

171 FERC ¶ 61,129  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Public Citizen, Inc.

Docket No. EL18-61-001

v.

PJM Interconnection, L.L.C.

ORDER DENYING REHEARING

(Issued May 21, 2020)

1. On October 17, 2019, the Commission issued an order denying a complaint filed by Public Citizen, Inc. (Public Citizen) pursuant to section 206 of the Federal Power Act (FPA)<sup>1</sup> against PJM Interconnection, L.L.C. (PJM). The complaint alleged that PJM violated the FPA, Commission precedent, and the Amended and Restated Operating Agreement of PJM (Operating Agreement) by recovering, through its Commission-approved filed rate, improper campaign contributions and lobbying expenses, and by failing to disclose its spending on political activity.<sup>2</sup> Public Citizen filed a timely request for rehearing of the Complaint Order. In this order, we deny the rehearing request, as discussed below.

**I. Background**

**A. Complaint**

2. In its February 20, 2018 complaint, Public Citizen alleged that PJM violated the FPA's requirement that rates be just and reasonable, as well as Commission precedent, by financing partisan political activities through its filed rate.<sup>3</sup> Public Citizen asserted it had identified at least \$456,500 in campaign contributions made by PJM to political action

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<sup>1</sup> 16 U.S.C. § 824e (2018).

<sup>2</sup> *Pub. Citizen, Inc. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,031 (2019) (Complaint Order).

<sup>3</sup> Complaint at 1-2.

committees, i.e., the Democratic Governors Association (DGA) and the Republican Governors Association (RGA), for the purpose of financing partisan electoral politics that have not been disclosed to the Commission or PJM's stakeholders.<sup>4</sup> Public Citizen argued that neither the PJM Open Access Transmission Tariff nor the PJM Manual allows recovery of costs related to the financing of partisan political activity and that, indeed, the Commission has ruled that "activities such as participation in Political Action Committees [and] candidate fundraising . . . are clearly not recoverable lobbying activities."<sup>5</sup> Public Citizen also contended that PJM retained outside lobbying firms without disclosure in violation of its Operating Agreement and Commission precedent.<sup>6</sup>

3. Public Citizen requested that, to the extent that PJM is financing partisan political activities through its filed rate, the Commission declare PJM's rate unjust and unreasonable. Further, Public Citizen requested that the Commission require PJM to itemize and disclose all political-related spending, including campaign contributions and lobbying expenses, and clearly document which political expenses are funded through filed rates.

#### **B. Complaint Order**

4. On October 17, 2019, the Commission issued an order denying the complaint, finding that Public Citizen had not demonstrated that PJM's rate was unjust and unreasonable. The Commission stated that in determining whether expenses related to any lobbying-type activities are recoverable, the Commission evaluates whether the expenditures: (1) represent an educational or informational function of the Regional Transmission Organization (RTO) essential to its core operations, and (2) support policies that the RTO determines to be in the collective best interests of its stakeholders and from which the RTO cannot reap any financial or other benefit.<sup>7</sup> Further, the Commission explained that expenses for lobbying "may be recoverable if they are 'directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations' and therefore, are

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<sup>4</sup> *Id.* at 3. Public Citizen states that it found evidence of these contributions through its search of the Internal Revenue Service 527 database.

<sup>5</sup> *Id.* at 2 (quoting *ISO New England Inc.*, 117 FERC ¶ 61,070, at P 41 (2006) (*ISO New England*), order on reh'g, 118 FERC ¶ 61,195 (2007), *aff'd sub nom. Braintree Elec. Light Dep't v. FERC*, 550 F.3d 6 (D.C. Cir. 2008)).

<sup>6</sup> *Id.* at 5-6.

<sup>7</sup> Complaint Order, 169 FERC ¶ 61,031 at P 21 (citing *ISO New England*, 117 FERC ¶ 61,070 at P 49).

not considered to be unrecoverable civic, political, or related activities costs[.]”<sup>8</sup> In the Complaint Order, the Commission concluded that Public Citizen failed to demonstrate that the fees paid by PJM to the DGA and RGA were unrecoverable under this standard. The Commission also found Public Citizen failed to show that PJM’s membership payments to the DGA and RGA were significantly different from those the Commission found recoverable in a similar proceeding.<sup>9</sup>

5. The Commission also disagreed with Public Citizen that PJM’s rate was unjust and unreasonable because it recovers expenses associated with more general lobbying activities.<sup>10</sup> The Commission explained that it permits RTOs to recover expenses related to RTO informational and educational efforts.<sup>11</sup> In the Complaint Order, the Commission found Public Citizen failed to put forward evidence showing that these expenditures did not represent an educational or informational function of the RTO essential to its core operations or support policies that the RTO determines to be in the collective best interests of its stakeholders.

