

156 FERC ¶ 61,134
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Monongahela Power Company
Potomac Edison Company
West Penn Power Company
AEP Indiana Michigan Transmission Company, Inc.
AEP Kentucky Transmission Company, Inc.
AEP Ohio Transmission Company, Inc.
AEP West Virginia Transmission Company, Inc.
Appalachian Power Company
Indiana Michigan Power Company
Kentucky Power Company
Kingsport Power Company
Ohio Power Company
Wheeling Power Company
Commonwealth Edison Company
Commonwealth Edison Company of Indiana, Inc.
Dayton Power and Light Company
Virginia Electric and Power Company
Public Service Electric and Gas Company
PECO Energy Company
PPL Electric Utilities Corporation
Baltimore Gas and Electric Company
Jersey Central Power & Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Potomac Electric Power Company
Atlantic City Electric Company
Delmarva Power & Light Company
UGI Utilities Inc.
Allegheny Electric Cooperative, Inc.
CED Rock Springs, LLC
Old Dominion Electric Cooperative
Rockland Electric Company
Duquesne Light Company
Neptune Regional Transmission System, LLC

Docket No. EL16-71-000

Trans-Allegheny Interstate Line Company
Linden VFT, LLC
American Transmission Systems, Incorporated
City of Cleveland, Department of Public Utilities,
Division of Cleveland Public Power
Duke Energy Ohio, Inc.
Duke Energy Kentucky, Inc.
City of Hamilton, Ohio
Hudson Transmission Partners, LLC
East Kentucky Power Cooperative, Inc.
City of Rochelle
ITC Interconnection LLC
PJM Interconnection, L.L.C.

ORDER TO SHOW CAUSE

(Issued August 26, 2016)

1. In this order, pursuant to section 206 of the Federal Power Act (FPA)¹ and Rule 209(a) of the Commission's Rules of Practice and Procedure,² the Commission establishes a proceeding to determine whether the PJM Transmission Owners are complying with their Order No. 890 obligations. The Commission is concerned that, as implemented, the transmission planning process governed by the PJM Operating Agreement is not providing stakeholders with the opportunity for early and meaningful input and participation in the transmission planning process, as required by Order No. 890.³ Accordingly, the PJM Transmission Owners are directed to either (1) propose revisions to the PJM Operating Agreement to comply with Order No. 890, (2) revise their portions of the PJM Open Access Transmission Tariff (PJM OATT) or their individual Open Access Transmission Tariffs (individual OATTs) to comply with

¹ 16 U.S.C. § 824e (2012).

² 18 C.F.R. § 385.209(a) (2016).

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

Order No. 890, or (3) show cause why they should not be required to do so, within 60 days of the date of this order.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a basis that is just, reasonable and not unduly discriminatory or preferential. Among other things, the Commission in Order No. 890 directed all transmission providers to develop a transmission planning process that satisfied nine transmission planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. To satisfy the coordination principle, transmission providers are required to provide customers and other stakeholders the opportunity to participate fully in the transmission planning process. The Commission explained that this requirement means that transmission providers must facilitate the timely and meaningful input and participation of customers in the development of transmission plans and, more specifically, that “customers must be included at the early stages of the development of the transmission plan and not merely given an opportunity to comment on transmission plans that were developed in the first instance without their input.”⁴ In short, Order No. 890 requires that transmission planning “not [be] limited to the mere exchange of information and then review of transmission provider plans after the fact.”⁵ Instead, stakeholders must have “a meaningful opportunity to engage in planning along with their transmission providers.”⁶

3. In addition, the Commission required that transmission providers disclose to all stakeholders the basic criteria, assumptions and data that underlie their transmission plans and reduce to writing and make available the basic methodology, criteria, and processes the transmission providers use to develop their transmission plans. Also, sufficient information must be made available to enable customers, other stakeholders, and independent third parties to replicate the results of transmission planning studies and thereby reduce the incidence of after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion. The Commission explained that stakeholders’ lack of access to this information created the potential for undue

⁴ *Id.* P 454.

⁵ *Id.* P 488.

⁶ *Id.*

discrimination and could shift discussions about a project's merits from the planning stage, where they ought to occur, to a series of after-the-fact disputes.⁷

4. The Commission also determined that the transmission-owning members of a regional transmission organization (RTO) or independent system operator (ISO) must participate in the transmission planning process and that the process must be open to transmission customers and other stakeholders. Although the Commission left it to the RTOs and ISOs to determine how to satisfy Order No. 890's requirements, the Commission observed that an RTO or ISO would not comply with Order No. 890 unless the RTO or ISO required the transmission owners within its footprint to engage in a transmission planning process that itself complied with the requirements of Order No. 890.⁸

5. On compliance with Order No. 890, PJM stated that its transmission planning procedures satisfied the directives of Order No. 890 with respect to PJM transmission owners that do not have their own OATTs on file and who have turned over to PJM operational control of their transmission facilities.⁹ In order to meet the specific service requests for certain transmission customers, and treat all customers comparably, PJM created a new category (Supplemental Projects) for transmission facilities developed under the local transmission owner planning processes.¹⁰ PJM stated that the PJM Transmission Owners are obligated to engage in transmission planning that complies with Order No. 890.¹¹ PJM explained that the Supplemental Project category would be incorporated into the PJM planning process in a manner consistent with Order No. 890's

⁷ *Id.* PP 424, 471-479.

