article 5.2(3) of the *pro forma* Large Generator Interconnection Agreement (LGIA) to specifically require a transmission owner the opportunity to "review and approve the engineering design of facilities constructed under the Option to Build."⁶ The Commission found that PJM's *pro forma* ICSA provides comparable protection to the Commission's *pro forma* LGIA

³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

⁴ *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 (2018), *order on reh'g*, Order No. 845-A, 166 FERC ¶ 61,137, *errata notice*, 167 FERC ¶ 61,123, *order on reh'g*, Order No. 845-B, 168 FERC ¶ 61,092 (2019).

⁵ Under the PJM Tariff, an interconnection customer may opt to build certain network, local, or merchant upgrades, at its expense. See PJM, Intra-PJM Tariffs, OATT (22.1.0), § I.1 (Definitions – O – P – Q).

⁶ Complaint Order, 167 FERC ¶ 61,121 at P 61.

article 5.2(3), but “to ensure requisite clarity in the ICSA and prevent future confusion,” such changes were required.

B. Guernsey Agreement Order

5. On December 19, 2018, as amended on March 13, 2019, PJM filed an unexecuted ISA and ICSA among PJM, Guernsey, and AEP Ohio. The ICSA would allow Guernsey to construct interconnection facilities for the Guernsey Power Station, a 1,650 MW combined cycle gas turbine in southeastern Ohio.⁷ On March 13, 2019, PJM requested that the Commission grant an effective date of May 13, 2019 for the Guernsey ISA and ICSA.⁸

6. On May 10, 2019, the Commission issued the Guernsey Agreement Order. The Commission accepted the proposed Guernsey ISA and ICSA, effective May 13, 2019, as requested, subject to PJM amending the Guernsey ICSA to include the same provisions required by the Commission in the Complaint Order.⁹

II. The Filings

A. The Complaint Compliance Filing

7. On May 21, 2019, PJM filed the Complaint Compliance Filing. PJM states that its proposed revisions to its *pro forma* ICSA reflect the two changes ordered by the Commission in the Complaint Order. First, PJM asserts that it includes an explicit Option to Build indemnification provision under ICSA, Appendix 2, section 3.2.3.2(e), consistent with article 5.2(7) of the Commission’s *pro forma* LGIA.¹⁰ Second, PJM adds a clarifying sentence to ICSA, Appendix 2, section 3.2.3.8, to make clear that the interconnected transmission owner is permitted to review and approve the interconnection customer’s engineering designs.¹¹

8. In addition to the compliance requirements, PJM states that it includes two clarifying revisions to its *pro forma* ICSA. First, PJM proposes to add a sentence to

⁷ Guernsey Agreement Order, 167 FERC ¶ 61,120 at P 9.

⁸ *Id.* P 12.

⁹ *Id.* P 58.

¹⁰ PJM, Transmittal, Docket No. ER19-1922, at 2-3 (filed May 21, 2019) (PJM Complaint Compliance Transmittal).

¹¹ *Id.* at 3.

Appendix 2, section 3.8.4.1 (Notification and Correction of Defects)¹² to clarify that the interconnected transmission owner's acceptance of corrections by the interconnection customer does not modify the new indemnification provision added to the *pro forma* ICSA.¹³ Second, PJM proposes to add a phrase to Appendix 2, section 6.1 (Interconnection Customer Warranty),¹⁴ to clarify that the new indemnification provision of ICSA, Appendix 2, section 3.2.3.2(e), does not modify or limit the interconnection customer warranty.¹⁵ PJM requests that the Commission accept the compliance filing, with an effective date of July 22, 2019, 60 days from when it filed the Complaint Compliance Filing.¹⁶

B. The Guernsey ICSA Compliance Filing

9. On May 24, 2019, PJM filed the Guernsey ICSA Compliance Filing. PJM states that, consistent with the Commission's directives in the Guernsey Agreement Order, PJM proposes to: (1) include in Schedule M of the Guernsey ICSA (Schedule of Non-Standard Terms and Conditions) an indemnification provision that is consistent with Order No. 2003 and article 5.2(7) of the Commission's *pro forma* LGIA;¹⁷ and (2) revise Guernsey ICSA, Appendix 2, section 3.2.3.8 (Interconnection Customer Drawings) to

¹² *Pro forma* ICSA, Appendix 2, section 3.8.4.1 (Notification and Correction of Defects) sets forth the process by which the interconnection customer will correct any identified construction defects or failures to comply with applicable standards, and requires the interconnection customer to obtain the transmission owner's acceptance of those corrections.