6. Finally, the Commission denied Public Citizen’s request to PJM to itemize and disclose all political-related spending, noting that in PJM’s rate case, the Commission found that the structure of the rate, with its oversight from the PJM Finance Committee and the presence of a refund provision, was adequately justified.<sup>12</sup>

## II. Discussion

7. On November 18, 2019, Public Citizen filed a rehearing request. Public Citizen argues that the Complaint Order rests on twin errors: (1) that PJM’s financial contributions to political action committees are just and reasonable because PJM’s intent was noble; and (2) that PJM’s stakeholders are empowered to independently oversee PJM’s finances and raise questions about PJM’s spending.<sup>13</sup> Public Citizen asserts that it is barred from being able to attend, monitor or participate in any PJM Finance Committee

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<sup>8</sup> *Id.* (citing *ISO New England*, 117 FERC ¶ 61,070 at P 46) (internal citations omitted).

<sup>9</sup> *Id.* PP 18, 22 (citing *ISO New England*, 117 FERC ¶ 61,070 at P 49).

<sup>10</sup> *Id.* P 24.

<sup>11</sup> *Id.* (citing *PJM Interconnection, L.L.C.*, 157 FERC ¶ 61,236, at P 24 (2006)) (internal citations omitted).

<sup>12</sup> *Id.* P 26 (citing *PJM Interconnection, L.L.C.*, 157 FERC ¶ 61,236 at P 24).

<sup>13</sup> Rehearing Request at 1-2.

where decisions about PJM's spending are made, and thus, it has no ability to exercise its rights under the FPA to hold PJM accountable for its expenditures of ratepayer money.<sup>14</sup> For the reasons discussed below, we deny rehearing.

8. As to the first point, Public Citizen asserts that, regardless of PJM's intent in contributing to the DGA and RGA, those organizations are political as they use PJM's contributions to finance electoral campaigns and give contributors "special access" to elected officials.<sup>15</sup> Thus, Public Citizen reiterates that these costs should not be recoverable. We are unpersuaded by this argument and deny rehearing.

9. Public Citizen overlooks how the Commission evaluates lobbying-type activities to determine whether they are recoverable. Pursuant to Commission precedent, the Commission evaluates whether the expenditures: (1) represent an educational or informational function of the RTO essential to its core operations, and (2) support policies that the RTO determines to be in the collective best interests of its stakeholders and from which the RTO cannot reap any financial or other benefit.<sup>16</sup> Here, the Commission found that, although the DGA and RGA may support candidates for office, the DGA and RGA also maintain fora for obtaining relevant information about energy-related matters.<sup>17</sup> The Commission agreed with PJM that, by paying membership fees to the DGA and RGA, PJM maintains access to these organizations to keep informed on policy initiatives impacting the wholesale markets and to help educate state policy makers on PJM activities, and such expenditures are directly related to advancing PJM's stakeholder interests.<sup>18</sup> Further, the Commission noted that attending DGA and RGA meetings is a cost-effective way of engaging on policy matters where the governors of PJM's thirteen states and their staffs are present.<sup>19</sup>

10. Rather than disputing these findings, Public Citizen argues the Commission erred in finding PJM's intent to be "noble" in making contributions to the DGA and RGA. Public Citizen's argument, if accepted, would focus only on the particular organization to which the RTO was donating, finding that, if it is political, no recovery would be

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<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> Complaint Order, 169 FERC ¶ 61,031 at P 21 (citing *ISO New England*, 117 FERC ¶ 61,070 at PP 46, 49).

<sup>17</sup> *Id.* P 22.

<sup>18</sup> *Id.* (citing PJM March 9, 2018 Answer at 6).

<sup>19</sup> *Id.*

permitted. Such a finding would be inconsistent with Commission precedent. The Commission has found that the characterization of an expense as “lobbying” does not determine whether the expense is recoverable.<sup>20</sup> Rather, that determination depends on the circumstances in which the expense was incurred and whether the activity to which the expense relates benefits ratepayers.<sup>21</sup> In conducting that fact-specific analysis, the Commission has found that, in the case of RTOs that do not have shareholders, expenses like those PJM incurred here are recoverable.<sup>22</sup> Public Citizen fails to point to any evidence or documentation to dispute PJM’s assertion that the reason it participates in the DGA and RGA is to keep informed on policy initiatives impacting wholesale markets, bulk power system operations and infrastructure, and to share relevant details about such matters with state policymakers.<sup>23</sup> Nor does Public Citizen demonstrate that PJM directly contributes to the organizations in order to finance electoral campaigns. As the Commission explained in the Complaint Order, Public Citizen has not supported its contention that these expenses constituted improper lobbying expenses.<sup>24</sup> Accordingly, we affirm the Commission’s finding in the Complaint Order that Public Citizen has not demonstrated that PJM’s rate is unjust and unreasonable, and that PJM’s expenses related to the DGA and RGA remain recoverable.