⁸ *Id.* P 440.

⁹ *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163, at P 122 (2008) (citing PJM December 7, 2007 filing in Docket No. OA08-32-000, at 34).

¹⁰ A Supplemental Project is defined as a transmission expansion or enhancement that is not required for compliance with the following PJM criteria: system reliability, operational performance or economic criteria, pursuant to a determination by PJM, and is not a state public policy project pursuant to section 1.5.9(a)(ii) of Schedule 6 of the Operating Agreement. *See* PJM, Intra-PJM Tariffs, Operating Agreement, Definitions, § 1.42A.02.

¹¹ *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163 at P 138.

requirement that transmission projects be planned through a process that is both open and transparent.¹²

6. The Commission found that PJM's Order No. 890 compliance filing failed to specify with sufficient clarity how locally planned transmission projects fit into the PJM regional transmission planning process.¹³ Therefore, the Commission directed PJM to modify the PJM Operating Agreement to: (i) require each transmission owner's local transmission plan to be made available on a website for review by the Planning Committee, the Transmission Expansion Advisory Committee, and the Subregional RTEP Committee; (ii) provide links to each transmission owner's local transmission plan on PJM's website; (iii) require transmission owners to post the planning criteria and assumptions used in its current local transmission plan; and (iv) provide links to each transmission owner's planning criteria and assumptions on PJM's website; and (v) require transmission owners to provide stakeholders a reasonable opportunity for written comments after the transmission owners post their local transmission plan.

7. Upon reviewing PJM's subsequent compliance filing, the Commission concluded that it continued to fall short of Order No. 890's requirements. The Commission directed PJM to provide the opportunity for stakeholders to review and comment on the criteria, assumptions, and models used in local transmission planning activities prior to finalization of the Local Plan¹⁴ and on the Local Plan itself prior to it being submitted to the Subregional RTEP Committee.¹⁵ PJM complied with that directive by revising subsections 1.3(d) and (f) in Schedule 6 of the PJM Operating Agreement to expressly include: (1) an opportunity for stakeholders through the Subregional RTEP Committee to review and comment on the transmission owner's criteria, assumptions, and models prior to finalizing the Local Plan; (2) a provision for the scheduling of Subregional RTEP Committee meetings to accommodate such reviews; and (3) a statement that any unresolved stakeholder issues stemming from the local transmission planning process

¹² *Id.* PP 138-139.

¹³ *Id.* P 140.

¹⁴ The Local Plan shall include Supplemental Projects as identified by the Transmission Owners within their zone and Subregional RTEP projects developed to comply with all applicable reliability criteria, including Transmission Owners' planning criteria or based on market efficiency analysis and in consideration of Public Policy Requirements. PJM Operating Agreement (Definitions) (3.1.0).

¹⁵ *PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,166, at P 28 (2009).

will be addressed in the Subregional RTEP Committee.¹⁶ In addition, PJM amended subsections 1.5.4(a) and (g) of Schedule 6 of the PJM Operating Agreement to require that transmission owners provide their criteria and assumptions, including the models used in their Local Plan.¹⁷

8. PJM has since reiterated that these procedures require that the regional and local transmission planning processes be fully integrated into PJM's overall transmission planning process, and has clarified that the Local Plan is a product of the Subregional RTEP Committees rather than of the transmission owners alone.¹⁸ The Commission has relied on these statements in continuing to find that PJM's local transmission planning processes satisfy the Order No. 890 transmission planning principles. For example, this understanding was integral to the Commission's determination that PJM had complied with Order No. 1000,¹⁹ in which the Commission required, among other things, that every public utility transmission provider participate in a regional transmission planning process that complied with the Order No. 890 transmission planning principles.²⁰ In accepting PJM's Order No. 1000 compliance filings, the Commission explained its understanding that PJM's local transmission planning procedures require that stakeholders have "an opportunity at the early stages of each individual PJM Transmission Owner's planning of Supplemental Projects (i.e., *before each transmission*

¹⁶ *PJM Interconnection, L.L.C.*, 130 FERC ¶ 61,167, at P 12 (2010). PJM clarified that the defined term, Local Plan, includes Subregional RTEP Projects and Supplemental Projects as identified by the transmission owners within their zone. *PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,166 at P 22.