¹³ PJM Complaint Compliance Transmittal at 4.

¹⁴ *Pro forma* ICSA, Appendix 2, section 6.1 (Interconnection Customer Warranty), provides for a one-year interconnection customer warranty period that the facilities are free from defects in workmanship and design and conform to the requirements of the Interconnection Construction Service Agreement.

¹⁵ PJM Complaint Compliance Transmittal at 4-5.

¹⁶ *Id.* at 7.

¹⁷ PJM, Transmittal, Docket No. ER19-603 at 1-2 (filed May 24, 2019) (PJM Guernsey Compliance Transmittal).

grant the transmission owner the right to review and approve the initial drawings and engineering design of facilities that will be constructed under the Option to Build.¹⁸

III. Notice of Filings and Responsive Pleadings

10. Notice of PJM's Complaint Compliance Filing was published in the *Federal Register*, 84 Fed. Reg. 24,770 (2019), with interventions and protests due on or before June 11, 2019. Timely motions to intervene were filed by Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM, Exelon Corporation, Dominion Energy Services, Inc., Calpine Corporation, and American Municipal Power, Inc. On July 1, 2019, Guernsey filed an out-of-time motion to intervene.

11. Notice of PJM's Guernsey ICSA Compliance filing was published in the *Federal Register*, 84 Fed. Reg. 25,253 (2019), with interventions and protests due on or before June 14, 2019. No interventions were filed.

12. On June 11, 2019, AEPSC filed a "Requests for Clarification, Motion to Intervene, Comments, and Protest" in the original complaint proceeding, the complaint compliance proceeding, and the Guernsey ICSA proceeding.¹⁹ On June 26, 2019, and July 11, 2019, respectively, PJM and Guernsey each filed an answer in the same dockets.

A. Complaint Compliance Filing

1. AEPSC Protest

13. AEPSC states that it is generally satisfied with the Complaint Compliance Filing, but that there are a few issues it would like the Commission to clarify. First, AEPSC requests that the Commission clarify that the effective date of the Complaint Compliance Filing should be November 19, 2018, the date AEPSC filed its complaint.²⁰ AEPSC argues that, in the Complaint Order, the Commission omitted an effective date, which has created confusion as to when the Tariff revisions that the Commission ordered should take effect. AEPSC states that PJM's proposed effective date of July 22, 2019, 60 days

¹⁸ *Id.* at 2-3.

¹⁹ AEPSC and PJM also filed their pleadings in the docket pertaining to PJM's compliance with Order No. 845, Docket No. ER19-1958. Comments regarding that filing will be addressed in the order in that proceeding.

²⁰ AEPSC, Requests for Clarification, Motions to Intervene, Comments, and Protest, Docket Nos. EL19-18, ER19-1922, ER19-1958, and ER19-603, at 7 (filed June 11, 2019) (AEPSC Protest).

from the date of the filing, is unlawful because the filing is not a new section 205 filing that would take effect on a prospective basis. Rather, AEPSC argues, the effective date of the filing, and the effective date of AEPSC's requested relief, should be the date AEPSC filed the underlying complaint, consistent with section 206(b) of the Federal Power Act (FPA).²¹ AEPSC states that section 206(b) of the FPA provides that upon the filing of a complaint, the Commission must establish a refund effective date that is no earlier than the date of the complaint and no later than five months subsequent to the date of the complaint.²² AEPSC does not believe that any ICSAs signed after November 19, 2018 need to be physically amended. Rather, AEPSC states that they can be deemed amended by a Commission order.

