

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

**PJM Interconnection, L.L.C.**

**:**

**Docket No. ER20-2308-000**

**COMMENTS OF PJM INTERCONNECTION, L.L.C.**

Pursuant to Rules 213<sup>1</sup> of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), PJM Interconnection, L.L.C. (“PJM”) submits these comments (“Comments”) to the filing<sup>2</sup> submitted today, pursuant to section 205 of the Federal Power Act (“FPA”),<sup>3</sup> in the captioned docket.

In the Schedule 6, Section 205 Filing submitted this date in Docket No. ER20-2308-000, PJM submitted revisions to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”) developed by Joint Stakeholders<sup>4</sup> in the context of the Markets & Reliability Committee (“MRC”) Special Session: *Transparency and End of Life (“EOL”) Planning* stakeholder meetings and approved by the June 18 Members Committee to move the planning of all Transmission Facilities determined as at their end of life, currently

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<sup>1</sup> 18 C.F.R. § 385.213 (2019).

<sup>2</sup> *PJM Interconnection, L.L.C.*, Joint Stakeholders Revisions to the PJM Operating Agreement, Docket No. ER20-2308-000 (July 2, 2020) (“Schedule 6, Section 205 Filing” or “Section 205 Filing”).

<sup>3</sup> 16 U.S.C. § 824d.

<sup>4</sup> The Joint Stakeholders who brought forth the Joint Stakeholder Proposal Package A (“Joint Stakeholder Proposal”) at the MRC Special Session meetings included American Municipal Power, Inc. (“AMP”), Old Dominion Electric Cooperative (“ODEC”). LS Power subsequently combined its Package B with the AMP and ODEC package. The motion made at the June 18 MC to approve Package A was moved by ODEC and seconded by the Office of People’s Counsel for the District of Columbia. Additionally, the following entities submitted a letter dated May 12, 2020 to the PJM Board of Managers (“May 12 Stakeholder Letter”) in support of Package A: AMP, ODEC, LS Power, PJM Industrial Customer Coalition, Blue Ridge Power Agency, Delaware Municipal Electric Corporation, Inc., Public Power Association of New Jersey, Office of People’s Counsel for the District of Columbia, and the Delaware Division of the Public Advocate.

planned as either Supplemental Projects<sup>5</sup> or FERC Form No. 715 projects, to a new category of EOL Projects<sup>6</sup> under PJM’s regional transmission expansion planning (“RTEP”) process.<sup>7</sup>

## **I. EXECUTIVE SUMMARY**

Under the Operating Agreement, PJM is responsible for filing, under FPA section 205, amendments to the Operating Agreement approved by the PJM Members Committee.<sup>8</sup> Today’s Schedule 6, Section 205 Filing is novel in that PJM disagrees with the amendments approved by the Members Committee. While PJM properly filed those amendments, as required by the Operating Agreement, and relates in that filing the support for those amendments provided in the stakeholder process by the proponents of those revisions, PJM writes separately to provide the Commission PJM’s views, as the independent Regional Transmission Organization (“RTO”) of the PJM Region, on the matter. It is for this reason that PJM submits these comments on the same day as the Schedule 6, Section 205 Filing to give interested parties ample opportunity to read and comment upon PJM’s views.

In these Comments PJM details the PJM Board of Managers’ (“PJM Board”) response<sup>9</sup> to the Joint Stakeholder Proposal and presents for Commission review PJM’s argument previously

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<sup>5</sup> Supplemental Project is defined in the Operating Agreement to mean:

[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 the Office of the Interconnection and is not a state public policy project pursuant to Operating Agreement, Schedule 6, section 1.5.9(a)(ii). Any system upgrades required to maintain the reliability of the system that are driven by a Supplemental Project are considered part of that Supplemental Project and are the responsibility of the entity sponsoring that Supplemental Project.

*See* Operating Agreement, Section 1, Definitions S – T.

<sup>6</sup> *See* Schedule 6, Section 205 Filing at Attachment A, Operating Agreement, Section 1, Definitions E-F *proposed*.

<sup>7</sup> Capitalized terms used and not otherwise defined herein have the Operating Agreement definition of the term.

<sup>8</sup> PJM Operating Agreement, section 10.4(xiii).

<sup>9</sup> *See* May 27 Letter by the Chair of the Reliability and Security Committee on behalf of the PJM Board (“May 27 Board Letter”), a copy of which is attached hereto as Attachment A.

presented to stakeholders in the stakeholder forum as to why, in PJM’s view, the Section 205 Filing is inconsistent with, or contrary to: i) PJM governing documents; ii) Commission precedent on PJM’s and the PJM Transmission Owners’ respective roles in the planning of Supplemental Projects (including replacement of facilities at their end of useful life); and iii) Commission precedent clarifying a Transmission Owner’s authority and an RTO’s role over the planning of asset management activities and projects.

