

[ORAL ARGUMENT NOT YET SCHEDULED]

**No. 25-1064**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PJM TRANSMISSION OWNERS,  
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,  
Respondent

*On Petition for Review of Orders of the  
Federal Energy Regulatory Commission*

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**BRIEF OF AMICUS CURIAE  
PENNSYLVANIA GOVERNOR JOSH SHAPIRO  
IN SUPPORT OF RESPONDENT**

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February 10, 2026

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## **Certificate as to Parties, Rulings, and Related Cases**

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

### **A. Parties and Amici**

Except for the following, all parties, intervenors, and amici appearing in this court are listed in the Briefs for Petitioners and Respondent.

Governor Josh Shapiro of the Commonwealth of Pennsylvania has received consent to appear as *amicus* in support of Respondent and has filed his notice of intent.

### **B. Rulings Under Review**

References to the rulings at issue appear in the Brief for Petitioners and Respondent.

### **C. Related Cases.**

Counsel is not aware of any related cases.

/s/ Jacob B. Boyer  
Jacob B. Boyer

### **Rule 29 Statements**

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), counsel certifies that no party's counsel authored this brief in whole or in part and no party, party's counsel, or other person contributed money intended to fund the preparation or filing of this brief.

Parties in this proceeding have been consulted, and no party opposes the filing of this brief.

/s/ Jacob B. Boyer

Jacob B. Boyer

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## GLOSSARY

CTOA	Consolidated Transmission Owners' Agreement
CTOA Amendments	The utility-filed amendments to the CTOA rejected by FERC in the underlying proceeding
FERC	The Federal Energy Regulatory Commission
FPA	Federal Power Act
PJM	PJM Interconnection, LLC
PUC	Pennsylvania Public Utility Commission
Order No. 888	FERC's 1996 order that required Open Access transmission service and triggered the creation of PJM Interconnection. 61 Fed. Reg. 21,540 (May 10, 1996)
RTO	Regional Transmission Organization approved by FERC based on guidelines in 18 C.F.R. 35.34

## INTEREST OF AMICUS CURIAE

Josh Shapiro is Governor of the Commonwealth of Pennsylvania, one of the 13 states that, along with Washington D.C., is served by PJM Interconnection, LLC. PJM is a FERC-certified Regional Transmission Organization (RTO), which was created under federal law to ensure the availability of safe, reliable, least-cost electric service. It does so through non-discriminatory, independent operation of the transmission system and impartial administration of competitive wholesale markets. That service is essential for public safety, economic growth, and Pennsylvania residents' wellbeing.

Pennsylvania comprehensively regulates the distribution of electricity and allows utilities to charge retail rates only if they have been approved by state regulators as just and reasonable. FERC and PJM have analogous authority over interstate transmission and wholesale energy sales. Pennsylvania does not regulate PJM's rates, but its residents and businesses bear the costs of PJM's decisions. PJM-related charges comprise about half of consumers' electric bills.

Unfortunately, events in recent years have shown that PJM's decision-making processes fail to adequately incorporate important inputs



that reflect the public interest. The CTOA Amendments at issue here would exacerbate that problem, further shifting control of PJM away from the public interest and towards asset-owning interests. Governor Shapiro submits this brief to ensure that FERC retains its important authority to evaluate PJM's decision-making structure and to shield Pennsylvania consumers that are subject to the impacts of that decision-making from the undue influence of any individual segment of market participants, including the transmission-owning class at issue in this case.

### **SUMMARY OF THE ARGUMENT**

This case is about FERC's duty to evaluate if the regional organizations empowered to oversee the transmission of electric service throughout the country are employing governing structures that yield unjust, unreasonable, or unduly discriminatory rates.

Three decades ago, with encouragement from FERC and states including Pennsylvania, the petitioning utilities in this case delegated responsibilities over the transmission network to a new regional entity—PJM. At that time, FERC reviewed PJM's proposed governance structure and after rejecting initial proposals that lacked necessary protections from undue influence by market participants, ultimately authorized the

current organizing structure because it would ensure that the PJM Board would “possess[] the requisite independence from the transmission owners,” which had been lacking from the prior organizational proposals. *PJM Interconnection*, 81 FERC ¶ 61,257, at 62,263 (1997).