14. AEPSC asserts that a November 19, 2018 effective date is necessary so that all ICSAs signed after that date would conform to the PJM *pro forma* ICSA that resulted from the complaint. For example, AEPSC notes that an AEPSC transmission owner will be a party to an ICSA that was recently signed by the counterparty that does not contain the changes to the *pro forma* ICSA directed by the Complaint Order.²³ Without the earlier effective date, AEPSC argues that the entire litigation cycle might begin again, seeking these same changes.²⁴ Alternatively, AEPSC argues, an effective date of five months from the date of the complaint would be the latest lawful effective date.²⁵

15. AEPSC then raises several arguments with respect to the specific provisions proposed by PJM in the Complaint Compliance Filing. AEPSC argues that the Commission should direct PJM to revise its *pro forma* ICSA, Appendix 2, section 3.2.3.8 so that it is consistent with certain provisions required in the *pro forma* LGIA. Specifically, AEPSC requests that the Tariff revisions must give transmission owners the right to review and approve "equipment acceptance tests, and the construction" of customer-built facilities.²⁶ AEPSC states that the *pro forma* LGIA allows the transmission owner to review and approve construction, not just construction plans.

²¹ *Id.*

²² *Id.* (citing 16 U.S.C. § 824e(b) (2018) (stating that "the refund effective date shall not be earlier than the date of the filing of such complaint nor later than 5 months after the filing of such complaint").

²³ *Id.* at 8.

²⁴ *Id.* at 9.

²⁵ *Id.* at 8.

²⁶ *Id.* at 10-12.

AEPSC contends the Commission's intent was to "prevent future confusion," but that PJM has created confusion by not ensuring its *pro forma* ICSA provision is comparable to *pro forma* LGIA article 5.2(3), which provides for the review and approval of the engineering design, equipment acceptance tests, and construction of customer-built facilities.²⁷

16. AEPSC relies on the Commission's quoting *pro forma* LGIA article 5.2(3) in the Complaint Order to support its claim that the Commission intended PJM's ICSA, Appendix 2, section 3.2.3.8, to be more expansive. AEPSC contends the various ICSA sections cited by the Commission as providing comparable protection do not provide the equivalent of review and approval of construction or even mention equipment acceptance tests.²⁸ AEPSC argues that, even though the language in LGIA article 5.2(3) is "quite clear" as to the various tasks and activities that are subject to a transmission owner's review and approval, in its compliance filing, PJM took the Commission's directive literally and only added "engineering design."²⁹

17. Additionally, AEPSC argues, as a result of the revisions that PJM is proposing in its *pro forma* ICSA, Appendix 2, section 3.2.3.8, there is now a discrepancy between the scope of section 3.2.3.9 (Effect of Review)³⁰ and the scope of section 3.2.3.8.³¹ AEPSC states section 3.2.3.9 now suggests that its protections are applicable only with respect to "review of Interconnection Customer's initial drawings." AEPSC argues that the scope of section 3.2.3.9 should apply to all the activities identified in section 3.2.3.8—i.e., review and approval of initial drawings and engineering design, or, if accepted by the Commission, review and approval of initial drawings, engineering design, equipment acceptance tests, and construction.³²

²⁷ *Id.* at 10.

²⁸ *Id.* at 11.

²⁹ *Id.*

³⁰ *Pro forma* ICSA, Appendix 2, section 3.2.3.9 (Effect of Review) provides that PJM, in consultation of the interconnected transmission owner may reasonably require that the interconnection customer make changes to the engineering design to ensure that the Option to Build facilities meet the applicable standards and conform with the facilities study.

³¹ AEPSC Protest at 13.

³² *Id.* at 13-14.