Although stakeholders have argued that these issues, i.e., asset management, individual Transmission Owner Form 715 criteria, and Supplemental Projects (in particular end of life projects) needed to go through the stakeholder process, in this case the stakeholder process was markedly dominated by legal debates, including debates as to the meaning of certain governing documents and the scope of authority ascribed to PJM and the PJM Transmission Owners under those documents. By the same token, much of the debate focused on the meaning and impact of Commission orders on the planning of Supplemental Projects in the PJM Region,<sup>10</sup> as well as the precedential weight to be given Orders issued by this Commission on issues concerning asset management projects and activities that arose in California (the “California Orders”).<sup>11</sup>

At the end of the day, these legal issues, as well as related policy issues, are not ones that necessarily lend themselves well to final resolution in a stakeholder process. It is for this reason

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<sup>10</sup> For example, although several parties attempt to speak for the Commission on how its rulings in the California Orders do or do not apply to PJM’s planning process, only the Commission can or should advise on how its rulings in those orders apply to the PJM tariffs.

<sup>11</sup> *California Pub. Utils. Comm’n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161 (Aug. 31, 2018) (“PG&E Order”), *order on reh’g*, 168 FERC ¶ 61,171 (Sept. 19, 2019) (“PG&E Rehearing Order”) (collectively, “PG&E Orders”) (denying a Complaint filed against PG&E alleging that PG&E was in violation of its obligations under Order No. 890 to conduct an open, coordinated and transparent transmission planning process because more than 80 percent of PG&E’s transmission planning consisted of “self-approved” projects with no opportunity for stakeholder review or input.); *see also So. Cal. Edison Co.*, 164 FERC ¶ 61,160 (Aug. 31, 2018) (“SoCal Edison Order”), *order denying reh’g*, 168 FERC ¶ 61,170 (“SoCal Edison Rehearing Order”) (accepting SoCal Edison’s Tariff amendments to add an annual transmission maintenance and compliance review process specific to certain transmission-related maintenance and compliance activities not subject to consideration through CAISO’s Transmission Planning Process) (collectively referred to as the “California Orders”).

that PJM is filing these Comments and urges the Commission to provide clear resolution on the legal and policy issues raised by the Joint Stakeholder Proposal.<sup>12</sup>

## **II. BACKGROUND**

The issues underlying the Schedule 6, Section 205 Filing date back to November 12, 2015, when the Commission staff held a technical conference<sup>13</sup> to examine PJM's application of its transmission planning process specific to Supplemental Projects. Discussions at the technical conference and the post-technical conference comments raised concerns about whether the PJM Transmission Owners were implementing their local transmission planning processes in a manner consistent with the PJM Operating Agreement and the requirements of Order No. 890.<sup>14</sup>

Following the November 12 Technical Conference, the Markets & Reliability Committee ("MRC") approved the creation of the Transmission Replacement Process Senior Task Force ("TRPSTF") in March 2016. The purpose of the TRPSTF was to "brainstorm and develop alternatives for providing more transparency and consistency in the communication and review of end of life projects. The TRPSTF's expected deliverables included: (i) increase transparency and consistency in the communication and review of end of life projects; (ii) potentially develop guidelines or criteria for establishing, communicating, reviewing, and setting forth the process for inclusion of Transmission Owner initiated end of life projects within the RTEP; and (iii) changes to PJM Manuals as necessary to address recommendations by the stakeholders (no changes to the

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<sup>12</sup> The stakeholder process, and in particular the correspondence to the Board and the Board's response, helped to clarify the specific issues set forth herein for Commission resolution.

<sup>13</sup> *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,197 (2015) (order accepting and suspending tariff revisions and establishing technical conference).

<sup>14</sup> *Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g & clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g & clarification*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

PJM governing documents were expected).<sup>15</sup> The TRPSTF met from March 29, 2016 through June 28, 2018.