¹⁷ *PJM Interconnection, L.L.C.*, 130 FERC ¶ 61,167, at P 11.

¹⁸ *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,038, at P 34 (2015). *See also PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,166 at P 22. *See also* Schedule 6, PJM Operating Agreement, § 1.18A (defining Local Plan).

¹⁹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

²⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 146.

owner actually identifies any potential Supplemental Projects) to review the criteria, assumptions, and models each individual transmission owner uses to plan Supplemental Projects.”²¹

9. On November 12, 2015, Commission staff held a technical conference²² to examine PJM’s application of its transmission planning process to local transmission facilities. Commission staff invited PJM and PJM Transmission Owner representatives to speak at the conference and all interested persons to submit post-technical conference comments. Discussions at the technical conference and the post-technical conference comments raised concerns about whether PJM’s local transmission planning process was being implemented in a manner that is consistent with the PJM Operating Agreement and the requirements of Order No. 890.

10. In particular, some participants suggest that stakeholders lack the opportunity to participate meaningfully in the early stages of the transmission planning process for Supplemental Projects. For example, Old Dominion Electric Cooperative (Old Dominion) commented that transmission owners rarely identify meaningful criteria, assumptions, or models used for Supplemental Projects and that transmission owners often take significant steps toward building the project before stakeholders are afforded an opportunity to participate.²³ Similarly, American Municipal Power, Inc. argued that the PJM Transmission Owners’ local transmission planning processes for Supplemental Projects lack the same transparency, scrutiny, and opportunity for participation as the projects planned to meet PJM’s regional planning criteria.²⁴ In both sets of comments, the commenters suggest that the local transmission planning process, particularly with

²¹ *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,250, at P 17 (2015) (emphasis added). See also *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at PP 121-123 (2013); *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128, at PP 72-83 (2014); *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,038, at PP 18-46; and *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,250 at PP 12-22 (addressing PJM’s local transmission planning process in PJM’s Order No. 1000 compliance proceeding).

²² *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,197 (2015) (order accepting and suspending tariff revisions and establishing technical conference).

²³ Old Dominion December 18, 2015 Post-technical Conference Comments at 3 in Docket Nos. ER15-1344-001, ER15-1344-002, ER15-1387-001.

²⁴ American Municipal Power, Inc. December 18, 2015 Post-technical Conference Comments at 7 in Docket Nos. ER15-1344-001, ER15-1344-002, ER15-1387-001.

respect to Supplemental Projects, falls short of the open and transparent transmission planning process required by Order No. 890 and as provided for by the PJM Operating Agreement.

11. Old Dominion notes that at least one transmission owner, Dominion Virginia Power, has adopted, pursuant to a Commission-approved settlement agreement, structured procedures that provide for stakeholder involvement early in the planning of Supplemental Projects.²⁵ However, Old Dominion further notes this process occurs outside of the PJM transmission planning process. Old Dominion argues that, to comply with Order No. 890 and Order No. 1000, PJM must be involved in local transmission planning.²⁶

II. Discussion

12. Each PJM Transmission Owner is required to administer a transmission planning process that complies with the principles of Order No. 890. However, the PJM Transmission Owners may satisfy this requirement either by establishing their own Order No. 890-compliant procedures or by participating in an RTO-administered transmission planning process that itself complies with Order No. 890. As noted, the PJM Transmission Owners chose the latter option, opting to comply with Order No. 890 by participating in the transmission planning process that is outlined in the PJM Operating Agreement. However, the Commission is concerned that, as implemented, the transmission planning process for Supplemental Projects outlined in the PJM Operating Agreement does not comply with Order No. 890.

13. Based on the comments received at the technical conference, it appears that some PJM Transmission Owners are conducting significant local transmission planning activities *before* the need for a Supplemental Project is brought to PJM for discussion in the stakeholder process. In addition, certain of the PJM Transmission Owners appear to be identifying—and even taking steps toward developing—Supplemental Projects before providing any opportunity for stakeholders to participate in the development of those projects through the PJM RTEP process.²⁷ Although the comments received

²⁵ Old Dominion Post-technical Conference Comments, filed December 18, 2015, at 16. *See Old Dominion Elec. Coop. and North Carolina Elec. Membership Corp. v. Virginia Elec. and Power Co.*, 139 FERC ¶ 61,137 (2012).

²⁶ Old Dominion Post-technical Conference Comments, filed December 18, 2015, at 17.