2. PJM Answer

18. While PJM defers to the Commission regarding the appropriate effective date of the Complaint Compliance Filing, if the Commission sets a retroactive effective date, PJM urges the Commission to establish the latest permissible effective date in order to minimize the number of already-issued ICSAs that would be affected and must be amended as a result.³³ PJM appreciates AEPSC's statement that any ICSAs signed after November 19, 2018 do not need to be physically amended, but can be deemed amended by a Commission order. PJM believes, however, that if the Commission sets an effective date between November 19, 2018, and April 19, 2019, it would be necessary to amend, in writing, the ICSAs issued on or after the effective date and before the Commission order that sets the retroactive effective date. PJM states that, without written amendments, it would be difficult for PJM and the other parties to properly administer and manage the affected ICSAs on a going-forward basis.

19. PJM then addresses AEPSC's arguments regarding the specific *pro forma* ICSA provisions. PJM argues that its revisions to the *pro forma* ICSA comply with the directives in the Complaint Order. PJM contends that AEPSC incorrectly claims that PJM's revised section 3.2.3.8 should incorporate various other provisions from the *pro forma* LGIA.³⁴ PJM states that the Commission did not direct the inclusion of any provisions beyond those that PJM added to its *pro forma* ICSA, and inclusion of those other provisions is unwarranted and unnecessary. PJM asserts that the Commission expressly concluded that the ICSA already provides comparable protection to *pro forma* LGIA, article 5.2(3), and ordered PJM to simply clarify that interconnected transmission owners shall review and approve the engineering designs of facilities constructed under the Option to Build.³⁵

20. PJM contends that the specific protections AEPSC requests with respect to review and approval of construction and equipment acceptance tests are already provided for elsewhere in the *pro forma* ICSA. PJM states that with respect to construction, its *pro forma* ICSA, Appendix 2, sections 3.8.2.1 (Inspection and Testing of Interconnection Customer-Built Facilities) and 3.8.3 (Review of Inspection and Testing by Interconnected

³³ PJM, Motion for Leave to Answer and Answer, Docket Nos. EL19-18, ER19-1922, ER19-1958, and ER19-603 at 3 (filed June 26, 2019) (PJM Answer).

³⁴ PJM Answer at 5.

³⁵ *Id.*

Transmission Owner)³⁶ describe the inspection, testing, and review of processes that apply to the interconnection customer's construction of any facilities constructed under the Option to Build. PJM then states that its *pro forma* ICSA, Appendix 2, section 3.8.4.1, provides for the correction of construction defects, while section 3.8.5 (Notification of Results)³⁷ provides that the transmission owner will confirm, in writing, that the facilities, as constructed, are acceptable for energization.³⁸ PJM states that equipment acceptance tests are captured in its *pro forma* ICSA, Appendix 2, sections 3.9 and 3.10, which provide for the conditions required for facility energization, for correction of any defect, and for written confirmation of acceptance by the transmission owner.³⁹

21. Finally, PJM responds to AEPSC's arguments regarding the interplay between *pro forma* ICSA, Appendix 2, sections 3.2.3.8 and 3.2.3.9. PJM argues that the provisions do not conflict with each other and work in harmony with the other Option to Build provisions. PJM argues that section 3.2.3.8 provides that an interconnection customer will review and approve the facility drawings and engineering design. PJM states that following the review of the Interconnection Customer Drawings under section 3.2.3.9, the transmission owner may then reasonably require the interconnection customer to make changes to the facilities. PJM posits that these two provisions, in combination with the inspection, testing, energization, and acceptance processes in *pro forma* ICSA, Appendix 2, sections 3.8 (Inspection and Testing of Completed Facilities) through 3.10 (Interconnected Transmission Owner's Acceptance of Facilities)

³⁶ *Pro forma* ICSA, Appendix 2, sections 3.8.2.1 (Inspection and Testing of Interconnection Customer-Built Facilities) and 3.8.3 (Review of Inspection and Testing by Interconnected Transmission Owner) describe the inspection, testing, and review process that applies to the interconnection customer's construction of Option to Build facilities.