Five months into the TRPSTF meetings, the Commission issued an Order to Show Cause establishing an FPA section 206 inquiry into the justness and reasonableness of the Supplemental Project planning process contained in the Operating Agreement and the PJM Open Access Transmission Tariff (“Tariff”).<sup>16</sup> The August 26 Show Cause Order referenced concerns raised during the November 2015 technical conference and post-technical conference comments that the PJM Transmission Owners’ local planning with respect to Supplemental Projects was not consistent with Order No. 890.<sup>17</sup>

On October 25, 2016, the PJM Transmission Owners submitted their response to the August 26 Show Cause Order stating that no revisions were necessary because the Operating Agreement already complies with the requirements of Order No. 890.<sup>18</sup> Concurrent with that response, the Transmission Owners filed proposed amendments to the PJM Tariff to add a new Attachment M-3 to provide additional detail regarding the planning of Supplemental Projects.<sup>19</sup>

On February 15, 2018, the Commission issued its order finding that the PJM Transmission Owners were implementing the PJM Operating Agreement in a manner inconsistent with the requirements of Order No. 890.<sup>20</sup> In addition, the Commission accepted in part the PJM

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<sup>15</sup> See TRPSTF Charter at <https://pjm.com/-/media/committees-groups/task-forces/trpstf/postings/charter.ashx?la=en>.

<sup>16</sup> *Monongahela Power Co.*, 156 FERC ¶ 61,134 (Aug. 26, 2016) (“August 26 Show Cause Order”). As a result of the August 26 Show Cause Order, the TRPSTF Consensus Based Issue Resolution (“CBIR”) activities were suspended and did not restart until August 28, 2017.

<sup>17</sup> *Id.*

<sup>18</sup> *Monongahela Power Co., et al.*, Response to Show Cause Order, Docket No. EL16-71-000 (Oct. 25, 2016) (“October 25 Response”).

<sup>19</sup> *PPL Elec. Utils. Corp.*, Proposed Tariff Revisions to Add a New Attachment M-3, Docket No. ER17-179-000 (Oct. 25, 2016).

<sup>20</sup> *Monongahela Power Co., et al.*, 162 FERC ¶ 61,129 (Feb. 15, 2018) (“Feb. 15 Attachment M-3 Order”).

Transmission Owners' proposed Tariff revisions to add a new Attachment M-3 Supplemental Project planning process subject to further compliance. PJM and the PJM Transmission Owners submitted compliance filings on March 19, 2018.<sup>21</sup>

On September 13, 2018, the special meeting of the MRC: *Transmission Replacement Process* convened to address end of life facilities in the PJM planning process. In its presentation,<sup>22</sup> AMP stated that the AMP/ODEC proposal:

- Did not contradict or run afoul of the Transmission Owners' Attachment M-3 compliance filing or FERC orders;
- Would not violate the CTOA;
- Was not asking PJM to plan Supplemental Project end of life facilities;
- Was not asking PJM to modify its planning schedule; and
- Does not impose additional work on PJM planning staff.

AMP and ODEC also presented proposed revisions to PJM Manual 14B to clarify how end of life projects and the Transmission Owners' new Attachment M-3 process fit into the PJM RTEP and to add greater clarity and transparency to how transmission owner local plans integrate with the RTEP planning process.<sup>23</sup>

At the September 13 Special Meeting of the MRC, PJM presented summaries of two California Orders on the applicability of Order No. 890 to similar issues concerning asset management projects and activities.<sup>24</sup>

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<sup>21</sup> See *PJM Interconnection, L.L.C.*, PJM Compliance Filing, Docket Nos. EL16-71-002 and ER17-179-001 (Mar. 19, 2018); see also *American Transmission Systems, Inc.*, PJM Transmission Owners' Attachment M-3 Compliance Filing, Docket No. ER17-179-002 (Mar. 19, 2018).

<sup>22</sup> See September 13, 2018 MRC - Special Meeting – Transmission Replacement Process, AMP Presentation dated August 23, 2018, Slide 3 at <https://pjm.com/-/media/committees-groups/committees/mrc/20180913-special-trp/20180913-item-02a-amp-odec-end-of-life-projects-proposal-presentation-from-8-23-8-mrc-meeting.ashx>.

<sup>23</sup> See AMP/ODEC proposed revisions to Manual 14B posted for review at the September 13, 2018 MRC - Special Meeting at <https://pjm.com/-/media/committees-groups/committees/mrc/20180913-special-trp/20180913-item-02a-manual-14b-revisions-amp-odec-proposal-redline.ashx>.

<sup>24</sup> See *supra* at 4, n. 11.

