

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

Regulations Implementing FAST Act Section)	
61003 – Critical Electric Infrastructure)	Docket No. RM16-15-000
Security and Amending Critical Energy)	
Infrastructure Information)	

**REPLY COMMENTS OF ISO NEW ENGLAND INC. AND
SOUTHWEST POWER POOL, INC.**

ISO New England Inc. (“ISO-NE”) and Southwest Power Pool, Inc. (“SPP” and, together with ISO-NE, the “Joint RTOs”) submit these comments in response to the reply comments submitted by PJM Interconnection, L.L.C. (“PJM”) on August 30, 2016 in this proceeding (the “PJM Reply Comments”).

In the Joint RTOs’ initial comments, filed on August 19 in this docket, the Joint RTOs requested that the Commission adopt rules to facilitate sharing of critical electric infrastructure information by regional entities and others, as required by the Fixing America’s Surface Transportation (“FAST”) Act. Specifically, the FAST Act requires the Commission to adopt rules as necessary to “facilitate voluntary sharing of critical electric infrastructure information with, between and by” regional entities and others.¹

**I. CURRENT CEII-PROTECTION PRACTICES AND THE JOINT RTOS’
PROPOSAL FOR IMPROVEMENT**

In their August 19 comments, the Joint RTOs pointed out that, currently, independent system operators (“ISOs”) and regional transmission organizations (“RTOs”) share sensitive infrastructure information by following the Commission’s model. In this model, each individual

¹ Section 215A(d)(2)(D) of the Federal Power Act (as it has been amended by the FAST Act).

employee of the ISO or RTO must execute a non-disclosure agreement to receive discrete pieces of information. Other models have been proposed, including entity-wide agreements that require the ISO or RTO to internally track use of the data by employees and secure the employees' signatures to the non-disclosure agreement or an addendum thereto.

These models are more stringent than those used by ISOs and RTOs to share more commercially-sensitive confidential information like market data, and, in the Joint RTOs' opinion, may impede fulfillment of their increasing obligations to share data for planning and operations purposes, e.g., pursuant to the Commission's Order No. 1000.² In their initial comments, the Joint RTOs posited that current procedures may not be necessary for use between similarly-situated entities, all of which are regulated by the Commission and have approved tariffs that serve as binding contracts.

The Joint RTOs proposed that the Commission allow ISOs and RTOs, and other entities with Commission-approved tariffs that have planning and operations responsibilities, to use those tariffs to facilitate information-sharing. In other words, the Commission would require all RTOs, ISOs and other entities with tariffs to file new or revised tariff provisions in which they commit to both share critical electric infrastructure information and maintain the confidentiality of information that is shared with them. This approach recognizes that tariffs are contracts subject to enforcement, and that these entities already have mature processes for protecting sensitive information, given long-standing requirements to protect the confidential information of market participants.

The Joint RTOs' proposal is efficient, poses little risk of misuse of the relevant information, and, if adopted, would facilitate more effective execution of relevant ISO/RTO

² Order No. 1000, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 136 FERC 61,051 (2011).

functions that implicate sharing of this type of information. Conversely, requirements that are applicable to requests from members of the public are inefficient and unnecessary for entities that have been entrusted by the Commission with responsibilities for transmission planning and reliable system operations.

II. SUMMARY OF PJM’S REPLY COMMENTS AND THE JOINT RTOS’ RESPONSE THERETO

The crux of PJM’s objection to the Joint RTOs’ comments appears to be that a voluntary collaborative approach is preferable to the “tariffing” of processes for information sharing.³ The Joint RTOs disagree, both because information sharing has already been “tariffed” and the voluntary collaborative approach is burdensome and creates compliance risks, particularly as information-sharing requirements grow.

Regarding the former point, information sharing has already been “tariffed” in the context of transmission planning. Specifically, in Order No. 890, the Commission ordered ISOs and RTOs to adopt processes for sharing critical infrastructure information.⁴ Pursuant to that order, ISOs and RTOs filed descriptions of their transmission planning processes, including the means of making those processes open and transparent. As a result, ISO-NE, for example, has already included in its Tariff a description of the process for sharing “CEII” with various stakeholders.⁵

To continue the example, it would be a relatively simple matter to amend the existing Tariff description to specify that ISO-NE will share critical infrastructure data with entities based on the commitments in their tariffs to protect planning information. ISO-NE’s Tariff would

³ PJM Reply Comments at p. 2.

⁴ Order No. 890, *Preventing Undue Discrimination and Preference in Transmission Service*, 118 FERC 61,119 at P 460 (2007).

⁵ Section II.K.2.4(d) of the Tariff. This provision is located in Attachment K (“Regional System Planning Process”).

contain a reciprocal commitment. To the extent the Commission deems it necessary, entities with tariffs could include an additional, similar provision regarding the sharing of operational data. In ISO-NE's Tariff, this provision could be located in its Information Policy.⁶

Contrary to PJM's assertion,⁷ these tariff provisions would not obviate existing procedures for responding to members of the public; rather, the tariff provisions would be limited to reciprocal use by entities that have Commission-approved tariffs. Existing procedures that require tracking of recipients and non-disclosure agreements would continue to apply to members of the public. The Joint RTOs posit, however, that these provisions are unnecessary and burdensome when applied to fellow ISOs, RTOs and other utilities with planning and operational responsibilities, all of which already protect significant confidential information.

PJM points out that the Joint RTOs already have the ability to make filings like those detailed above without the Commission's prior action.⁸ While this is technically true, voluntary filings could lead to a patchwork of protection – like the contractual patchwork that exists today. The Commission could remedy this problem by directing all entities with planning and operations responsibilities to make tariff filings.

Regarding PJM's preference for a system of voluntary collaboration, PJM points to the sharing that has occurred to date through the Eastern Interconnection Planning Collaborative and other entities.⁹ Certainly, collaboration has occurred in lieu of other options, and the Joint RTOs will participate in existing efforts if the Commission does not adopt new rules pursuant to the FAST Act. While the Joint RTOs applaud the collaboration that has occurred to date, successes

⁶ The ISO New England Information Policy is Attachment D to Section III of the Tariff. Section 3.0(g) thereof ("Reliability, Operations and Area Control Information") allows sharing of information with external control centers, other reliability coordinators, and others.

⁷ PJM Reply Comments at pp. 4-5.

⁸ *Id.* at p. 2.

⁹ *Id.* at pp. 2-4.

were hard won. The Joint RTOs' own experience with the effort was that it spanned six months and required, collectively, hundreds of hours. Most significantly, the end result, in the opinion of the Joint RTOs, will not result in prompt and seamless information-sharing; rather, the agreement requires far too much overhead, both per entity, in the form of employee tracking and signatures, and jointly, as the signatories track entities that join the agreement.

III. CONCLUSION

In sum, the Joint RTOs ask the Commission to ease the burden of sharing planning and operational information among Commission-regulated entities for purposes of ensuring interregional reliability and effective long-term planning.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

Dated at Holyoke, Massachusetts this 12th day of September, 2016.

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