³⁷ *Pro forma*, ICSA, Appendix 2, sections 3.8.5 (Notification of Results) specifies that before energization of the Option to Build facilities, the interconnected transmission owner shall confirm in writing that the inspected and tested facilities—as constructed—are acceptable for energization.

³⁸ PJM Answer at 6.

³⁹ *Id.* at 7-8.

Constructed by Interconnection Customer),⁴⁰ already provide the protections AEPSC requests.⁴¹

3. Guernsey Answer

22. Guernsey contends that the effective date for the two changes directed by the Commission in the Complaint Order should, as AEPSC argues, be April 19, 2019.⁴² However, Guernsey argues that PJM's proposed changes to sections 3.8.4.1 and 6.1 should be made effective 60 days after the date they were first filed by PJM, which is July 22, 2019.⁴³ Guernsey argues that these changes exceed the Commission's compliance directive, are merely clarifications, and provide no new substantive requirements. Guernsey also contends that PJM failed to provide any rationale to support an earlier effective date.

B. Guernsey ICSA Compliance Filing

1. AEPSC Protest

23. AEPSC argues that, regardless of the effective date of the Complaint Compliance Filing, the Commission should direct PJM to incorporate all of PJM's proposed revisions to PJM's *pro forma* ICSA into the Guernsey compliance ICSA, including revisions to Appendix 2, sections 3.8.4.1 and 6.1.

24. Similar to its arguments regarding PJM's proposed changes to the *pro forma* ICSA, AEPSC argues that the Guernsey compliance ICSA, Appendix 2, section 3.2.3.8

⁴⁰ *Pro forma* ICSA, Appendix 2, sections 3.8 (Inspection and Testing of Completed Facilities) through 3.10 (Interconnected Transmission Owner's Acceptance of Facilities Constructed by Interconnection Customer) provide equipment acceptance tests and stage two energization may not occur until the interconnection customer has satisfied three conditions. After the conditions are met, the interconnected transmission owner and interconnection customer coordinate and undertake stage two energization of the Option to Build facilities.

⁴¹ PJM Answer at 9-10.

⁴² Guernsey, Answer Opposing June 11, 2019 Protest and Request for Clarification, Docket Nos. EL19-18, ER19-1922, and ER19-603 at 15 (Guernsey Answer) (citing AEPSC Protest at 7-9).

⁴³ *Id.* at 16.

should include the same protections contained in *pro forma* LGIA article 5.2(3).⁴⁴ According to AEPSC, section 3.2.3.8 of the revised *pro forma* ICSA should include review and approval of construction and equipment acceptance tests in addition to engineering designs.⁴⁵

2. PJM Answer

25. PJM argues that the Guernsey Compliance Filing complies with the Commission's directives in the Guernsey Agreement Order.⁴⁶ PJM contends that the Guernsey Agreement Order required two discrete revisions to the Guernsey ICSA, and PJM made those revisions in its filing. PJM claims that the clarifying changes it made to the *pro forma* ICSA are not required to be in the Guernsey compliance ICSA, as those changes are beyond the scope of the Guernsey proceeding. PJM admits, though, that if the Commission accepts the discretionary language in the *pro forma* ICSA and sets an effective date for those revisions earlier than May 13, 2019, the effective date of the Guernsey compliance ICSA, then the parties will incorporate those provisions in the Guernsey compliance ICSA through a written amendment.⁴⁷

26. Similar to its argument regarding its *pro forma* ICSA, Appendix 2, section 3.2.3.8, PJM argues that its revisions to the Guernsey compliance ICSA, Appendix 2, section 3.2.3.8 comply with the directives in the Guernsey Agreement Order. PJM states that the Commission did not direct the inclusion of language to provide for the review and approval of construction and equipment acceptance tests in section 3.2.3.8, and such inclusion is unwarranted and unnecessary as those protections are provided elsewhere in the ICSA.⁴⁸

3. Guernsey Answer

27. Guernsey requests that the Commission reject AEPSC's requested changes to the Guernsey compliance ICSA because those changes are beyond the scope of what the Commission directed in the Guernsey Agreement Order.⁴⁹

⁴⁴ AEPSC Protest at 10; *see supra* PP 16-17.