On September 26, 2018, the Commission issued an order denying rehearing of its February 15 Order and accepting PJM's and the PJM Transmission Owners' compliance filings, effective September 26, 2018, finding that the Transmission Owners' Attachment M-3 planning process establishes a just and reasonable transmission planning process for Supplemental Projects.<sup>25</sup>

At the December 5, 2019 MRC, AMP and ODEC brought a problem statement and issue charge addressing transmission asset end of life processes. The special session of the MRC: *Transparency and End of Life Planning* convened on December 18, 2019. The work was intended to (i) develop specific governing document language to establish criteria that would apply to all transmission projects that address end of life drivers on PJM transmission assets, (ii) address planning horizon requirements and (iii) improve overall transparency, consistency and clarity in the RTEP planning process. Both the Joint Stakeholders<sup>26</sup> and PJM<sup>27</sup> brought package proposals to the May 28 MRC for endorsement. Both packages failed. The Joint Stakeholders moved for a vote at the June 18 Members Committee, at which time the Joint Stakeholder package passed by a sector-weighted vote of 3.45 in favor and was presented for filing in this docket under separate cover today.

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<sup>25</sup> *Monongahela Power Co.*, 164 FERC ¶ 61,217 (Sept. 26, 2018) ("September 26 Attachment M-3 Order").

<sup>26</sup> The Joint Stakeholder Package A was presented by AMP and ODEC and LS Power presented Package B. LS Power subsequently agreed to combine with AMP and ODEC's Package A. Package A included proposed revisions to the Operating Agreement.

<sup>27</sup> The PJM package proposed revisions to the PJM Manuals. Because revisions to PJM Manuals are presented to the MRC only for endorsement, they could not be presented to the June 18 Members Committee for endorsement. PJM posted a presentation for discussion at the June 18 Members Committee addressing the following topics: (i) Board Response Summary; (ii) Joint Stakeholder Package Concerns; and (iii) Operating Agreement Language Concerns. See PJM Presentation at <https://pjm.com/-/media/committees-groups/committees/mc/2020/20200618/20200618-item-02-3-eol-transmission-planning-pjm-presentation.ashx>.

### III. COMMENTS

#### ***A. The Joint Stakeholder Proposal Contravenes PJM's Governing Documents, FERC Orders, Commission Precedent and the PJM Board of Managers Explicit Recommendation***

As described in more detail below, on May 12, 2020 the Joint Stakeholders and others (“PJM stakeholders”) sent a letter (“May 12 Stakeholder Letter”) to the PJM Board to ensure that the PJM Board has “a complete picture of [their] proposal and the law supporting it.”<sup>28</sup> By letter dated May 27, 2020, Mr. O. H. Dean Oskvig, Chair of the Reliability and Security Committee, provided a response to the PJM stakeholders on behalf of the PJM Board stating that the PJM end of life solution package presented to the May 28 MRC appropriately applied PJM’s authority and takes a reasonable approach to replace a transmission facility that has been identified as at its end of life.<sup>29</sup> In addition, the PJM Board included, as an Attachment to its letter, comments and feedback provided to the PJM Board by PJM staff that detailed each issue of concern presented by the Joint Stakeholders’ proposed revisions to the Operating Agreement, which the PJM Board adopted “as parts of its response and its comments” on the Joint Stakeholder package.<sup>30</sup>

The May 27 Board Letter was posted with the June 18 Members Committee materials consistent with the Operating Agreement, section 18.6, which provides that the Operating Agreement may be amended (except as provided by law or otherwise set forth therein) only upon:

- (i) submission of the proposed amendment to the PJM Board for its review and comments;
- (ii) approval of the amendment or new Schedule by the Members Committee, after consideration

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<sup>28</sup> May 12 Stakeholder Letter at 2 at <https://pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20200513-letter-to-pjm-board-on-eol-transmission-planning.ashx?la=en>.

<sup>29</sup> See Attachment A, May 27 Board Letter at 2.

<sup>30</sup> See Attachment A, May 27 Board Letter at 2.



of the comments of the PJM Board; and (iii) approval and/or acceptance for filing of the amendments by the Commission.

Importantly, in this instance, the PJM Board affirmed that “PJM’s role has limitations,”<sup>31</sup> which limitations are: (i) defined by the CTOA entered into between the PJM Transmission Owners and PJM, (ii) clarified in PJM Orders relevant to the planning of criteria included in individual Transmission Owner’s Form No. 715 and adoption of the Transmission Owners’ Tariff Attachment M-3 and Attachment M-4 processes; and (iii) set forth in Commission precedent, such as the California Orders.

Relying on the guidance set forth in the May 27 Board Letter, PJM provides the following detail on its position concerning the CTOA, Commission orders on the planning of Supplemental Projects and Transmission Owners’ end of life decisions, and Commission precedent on asset management activities and projects, to demonstrate why the Joint Stakeholder Proposal contravenes the limits defined by the CTOA and Commission precedent.