²⁷ *See id.* at 3-4.

suggest that *some* PJM Transmission Owners are providing stakeholders with an opportunity for early and meaningful participation, we are concerned that not all stakeholders are receiving this opportunity. Similarly, we are concerned that not all stakeholders are receiving an opportunity to review and comment on the criteria, assumptions, and models that the PJM Transmission Owners use to identify the need for and to develop Supplemental Projects. As noted above, these actions appear to be inconsistent with the representations made to the Commission in the PJM Transmission Owners' Order No. 1000 compliance filings. Furthermore, given that Order No. 1000's reforms were built on the foundation laid by Order No. 890 and that the PJM RTEP process necessarily relies, in part, on information from the PJM Transmission Owners' local planning activities, we are also concerned that a lack of transparency in the PJM Transmission Owners' local planning processes for developing Supplemental Projects could undermine PJM's implementation of the Order No. 1000 reforms.

14. The individual PJM Transmission Owners are responsible for providing such an opportunity through a transparent local transmission planning process that is on file with the Commission.²⁸ Therefore, to the extent that stakeholders are not receiving the opportunity to participate meaningfully in the PJM transmission planning process with respect to Supplemental Projects, as the Commission originally understood,²⁹ then it is the responsibility of the PJM Transmission Owners to provide a remedy. However, as with their original Order No. 890 compliance obligations, the PJM Transmission Owners may elect to satisfy this responsibility through a PJM-administered process that complies with Order No. 890.

15. Therefore, pursuant to section 206 of the FPA, we are establishing a proceeding to determine whether the PJM Transmission Owners are complying with their Order No. 890 obligations. We require that, within 60 days of the date of this order, the PJM Transmission Owners either (1) propose revisions to the PJM Operating Agreement to comply with Order No. 890, (2) revise their portions of the PJM OATT or revise their individual OATTs to comply with Order No. 890,³⁰ or (3) show cause why they should

²⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 440 fn. 247.

²⁹ *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163 at P 138.

³⁰ Transmission Owners choosing this option should, pursuant to their filing rights agreement with PJM, make an eTariff compliance filing to revise the appropriate provisions of the PJM OATT. *See Am. Elec. Power Serv. Corp.*, 110 FERC ¶ 61,276, at P 10 (2005) (requiring that PJM Transmission Owner tariffs be included in the PJM OATT for ease of reference); *Am. Elec. Power Serv. Corp.*, 110 FERC ¶ 61,187, at P 33 (2005) (same).

not be required to do so. As noted, the PJM Transmission Owners currently use the transmission planning process administered by PJM and outlined in the PJM Operating Agreement to comply with Order No. 890. Thus one option for the PJM Transmission Owners³¹ is to propose changes to the PJM Operating Agreement to ensure that, as implemented, the transmission planning process contained therein complies with Order No. 890.³² However, the PJM Transmission Owners are not required to comply with this order by proposing changes to the PJM Operating Agreement. Because it is ultimately the PJM Transmission Owners' responsibility to satisfy Order No. 890, they may also comply with this order by either revising their portion of the PJM OATT or by revising their individual OATTs to ensure that Supplemental Projects are developed through a process that complies with Order No. 890.

16. In cases where, as here, the Commission institutes a proceeding on its own motion under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date of the publication by the Commission of notice of its intention to initiate such proceeding nor later than five months after the publication date. Section 206(b) permits the Commission to order refunds for a 15-month period following the refund effective date. Consistent with the Commission's general policy of providing maximum protection to customers,³³ we will set the refund effective date at the earliest date possible in the docket, i.e., the date of publication by the Commission of notice of its intention to initiate such proceeding in the Federal Register.

17. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Assuming that the PJM Transmission Owners file revisions to the OATT, we estimate that the Commission would be able to issue our decision within approximately three months of the filing of such revisions.

³¹ Although this order is directed to the PJM Transmission Owners, the opportunity to propose revisions to the PJM Operating Agreement is open to any interested person, not only the PJM Transmission Owners.

³² PJM may file any such changes that the PJM Transmission Owners propose as part of a joint compliance filing with the PJM Transmission Owners.

³³ See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL16-71-000 concerning the justness and reasonableness of the PJM Transmission Owners' compliance with Order No. 890, as discussed in the body of this order.

(B) The PJM Transmission Owners are hereby directed to either (1) propose revisions to the PJM Operating Agreement to comply with Order No. 890, (2) revise their portions of the PJM OATT or revise their individual OATTs to comply with Order No. 890, or (3) show cause why they should not be required to do so, within 60 days of the date of this order.

(C) Any interested person desiring to be heard in Docket No. EL16-71-000 must file a notice of intervention or motion to intervene, as appropriate, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214) (2015) within 21 days of the date of issuance of this order.

(D) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of this section 206 proceeding in Docket No. EL16-71-000.

(E) The refund effective date established pursuant to section 206(b) of the FPA will be the date of publication in the Federal Register of the notice discussed in Ordering Paragraph (B) above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.