

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection LLC

Docket No. ER23-2327

**Protest of Public Citizen, Inc.**

On June 30, 2023, PJM Interconnection requested to recover from consumers a \$140,000 penalty assessed by the North American Electric Reliability Corporation, the nation's Electric Reliability Organization, as designed by FERC. The penalty was the result of a Settlement Agreement between PJM and ReliabilityFirst Corporation, one of six private corporations authorized by FERC for ensuring the reliability of America's bulk power systems, because PJM violated two NERC Reliability Standards.<sup>1</sup>

The request to recover an administrative penalty from consumers must be denied as it is inconsistent with the public interest and unjust and unreasonable. PJM executives and PJM's Board of Managers should shoulder financial responsibility for penalties resulting from PJM's violations of the nation's reliability standards. Indeed, ISO-NE has established a new precedent of having its management pay administrative penalties, rather than consumers.

In 2008, the Commission issued the *Reliability Standard Compliance & Enforcement in Regions with Regional Transmission Organizations or Independent System Operators* Order to "provide procedures by which [Regional Transmission Organizations ("RTO")] may seek to recover the costs of any penalties that are assessed."<sup>2</sup> However, the Commission rejected an automatic pass-through of penalty costs, and instead determined that an RTO could file under Section 205 of the Federal Power Act ("FPA") to seek approval for the "recovery of penalty costs by spreading those costs among their members and/or customers."<sup>3</sup> PJM, in accordance with the Commission's 2008 Order is thus seeking to pass-through the penalty costs to

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<sup>1</sup> In a continuing bizarre policy by FERC and NERC that Public Citizen has challenged, the names of violators are typically concealed from the public. The public is aware of these PJM violations only because of the request to recover the penalty from consumers. See for example [www.ferc.gov/media/second-joint-staff-white-paper-notices-penalty-pertaining-violations-critical-infrastructure](http://www.ferc.gov/media/second-joint-staff-white-paper-notices-penalty-pertaining-violations-critical-infrastructure) and [www.citizen.org/news/ferc-should-require-naming-utilities-with-repeat-cybersecurity-violations/](http://www.citizen.org/news/ferc-should-require-naming-utilities-with-repeat-cybersecurity-violations/)

<sup>2</sup> *Reliability Standard Compliance & Enforcement in Regions with Regional Transmission Organizations or Independent System Operators*, 122 FERC ¶ 61,247 (2008), p. 1.

<sup>3</sup> *Id.* at p. 27.

customers rather than have PJM executives take responsibility and pay the penalty themselves.

The Commission should reject PJM’s request and require that PJM executives and its board of managers pay the \$140,000 penalty for PJM’s violations – as occurred in 2022 with ISO-NE. On September 30, 2022, FERC ordered that ISO-NE pay a \$500,000 penalty for the delay in the commercialization of the Salem Harbor Power Development generating facility, falsifying information regarding the Salem facility, and blocking access of the independent market monitor.<sup>4</sup> After being ordered to pay the \$500,000 penalty, ISO-NE issued a statement, declaring that, “ISO New England’s senior management takes responsibility for the ISO’s role in this matter. Therefore, the financial penalty outlined in this settlement agreement will be paid through a reduction in executive compensation.”<sup>5</sup>

PJM attempts to justify its request that consumers pay the penalty, declaring that “PJM’s management personnel were not involved in the violations.”<sup>6</sup> Well, neither were consumers!

PJM continues its efforts to rationalize its request: “The violations at issue are of NERC reliability standards. PJM accordingly proposes to recover these penalty costs under Tariff, Schedule 9-1, which recovers PJM’s costs for ‘all of the activities of PJM associated with preserving the reliability of the PJM Region.’”<sup>7</sup>

But an administrative penalty for violating a NERC reliability standard is **not** “associated with preserving the reliability of the PJM Region”! The penalty does not *preserve* reliability, it is a *punitive* action to ensure future compliance, and therefore recovery from consumers is not justified under Tariff, Schedule 9-1.

PJM executives and its board of managers are paid salaries commensurate with large, for-profit corporations, whereas millions of families responsible for utility bills across PJM’s footprint are not. While PJM only reports to FERC base salary financial compensation for 10 executives,<sup>8</sup> PJM provides additional, undisclosed financial

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<sup>4</sup> *Order Approving Stipulation and Consent Agreement*, 180 FERC ¶ 61,223 (Sept. 30, 2022).