At the time, Pennsylvania supported PJM’s formation as part of the Commonwealth’s shift away from utility power suppliers. PJM provided the market structure needed to support Pennsylvania’s transition to competition in power generation and sales. Today, PJM’s role is critical to Pennsylvania and neighboring states’ ability to attract investment, keep energy flowing reliably, and produce affordable and stable rates. To serve its purpose, PJM must counterbalance “the fundamentally anti-competitive structure of the transmission industry.” *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 684 (D.C. Cir. 2000).

When PJM or utilities propose changes to market rules, transmission service, or governance, FERC’s role is to determine if the resulting rates and practices are just and reasonable and not unduly discriminatory.

Here, transmission owners in the PJM region are challenging FERC orders that—based on FERC’s expertise and the record it compiled—concluded the CTOA Amendments under review would directly compromise PJM’s required independence from asset owners. Exercising its broad discretion to find transmission agreements unjust and unreasonable, unduly discriminatory, or otherwise contrary to precedent, FERC rejected the CTOA Amendments.

“As FERC’s authority generally rests on the public interest in constraining exercises of market power,” the challenged orders carry out Congress’s core directive of protecting consumers from monopolistic energy providers. *National Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277, 1280 (D.C. Cir. 2007). FERC exercised its oversight of the public interest in this case, which is an important safeguard to prevent further degradation of RTO independence that is already in a precarious position.

## ARGUMENT

### **I. PJM’s independence from asset owners is necessary for just and reasonable rates.**

Among the essential roles PJM plays for the public, it is responsible for ensuring the reliability of the bulk power transmission system over

13 states and the District of Columbia and for planning expansion of the transmission network. PJM is regional in scope and designed to be independent from asset-owning utilities. Its scope and independence are meant to remedy “(1) engineering and economic inefficiencies in the transmission grid; and (2) opportunities for transmission owners to discriminate to favor their own activities.” *Public Utility Dist. No. 1 of Snohomish Cnty., WA v. FERC*, 272 F.3d 607, 611 (D.C. Cir. 2001) (cleaned up). Independence from asset owners, and FERC’s authority to enforce that, are especially integral to ensuring that the rates Pennsylvania consumers pay under the market’s current design are just and reasonable.

Historically, Pennsylvania utilities held carefully guarded monopolies over the generation, delivery, and sale of electricity within its service territory. Starting in the 1970s, a series of factors including high interest rates and expensive generation projects led to sharp price increases. *See, e.g., Duquesne Light Co. v. Barasch*, 488 U.S. 299, 302-05 (1989) (summarizing controversies about costs of new power projects in Pennsylvania). By the 1990s, policymakers in the region settled on a sweeping proposal: set electricity prices through competition.

Yet, as FERC later found, utilities’ “systemic anticompetitive behavior” stood in the way of competition. *Transmission Access Policy*, 225 F.3d at 684. Because they owned both power plants and transmission lines, utilities would be able to “use their position to favor their own generated electricity and to exclude competitors from the market, whether by denying transmission access outright, or by providing transmission services to competitors only at comparatively unfavorable rates, terms, and conditions.” *Id.* at 683-84.

Complementary actions by FERC and states sought to protect consumers by addressing utilities’ monopoly power. For its part, FERC facilitated competition by opening access to transmission lines. *Id.* at 682 (citing Order No. 888). Pennsylvania, along with several neighboring states, mitigated other advantages utilities enjoyed in wholesale markets by preventing utilities from financing power plants through state-set rates. The states also allowed consumers to choose from competing power suppliers. Taken together, these moves opened interstate wholesale electricity markets to investors and stimulated those markets with new participants.

Regional governance of transmission married the federal and state initiatives. And critically, FERC concluded, only RTOs that are “independent in both reality and perception” from market participants could foster the competition needed to drive down prices. Order No. 2000, 89 FERC ¶ 61,285, at 79, 84 (1999). Independence from financial interests would be a minimum characteristic of an RTO because “perceptions of discrimination [about utility transmission operators were] significant impediments to competitive markets.” *Id.* at 29. FERC found that “lack of market confidence resulting from the perception of discrimination” had consequences, including reliability risks, lack of investment, and higher prices. *Id.*

To cure the real and perceived discrimination inherent in utility-operated transmission, FERC concluded it must “pay considerable attention to governance” of RTOs, specifically noting distinct considerations for non-profit RTOs and those with ownership interests. *Id.* at 79. FERC required RTOs to employ a “decision making process that is independent of control by any market participant or class of participants.” *Id.* at 295.