11. Next, Public Citizen asserts that the Commission erred by finding that “PJM’s process ensures that the financial statements questioned by Public Citizen are subject to adequate independent review because the Finance Committee, composed of stakeholder representatives, including consumer advocates, reviewed the financial information

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<sup>20</sup> *ISO New England*, 117 FERC ¶ 61,070 at P 47.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* P 49 (“We find that these expenditures [“communicat[ions] with state and federal legislators regarding specific legislation or ideas on which there was pending legislation”] are properly recoverable as they clearly: (1) represented an educational, communicative function of ISO-NE essential to its mission of efficiently and reliably operating the New England markets.”); *see Braintree*, 550 F.3d at 12 (“it seems eminently reasonable to encourage legislature access to such an informational resource ... [and] allowing recovery of ISO-NE’s costs in monitoring legislative activity, so that it may consider how such activity might affect its operations, appears quite reasonable”).

<sup>23</sup> PJM March 9, 2018 Answer at 5.

<sup>24</sup> Complaint Order, 169 FERC ¶ 61,031 at P 21; *see also, e.g., Joint Ca. Complainants v. Pac. Gas & Elec. Co.*, 163 FERC ¶ 61,112, at PP 7-8 (2018) (citing 18 C.F.R. § 385.206 (b)(1)-(2), (8) and explaining the requirement for a complainant to provide evidentiary documents to support the allegations in the complaint).

establishing the rate and was satisfied that these figures represent legitimate expenses.”<sup>25</sup> In support, Public Citizen argues that it has attempted to participate in the PJM Finance Committee oversight process by joining the Public Interest and Environmental Organization User Group, but that such membership does not grant Public Citizen access to any Finance Committee meetings or deliberations.<sup>26</sup> Public Citizen also asserts that other consumer advocates cannot represent Public Citizen’s views and concerns because Public Citizen’s work entails government and corporate accountability oversight which goes far beyond consumer advocacy.<sup>27</sup> Public Citizen also notes that PJM ceased making contributions to both DGA and RGA, which has not been disclosed to the PJM Finance Committee.<sup>28</sup>

12. These arguments do not persuade us to modify the findings in the Complaint Order. The members of the PJM Finance Committee, composed of stakeholders, including consumer advocates,<sup>29</sup> represent the views of stakeholders and review these expenditures to ensure that they are in the interests of stakeholders. The Commission has found that, since RTOs do not have shareholders, there is less likelihood, as compared to a public utility with shareholders and a profit motive, that such expenditures are not in the stakeholder interests.<sup>30</sup> Public Citizen states that it has not pursued membership in PJM partly because it would not be given full voting rights.<sup>31</sup> However, Public Citizen could join PJM as a non-voting member and thus be able to represent its interests by attending PJM Finance Committee meetings and expressing its views on PJM proposals.<sup>32</sup>

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<sup>25</sup> Rehearing Request at 2 (citing Complaint Order, 169 FERC ¶ 61,031 at P 26).

<sup>26</sup> *Id.* at 3 (citing Exhibit A, November 8, 2019 email from Evelyn Robinson, Managing Partner for State Government Affairs for PJM, to Tyler Slocum, Energy Program Director for Public Citizen, indicating that “the Finance Committee is not a public meeting, and accordingly, it is only open to PJM members”).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 4.

<sup>29</sup> Complaint Order, 169 FERC ¶ 61,031 at P 26 (citing *PJM Interconnection, L.L.C.*, 157 FERC ¶ 61,236 at P 22).

<sup>30</sup> *ISO New England*, 117 FERC ¶ 61,070 at PP 47, 49.

<sup>31</sup> Public Citizen March 30, 2018 Answer at 2.

<sup>32</sup> *See PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,162, at P 3 (2017).

13. Finally, Public Citizen argues that “the Commission’s reluctance to regulate the most basic of RTO governance is contrary to guidance provided by the” courts.<sup>33</sup> In support, Public Citizen states that the Commission “has gone about regulating ISO governance all wrong: rather than its current, limited approach of overseeing ISOs as public utilities, the court determined FERC has authority to dictate what criteria constitutes an ISO.”<sup>34</sup> Public Citizen contends further, “[t]he Commission can easily require all PJM Finance Committee meetings be freely open to the public as a condition of being classified as an RTO.”<sup>35</sup> We find that not only is Public Citizen’s argument concerning RTO governance overly broad in the context of this proceeding, but also that its specific request to open up all PJM Finance Committee meetings is not the relief requested in its complaint.<sup>36</sup> Accordingly, we deny rehearing.

The Commission orders:

Public Citizen’s request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>33</sup> Rehearing Request at 5 (citing *Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395 (D.C. Cir. 2004) for the proposition that the Commission has full regulatory authority over RTOs)).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Complaint at 8.