⁴⁵ AEPSC Protest at 11; *see supra* PP 16-17.

⁴⁶ PJM Answer at 4.

⁴⁷ *Id.* at 4-5.

⁴⁸ PJM Answer at 5-8; *see supra* PP 19-20.

⁴⁹ Guernsey Answer at 1, 3-4.

IV. Discussion

A. Procedural Matters

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant Guernsey's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept PJM's and Guernsey's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

30. As discussed below, we accept PJM's Complaint Compliance Filing, effective May 10, 2019. We also accept PJM's Guernsey ICSA Compliance Filing, effective May 13, 2019. We deny AEPSC's request for clarification.

1. Complaint Compliance Filing

31. We accept PJM's Complaint Compliance Filing, effective May 10, 2019. In the Complaint Order, the Commission directed PJM to revise the *pro forma* ICSA to: (1) include an Option to Build indemnity provision that complies with Order No. 2003;⁵⁰ and (2) modify ICSA, Appendix 2, section 3.2.3.8, to allow transmission owners to "review and approve" the interconnection customer's engineering designs for any facilities that will be constructed under the Option to Build, consistent with *pro forma* LGIA article 5.2(3).⁵¹ We find that PJM's proposed revisions to the *pro forma* ICSA, Appendix 2, sections 3.2.3.2(e) and 3.2.3.8, comply with the directives in the Complaint Order.

32. We also accept PJM's proposed revisions to *pro forma* ICSA, Appendix 2, sections 3.8.4.1 and 6.1. We agree with PJM, AEPSC, and Guernsey, and find that these are clarifying, not substantive, revisions.⁵² First, PJM proposes to revise *pro forma*

⁵⁰ Complaint Order, 167 FERC ¶ 61,121 at P 51.

⁵¹ *Id.* P 57.

⁵² *See* AEPSC Protest at 6; Guernsey Answer at 16.

ICSA, Appendix 2, section 3.8.4.1, to clarify that the transmission owner's acceptance of corrections by the interconnection customer does not modify or limit the new indemnification provision of *pro forma* ICSA, Appendix 2, section 3.2.3.2(e). PJM's proposed language is consistent with the Complaint Order's finding that a "transmission owner's acceptance of corrections in facilities under section 3.8.4.1 would not affect the interconnection customer's indemnification obligation."⁵³ Second, PJM proposes to revise *pro forma* ICSA, Appendix 2, section 6.1, to clarify that the new indemnification provision of *pro forma* ICSA, Appendix 2, section 3.2.3.2(e) does not modify or limit the interconnection customer warranty set forth in section 6.1, which covers a period for one year commencing upon the date title is transferred to the transmission owner. PJM's proposed language is consistent with the findings in the Complaint Order where the Commission agreed with PJM's assertion that the "indemnity obligations do not end at the time of title transfer, but instead carry through while the transmission owner owns and operates the facilities."⁵⁴ Given that these proposed modifications to PJM's *pro forma* ICSA are consistent with our findings in the Complaint Order, we accept such revisions.

33. We reject AEPSC's protest and request for clarification regarding PJM's proposed revisions to *pro forma* ICSA, Appendix 2, sections 3.2.3.8 and 3.2.3.9 as beyond the scope of this compliance proceeding. In the Complaint Order proceeding, AEPSC argued that the ICSA, unlike *pro forma* LGIA article 5.2(3), does not state that the transmission owner "shall review and approve the engineering design." AEPSC added that even though the ICSA provides the transmission owner various rights that allow it to comment on design drawings, and requires the interconnection customer to hire contractors the transmission owner believes suitable to design facilities, the transmission owner's "absolute say over design found in *pro forma* LGIA [article] 5.2(3) is missing."⁵⁵ In the Complaint Order, the Commission concluded that PJM's ICSA provides comparable protection to the *pro forma* LGIA article 5.2(3), but, to ensure requisite clarity in the ICSA and prevent future confusion, the Commission directed PJM to modify its ICSA, consistent with *pro forma* LGIA article 5.2(3), to specifically require a transmission owner to review and approve the engineering design of facilities constructed under the Option to Build.⁵⁶ In its complaint, AEPSC did not request any other changes to sections 3.2.3.8 or 3.2.3.9, and the Commission did not make any additional findings concerning those sections. AEPSC did not seek rehearing of the Complaint Order. Accordingly, we

⁵³ Complaint Order, 167 FERC ¶ 61,121 at P 66.

