Transparency and End of Life Planning
PJM Markets and Reliability Committee

Indicated PJM Transmission Owners' Statement of
Legal and Contractual Issues and Reservation of Rights[1]
April 30, 2020

According to the Issue Charge brought by American Municipal Power (AMP) and Old Dominion Electric Cooperative (ODEC), the Transparency and End of Life Planning process was established to seek to develop criteria that will apply to all transmission projects that address end of life drivers on PJM Tariff transmission assets, address planning horizon requirements, and improve overall transparency, consistency, and clarity in the RTEP planning process. Instead, AMP, ODEC, and LS Power have attempted to re-write the Consolidated Transmission Owners Agreement (CTOA) and redefine supplemental projects. The scope of the proposed redlines to the Operating Agreement are far beyond the End of Life Problem Statement and Issue Charge, are inconsistent with Manual 34, and unlawfully seek to authorize PJM to engage in activity well beyond the authority delegated to it.

The AMP/ODEC/LS Power packages implicate significant legal issues with respect to the interpretation and application of legal precedent and various governing PJM document contractual provisions that are the foundation upon which PJM exists. As explained below:

- Aspects of the AMP/ODEC/LS Power proposals infringe upon the contractual rights that form the basis of the PJM Transmission Owners' membership and participation in PJM and go beyond the requirements of Order No. 890.
    - Under the CTOA, the Transmission Owners transferred responsibility for specific planning activities relating to expansion of the grid to PJM, but they did not transfer all planning responsibilities to PJM. The Transmission Owners specifically reserved the right to operate and maintain their facilities as well as the right to decide whether and when to retire any facility.[2] The Transmission Owners also reserved all other rights not specifically transferred to PJM.[3] This is recognized in Schedule 6 of the Operating Agreement, which provides that in preparing the RTEP, PJM shall take into account the legal and contractual rights and obligations of the Transmission Owners.[4]

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[1] The Indicated PJM Transmission Owners are: Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, AEP Indiana Michigan Transmission Company, AEP Kentucky Transmission Company, AEP Ohio Transmission Company, and AEP West Virginia Transmission Company (collectively "AEP"); Dayton Power and Light Company; Virginia Electric and Power Company, dba Dominion Energy Virginia; Duke Energy Corporation; Duquesne Light Company; East Kentucky Power Cooperative; Exelon Corporation; FirstEnergy Transmission Companies, including American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Mid-Atlantic Interstate Transmission LLC, West Penn Power Company, The Potomac Edison Company and Monongahela Power Company; PPL Electric Utilities Corporation; and Public Service Electric and Gas Company.

[2] *See* CTOA § 4.5 and § 5.2.

[3] *See* CTOA § 5.6.

[4] *See* Schedule 6, § 1.4(d)(iii).

- The stakeholder process is not the appropriate forum to relitigate issues that have already been settled by the Commission and/or challenge existing contractual rights and obligations.
    - The stakeholder process may not seek a result specifically rejected by the Federal Energy Regulatory Commission in recent Order to Show Cause/Attachment M-3 litigation.
    - The stakeholder process has failed to recognize the application of direct FERC precedent on asset management issues. PJM itself has noted that recent FERC decisions in California make clear that Order No. 890 planning requirements do not apply to "asset management activities and projects." Asset management activities that relate to maintenance and infrastructure at the end of its useful life do not expand the transmission system and are not within the scope of Order No. 890.[5]

In sum, it is critical for an orderly process for stakeholders to not lose sight of these relevant and applicable legal precedents and contractual provisions. Such considerations must inform the group's efforts, and indeed PJM has squarely raised these issues in the stakeholder proceeding and through the letters from the PJM Board. All of these collective efforts have been ignored by AMP/ODEC/LS Power.

In light of these concerns, the Transmission Owners object to the AMP/ODEC/LS Power packages and reserve the right to raise additional issues and objections to any further consideration of that package or any similar proposal in the stakeholder process. The Transmission Owners also reserve the right to raise additional issues and objections with respect to the subject matter of this process in any and all future PJM processes and any regulatory or judicial proceedings. The Transmission Owners' participation in this process should not be construed as an admission against interest or a waiver of any right or objection nor may the silence of the Transmission Owners as to any particular suggestion voiced by any stakeholder during any part of these proceedings be deemed to constitute a ceding of the rights retained by the Transmission Owners under the CTOA.

[5] *California Public Utilities Commission, et al. v. Pacific Gas & Electric Company*, 164 FERC ¶ 61,161 (2018), *order denying reh'g*, 168 FERC ¶ 61,171 (2019); *Southern California Edison Company et al.*, 164 FERC ¶ 61,160 (2018), *order denying reh'g*, 168 FERC ¶ 61,170 (2019).