FERC continues to oversee PJM’s governance to ensure PJM keeps to its intended purposes and meets the needs of the millions of consumers

who are affected by its decisions. For instance, as described above, FERC rejected utilities' initial proposals to create an organizational structure for PJM because they had failed to "propose a truly independent" PJM. *Atlantic City Electric*, 77 FERC ¶ 61,148 at 61,574-61,575 (1996). One proposal would have allowed utilities to "exercise ultimate control over" PJM, while another would have provided utilities with "a degree of influence that would be excessive and would [] diminish the independence" of PJM from market participants. *Id.*

Pennsylvania relies on FERC conducting this oversight. In 1996, Pennsylvania's General Assembly found that it is "in the public interest to permit retail customers to obtain direct access to a competitive generation market." Act 138, Electricity Generation Choice for Customers of Electric Cooperatives and Competition Act ("Competition Act"), Pub. Law No. 802, § 7403 (1996) (now codified at 66 Pa.C.S. § 2802). While it was implementing the Act, the PUC relied upon the fact that the "region's competitive wholesale market is the bedrock upon which our competitive retail market is founded." PUC, Investigation Order, Pa. Bulletin Vol. 31, No. 50, pp. 6784 (Nov. 30, 2001).

The Pennsylvania General Assembly understood that consumers would benefit only if markets were kept competitive. When the state legislature passed the Competition Act, it encouraged the PUC to work with other states and FERC to establish an independent transmission operator. 66 Pa.C.S. § 2805(a). And in response to comments about how the PUC implemented the Act, the PUC expressed that anticompetitive market behavior would be better addressed by “a combination of a self governed regional transmission organization, market rules, and monitoring by an independent RTO market monitor,” instead of by “prescriptive Pennsylvania-only rules.” PUC, Competitive Safeguards for the Electric Industry, Pa. Bulletin, Vol. 30, No. 28, at 3447 (July 8, 2000).

Decades of Pennsylvania legislation and PUC orders are built upon the expectation that PJM will perform its required functions independent of the petitioning utilities or other asset owners. Having PJM govern free from undue influence by any particular market participant is essential to a range of consumer benefits, including power plant dispatch that is indifferent to asset ownership, and regional transmission grid operation and expansion planning premised on maximizing consumer benefits rather than any individual company’s profits.



Preserving separation between RTO governance and asset owners serves the RTO's function of protecting the wholesale market from monopoly power that had been pervasive when power plants and transmission lines were under common ownership across all states. Without careful policing of the distance an RTO must maintain from transmission-owning utilities, the resulting rates can become unjust and unreasonable for consumers by, for example, imposing gratuitous costs on consumers.

These remain real risks even under the status quo. In recent years, when PJM's existing governance regime failed to procure resource adequacy without imposing excessive costs on consumers, Governor Shapiro took action under section 206 of the FPA. *See generally Commonwealth of Pennsylvania v. PJM*, 191 FERC ¶ 61,066 (2025) (approving a settlement between the parties that reduced PJM prices by \$18 billion over two years). Even without the CTOA Amendments, existing problems in PJM's governance regime and stakeholder process have led Governor Shapiro to convene the region's governors to discuss PJM's direction and coalesce around a vision for its future. This collaborative of governors has met frequently, hosted a PJM focused technical conference, and signed a

joint statement of intent to develop a PJM Governors' Collaborative. Further, Governor Shapiro is leading an ongoing effort, alongside the other 12 governors in the region and the U.S. Departments of Energy and Interior, to propose significant reforms to PJM's markets and processes that would increase reliability while safeguarding against unwarranted costs being passed on to consumers. The success of these reforms is predicated on PJM acting in the public interest.