<sup>5</sup> *ISO-NE Issues Statement on Settlement with FERC OE*, (Sept. 30, 2022),

<https://isonewswire.com/2022/09/30/iso-ne-issues-statement-on-settlement-with-ferc-oe/>

<sup>6</sup> At page 6.

<sup>7</sup> At page 6.

<sup>8</sup> PJM Form 1 for 2022, <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=DEC6D292-C969-CoD5-9351-8780EB900000>

compensation to its executives in the form of performance-based bonuses. These performance-based financial bonuses can be much larger than the base salary, resulting in significant financial compensation that is disclosed neither to FERC nor the public. If any PJM executives are paid performance bonuses that in any way relate to reliability of the bulk-power market, then there would be an even stronger case that PJM executives be liable for the penalty rather than blameless consumers. In addition, PJM declines to disclose to FERC or the public the actual financial compensation paid to its board of managers, despite the fact that every other RTO provides such detail through public 990 reports to the Internal Revenue Service (PJM is the only RTO that is not structured as a not-for-profit). The failure of PJM to disclose accurate financial compensation data for its top executives and for its board of managers is a material omission.

For example, according to PJM's FERC Form 1 filing, PJM paid its CEO Manu Asthana an annual salary of \$900,000. PJM's disclosure to FERC significantly underreports actual financial compensation, because it omits bonuses and other benefits. According to filings with the IRS, MISO's John Bear was paid more than \$3.6 million in annual compensation;<sup>9</sup> ISO-NE paid its CEO Gordon van Welie \$2.5 million in annual compensation;<sup>10</sup> NYISO's CEO Richard Dewey is paid \$1.6 million in annual compensation;<sup>11</sup> SPP's CEO Barbara Sugg is paid \$1.5 million;<sup>12</sup> and former CAISO CEO Stephen Berberich was paid over \$1.1 million in annual compensation.<sup>13</sup> So either PJM's CEO is the lowest-paid of all the RTOs, or PJM has declined to disclose to FERC the actual financial compensation that is paid to its top executives.

PJM's filing is silent on whether it first consulted with its stakeholders on whether to force consumers to pay the penalty. Since PJM prohibits Public Citizen from full participation in its stakeholder process, including banning us from attending Finance Committee meetings, we cannot ascertain whether PJM first asked for stakeholder consent prior to making its June 30 filing. The Commission should require PJM to describe its efforts to consult with its stakeholders prior to its June 30 filing.

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<sup>9</sup> [https://pdf.guidestar.org/PDF\\_Images/2021/431/827/2021-431827033-202213189349318836-90.pdf](https://pdf.guidestar.org/PDF_Images/2021/431/827/2021-431827033-202213189349318836-90.pdf)

<sup>10</sup> [https://pdf.guidestar.org/PDF\\_Images/2020/043/372/2020-043372500-202132289349303923-9.pdf](https://pdf.guidestar.org/PDF_Images/2020/043/372/2020-043372500-202132289349303923-9.pdf)

<sup>11</sup> [https://pdf.guidestar.org/PDF\\_Images/2020/141/815/2020-141815612-18815300-9.pdf](https://pdf.guidestar.org/PDF_Images/2020/141/815/2020-141815612-18815300-9.pdf)

<sup>12</sup> [https://pdf.guidestar.org/PDF\\_Images/2021/710/748/2021-710748158-202222979349301012-90.pdf](https://pdf.guidestar.org/PDF_Images/2021/710/748/2021-710748158-202222979349301012-90.pdf)

<sup>13</sup> [https://pdf.guidestar.org/PDF\\_Images/2021/943/274/2021-943274043-202233199349309433-9.pdf](https://pdf.guidestar.org/PDF_Images/2021/943/274/2021-943274043-202233199349309433-9.pdf)

PJM executives and its board of managers – not customers – must be responsible for the \$140,000 administrative penalties for violations of NERC reliability standards, just as the recent ISO-NE administrative penalty was paid for through a reduction in compensation for the ISO-NE senior leadership team.

Respectfully submitted,

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