⁵⁴ *Id.* P 67.

⁵⁵ AEPSC, Motion for Leave to Answer and Answer, Docket No. EL19-18 at 25 (filed Jan. 7, 2019).

⁵⁶ Complaint Order, 167 FERC ¶ 61,121 at P 61.

reject AEPSC's protest and request for clarification, to the extent that they do not go to whether PJM has complied with the directives in the Complaint Order.

34. We also deny AEPSC's request that the Commission clarify that the effective date of PJM's proposed changes to the *pro forma* ICSA is November 19, 2018 (the date AEPSC filed its complaint with the Commission) or, in the alternative, April 19, 2019 (five months from the date of the complaint). As discussed below, both of those dates are more relevant to the establishment of the refund effective date in this proceeding than to the effective date of the Complaint Compliance Filing.

35. After granting a complaint filed pursuant to FPA section 206, the Commission must establish a refund effective date that is no earlier than the date of the complaint and no later than five months subsequent to the date of the complaint.⁵⁷ From that refund effective date, Section 206(b) allows refunds for a 15-month refund period. In this instance, the Commission did not establish a refund effective date in the Complaint Order. Therefore, we now establish the refund effective date as of the earliest date possible: November 19, 2018, the date AEPSC filed the complaint. However, AEPSC does not claim, and we find no evidence that, any refunds would be warranted as a result of the Commission's changes to the terms and conditions of the Option to Build.

36. By contrast, section 206(a) of the FPA provides that when the Commission finds a rate to be unjust and unreasonable, the Commission "shall determine the just and reasonable rate... to be *thereafter* observed and in force," and "shall fix" that rate by order.⁵⁸ Accordingly, when the Commission issues an order establishing a just and reasonable replacement rate under section 206 of the FPA, that replacement rate goes into effect prospectively, i.e., on or after the date of the Commission's order "fixing" the rate.⁵⁹ Applying that principle here, we find that the replacement rate regarding the

⁵⁷ 16 U.S.C. § 824e(b). The Commission has the authority to set the refund effective date at any time after instituting a section 206 proceeding. *See Port of Seattle, Wash. v. FERC*, 499 F.3d 1016, 1031 (9th Cir. 2007) (stating that "the plain language of the FPA does not place any restriction on when FERC may set the refund effective date."); *see also Am. Wind Energy Ass'n*, 168 FERC ¶ 61,006, at P 19 (2019).

⁵⁸ 16 U.S.C. § 824e(a) (emphasis added).

⁵⁹ *See, e.g., City of Anaheim, Cal. v. FERC*, 558 F.3d 521, 523-24 (D.C. Cir. 2009) (discussing precedent that held that FPA section 206 "allows the Commission to fix rates and charges, but only prospectively."), *on remand Indep. Energy Producers Ass'n v. Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,165, at PP 23-25 (2009) (*Indep. Energy Producers Ass'n*) (fixing the rates as of the date the Commission issued the order finding the rates just and reasonable). *Compare Aera Energy LLC v. FERC*, 789 F.3d 184, 191 (D.C. Cir. 2015) (upholding the Commission's decision to fix the effective date as of

Option to Build was fixed in the Complaint Order and the effective date of the Complaint Compliance Filing is May 10, 2019, the date of the Complaint Order.⁶⁰

37. We reject Guernsey's argument that, even if the Commission accepts PJM's proposed clarifying revisions to *pro forma* ICSA, Appendix 2, 3.8.4.1 and 6.1, the effective date of these two changes should be 60 days after the date they were first filed by PJM, July 22, 2019. As explained above, and as Guernsey agrees,⁶¹ these changes are not substantive and they only serve to clarify PJM's Tariff consistent with the Commission's findings in the Complaint Order.