The CTOA Amendments would move PJM even further away from its required insulation from asset owners, putting consumers at even greater risk of needless costs. Indeed, the organization representing the fourteen state public utility commissions in the region told FERC that the CTOA Amendments would "limit PJM's independence, limit the perception of independence of both PJM and the PJM Board of Managers, limit the transparency into PJM's processes, demonstrate the PJM Board of Managers' lack of responsiveness to stakeholders, and make it more difficult to develop cost-effective and efficient regional transmission." Protest of the Organization of PJM States, FERC Docket No. ER24-2336 (Jul. 22, 2024).

Ensuring, as FERC did, that regional governance is independent from asset owners is necessary to align PJM with its core purpose and the public interest.

## **II. FERC may review RTOs' governance.**

A “major purpose of [the FPA] is to protect power consumers against excessive prices.” *Pennsylvania Power Co. v. FPC*, 343 U.S. 414, 418 (1952). The statute requires that rates, terms, and conditions of transmission service must be “just and reasonable” and may not grant “any undue preference or advantage.” 16 U.S.C. § 824d(a). FERC must remedy any rate, term, or condition in a transmission tariff or contract that is “unjust, unreasonable, [or] unduly discriminatory.” 16 U.S.C. § 824e(a).

FERC possesses broad powers under this authority and has “wide discretion to determine what constitutes undue discrimination.” *Xcel Energy Servs. Inc. v. FERC*, 41 F.4th 548, 557 (D.C. Cir. 2022) (internal quotation omitted). When it reviews a utility filing under section 205, as it did here, FERC has discretion to consider its experience and expertise and weigh allegations in the record about anti-competitive effects of the proposal. *See Gulf States Utilities Co. v. Fed. Power Comm’n*, 411 U.S.

747, 758-59 (1973) (stating that FERC must “consider . . . anticompetitive effects” in section 205 proceedings); *Transmission Access Policy*, 225 F.3d at 687 (upholding Order No. 888 and summarizing that FERC “relied upon unsubstantiated allegations of discriminatory conduct in public comments, its own experience in reviewing applications and complaints, and its own understanding of the incentives for monopolists to behave discriminatorily”).

To fulfill its charge (and the FPA’s purpose), FERC’s focus when reviewing utility filings is to “control the economic power of utilities that enjoy monopoly status.” *Process Gas Consumers Group v. FERC*, 177 F.3d 995, 1003 (D.C. Cir. 1999) (quoting *Public Sys. v. FERC*, 606 F.2d 973, 979 n.27 (D.C. Cir. 1979)). It is “beyond question” and “fully engrained in [this Court’s] jurisprudence” that FERC “must consider the anticompetitive consequences of matters properly before it.” *Northern California Power Agency v. Fed. Power Comm’n*, 514 F.2d 184, 187 (D.C. Cir. 1975).

That means FERC may regulate the governance of RTOs. Doing so is necessary to, among other things, prevent utilities from extending their local monopoly power through regional alliances. Regional coordination among utilities can improve reliability and lower consumer costs,

but interstate utility agreements can also be a means of exercising monopoly power to limit consumer choice, impede market entry, obstruct efficient transmission development, and otherwise raise prices. *See, e.g., MISO Transmission Owners v. FERC*, 819 F.3d 329, 335 (7th Cir. 2016) (explaining how provisions in a transmission-owner agreement akin to the CTOA insulated utilities from competition).

This Court has upheld FERC’s regulation of transmission governance “as a proper exercise of its power to prevent undue discrimination.” *Associated Gas Distribs. v. FERC*, 824 F.2d 981, 999 (D.C. Cir. 1987). Reviewing a multi-utility power pool contract in 1977, the Commission explained that “[w]hile there is no obligation for utilities . . . to have a pooling agreement, if one does exist it must be nondiscriminatory.” *Mid-Continent Area Power Pool Agreement*, 58 F.P.C. 2622 at 2636 (1977). The Commission ordered changes to pool membership provisions that denied small utilities pool benefits. Such “subtle” discrimination, the Commission found, demands “close scrutiny” because it can have a “significant long-term impact.” *Id.*

FERC has long understood that its duty to ensure just and reasonable rates necessarily entails review of how transmission is governed. As

Congress and states pushed for more competitive electricity markets, FERC encouraged utilities to form regional alliances that would advance wholesale market development. *Policy Statement Regarding Regional Transmission Groups*, 58 Fed. Reg. 41,626 (Aug. 5, 1993). To receive FERC's approval, a multi-utility contract had to "include fair and non-discriminatory governance and decision-making procedures." *Id.* at 41,632.

Again, in FERC's landmark Open Access transmission order, it determined that Open Access transmission rules would be "not enough to cure undue discrimination in transmission if [] public utilities can continue to trade with a selective group within a power pool that discriminatorily excludes others . . . and that provides preferential intra-pool transmission rights and rates." Order No. 888, 61 Fed. Reg. 21,540, at 21,593 (May 10, 1996).

To remedy unduly discriminatory utility power pools, FERC encouraged utilities to delegate transmission responsibilities to third parties with "governance [] structured in a fair and non-discriminatory manner." Order No. 888-A, 62 Fed. Reg. 12,274 at 12,316 (Mar. 14, 1997).

These new transmission operators “should be independent of any individual market participant or any one class of participants,” and their “rules of governance ... should prevent control, and appearance of control, of decision-making by any class of participants.” Order No. 888, 61 Fed. Reg. at 21,596. FERC later promulgated a substantially similar standard as its independence rule. *See* 18 C.F.R. § 35.34 (establishing criteria for RTO).

Since its initial approval of PJM’s structure in 1997, FERC has acted repeatedly to keep market actors’ role in governance at bay. In 2001, FERC rejected a proposal that would have empowered PJM utilities to set certain reliability standards. FERC concluded that because the utilities are market participants, allowing them to set standards that affect energy markets would compromise PJM’s administration of its markets. *PJM Interconnection*, 96 FERC ¶ 61,061, at 62,129-61,230 (2001).

In 2003, FERC approved a settlement among PJM and the PJM utilities that allocated authority to propose tariff changes to FERC. FERC pledged to “exercise careful oversight” to prevent the utilities from using “their filing rights in a way that compromises [PJM’s] independence.” *PJM Interconnection*, 105 FERC ¶ 61,294 at 62,430 (2003). Outside

of PJM, FERC has protected the independence of other RTOs from financial interests. *See, e.g., New England Power Pool*, 83 FERC ¶ 61,045, at 61,260 (1998) (rejecting New England utilities' RTO proposal because it granted "a few large utilities [with] excess influence").

Enforcing proper governance rules that ensure no undue influence by any given market participant advances FERC's central responsibilities under the FPA. This certainly includes when FERC is ensuring that decision-making and tariff administration is free from the control of transmission-owning utilities because it ensures "that the segment of the industry characterized by natural monopoly—namely, the transmission grid that conveys the generated electricity—cannot exert monopolistic influence over other areas." *Morgan Stanley Capital Grp. v. Pub. Util. Dist. No. 1 of Snohomish Cnty., WA*, 554 U.S. 527, 536 (2016). This sort of independence yields just and reasonable rates by "break[ing] down regulatory and economic barriers that hinder[ed] a free market in wholesale electricity." *Id.*

FERC's oversight of governance prevents utilities and other market participants from re-introducing inefficient and anti-competitive practices that FERC has concluded were unduly discriminatory. Independent



governance is a prophylactic against the exercise of monopoly power that streamlines FERC's oversight of interstate rates. *See, e.g. Xcel Energy Services Inc.*, 41 F.4th at 555-59 (upholding FERC's distinction between RTOs and utilities when it reviews section 205 filings because RTOs "lack [] self-interest" to "favor[] some generators over others").

### CONCLUSION

Governor Shapiro urges the Court to uphold the challenged orders. The Court should reject any attempt to subject PJM's independence to the undue control of transmission owners or other asset owners.

February 10, 2026

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## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 29(a)(5) because it contains 3,129 words, excluding the parts of the brief exempt by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word in 14 point Century Schoolbook font.

February 10, 2026

*/s/ Jacob B. Boyer*

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Jacob B. Boyer

**CERTIFICATE OF SERVICE**

I hereby certify that on February 10, 2026, I electronically filed this brief with the Clerk of the Court of the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, which constitutes service under this Court's rules.

February 10, 2026

*/s/ Jacob B. Boyer*

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