2. The Guernsey ICSA Compliance Filing

38. We accept the Guernsey ICSA Compliance Filing, effective May 13, 2019. In the Guernsey Agreement Order, the Commission directed PJM to revise the Guernsey ICSA to: (1) include in the Guernsey ICSA an indemnification provision similar to that in article 5.2(7) of the *pro forma* LGIA,⁶² and (2) clarify the existing protections in section 3.2.3.8 of Appendix 2 to the Guernsey ICSA to more clearly permit transmission owners to review and approve the engineering designs of facilities constructed under the Option to Build.⁶³ Similar to our finding regarding generally the same changes to the *pro forma* ICSA, we find that PJM's revisions to the Guernsey ICSA, Appendix 2, sections 3.2.3.2(e) and 3.2.3.8, comply with the directives in the Guernsey Agreement Order.

39. Consistent with our finding regarding the Complaint Compliance Filing, we reject AEPSC's request for clarification regarding PJM's proposed revisions to Guernsey ICSA, Appendix 2, sections 3.2.3.8 and 3.2.3.9 as beyond the scope of the Guernsey

the date of the underlying order) *with Elec. Dist. No. 1 v. FERC*, 774 F.2d 490, 493 (D.C. Cir. 1985) (vacating the Commission's decision to fix the effective date as of the date of the underlying order rather than upon the date it accepted the compliance filing).

⁶⁰ See, e.g., *Aera Energy LLC v. FERC*, 789 F.3d at 191 (upholding the Commission's decision to fix the effective date as of the date of the underlying order, as opposed to order on subsequent compliance filing, because "FERC's order gave Kern River no discretion to make further changes to its rates."); *Indep. Energy Producers Ass'n*, 128 FERC ¶ 61,165 at P 26.

⁶¹ Guernsey Answer at 16 ("Moreover, these proposed new changes are merely clarification that provide no new substantive requirements to the *pro forma* ICSA...").

⁶² Guernsey Agreement Order, 167 FERC ¶ 61,120 at P 60.

⁶³ *Id.* P 61.

Agreement Order. Like our finding in the Complaint Order, in the Guernsey Agreement Order, we found that PJM's *pro forma* ICSA already provides comparable protections to those provided in *pro forma* LGIA article 5.2(3).⁶⁴ Again, AEPSC did not raise in its original protest of the Guernsey ICSA filing and the Commission did not make any finding concerning any other changes to sections 3.2.3.8 or 3.2.3.9. Nor did AEPSC seek rehearing of the Guernsey Agreement Order. As such, we deny AEPSC's protest and request for clarification as beyond the scope of the Guernsey Agreement Order.

40. We also find moot AEPSC's request that PJM incorporate the revisions proposed to sections 3.8.4.1 and 6.1 of PJM's *pro forma* ICSA into the Guernsey ICSA. As PJM concedes,⁶⁵ any *pro forma* ICSA changes made effective before the effective date of the Guernsey ICSA (i.e., May 13, 2019) would be applicable to the Guernsey ICSA. This includes sections 3.8.4.1 and 6.1, which we determined should be effective May 10, 2019.⁶⁶

The Commission orders:

(A) The Complaint Compliance Filing is hereby accepted for filing, effective May 10, 2019.

(B) The Guernsey ICSA Compliance Filing is hereby accepted for filing, effective May 13, 2019.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁶⁴ *Id.*

⁶⁵ PJM Answer at 3.

⁶⁶ *See* PJM Answer at 4-5 ("Therefore, if the Commission accepts the discretionary language in the [Complaint] Compliance Filing, and sets an effective date for those revisions that is earlier than May 13, 2019, then the parties would incorporate the additional language in the Guernsey ICSA through a written amendment.").