## **1. PJM Governing Documents**

### **a. Consolidated Transmission Owners Agreement**

In asserting that the Joint Stakeholder Proposal contravenes the CTOA, PJM relies on the following provisions of the agreement (with emphasis added):

- Under the CTOA, section 4.1.4, the Transmission Owners transferred to PJM the responsibility *to prepare* an RTEP.<sup>32</sup> The Transmission Owners also agreed to provide information reasonably requested by PJM to prepare the RTEP and otherwise cooperate with PJM in such preparation.

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<sup>31</sup> See Attachment A, May 27 Board Letter, Attachment - *Comments on the Stakeholder Proposed Operating Agreement Revisions Provided May 12th* at 4.

<sup>32</sup> The RTEP is defined to mean the plan prepared by PJM pursuant to Schedule 6, of the Operating Agreement for the enhancement and expansion of the Transmission System in order to meet the demands of firm transmission service in the PJM Region. See PJM Tariff, Part I, OATT Definitions – R-S.

- Under the CTOA, section 5.2, the Transmission Owners retained the authority to build, finance, own, acquire, sell, dispose, *retire*, merge or otherwise transfer or convey all or any part of its assets, including any Transmission Facilities. Section 5.2 further clarified that “**PJM shall not challenge any** such sale, disposition, **retirement**, merger, or other action under this Section 5.2.”
- Under the CTOA, section 4.4, the Transmission Owners agreed prior to permanently taking out of service any of its Transmission Facilities within the PJM Region that the Transmission Owner owning such Transmission Facilities would provide PJM with ***reasonable advance notice***.
- Finally, under CTOA, section 5.6 the CTOA further clarified that rights not specifically transferred by the Transmission Owners to PJM pursuant to this Agreement or any other agreement are expressly reserved by the Transmission Owners.

Essentially, through the CTOA the Transmission Owners acknowledged the need to cooperate with PJM in the determination of regional transmission needs through the Regional Transmission Expansion Planning Protocol but did not turn over to PJM replacement decisions, which are local in nature, associated with the retirement of existing infrastructure.<sup>33</sup>

#### **b. Operating Agreement**

Operating Agreement, section 10.4 details the duties and responsibilities to be carried out by PJM under the direction of the President and the PJM Board. In particular, section 10.4(xviii) provides that PJM shall “[p]erform those functions and undertake those responsibilities transferred to it under the [CTOA] including (A) directing the operation of the transmission facilities of the parties to the [CTOA] (B) administering the PJM Tariff, and (C) *administering the Regional Transmission Expansion Planning Protocol* set forth in Schedule 6 to this Agreement.” Prior to today’s Schedule 6, Section 205 Filing the provisions of the Operating Agreement are consistent

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<sup>33</sup> This is consistent with FERC’s Order No. 2000, which established RTOs to plan for *regional* transmission needs rather than establishing them as entities taking over every aspect of planning. Indeed, the “R” in RTO itself denotes RTOs focus as *Regional Transmission Organizations*, not organizations focused on “all” transmission needs. See Regional Transmission Organizations, Order No. 2000, 1996-2000 FERC Stats. & Regs. Preambles ¶ 31,089 at 30,996 (1999) (“Order No. 2000”), *order on reh’g*, Order No. 2000-A, 1996-2000 FERC Stats. & Regs. Preambles ¶ 31,092 (2000), *petitions for review dismissed sub nom.* Pub. Util. Dist. No. 1 v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

with the authority transferred to PJM by the Transmission Owners under the CTOA. PJM does not have the authority to expand its planning responsibilities by amendment to the Operating Agreement without a corresponding grant of authority from the Transmission Owners.

Schedule 6, section 1.5.6(n) provides that certain projects, i.e., Supplemental Projects, may not be required for compliance with the following PJM criteria: system reliability, market efficiency or operational performance. This provision further clarifies that these Supplemental Projects “shall be separately identified in the RTEP and are not subject to approval by the PJM Board.”

While the Joint Stakeholders propose to modify the definition of Supplemental Projects in the Operating Agreement, such revisions are counter to the authority transferred to PJM under the CTOA, as the Transmission Owners did not transfer to PJM the authority to plan for the enhancement and expansion of the Transmission System for anything beyond “demands of firm transmission service in the PJM Region.”<sup>34</sup> Thus, contrary to the Joint Stakeholders position, the inclusion of the definition of Supplemental Projects in the Operating Agreement does not give stakeholders the right to remove project categories from that definition when the resulting reassignment of responsibility for those categories contravenes section 10.4(xviii) of the Operating Agreement.<sup>35</sup>

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<sup>34</sup> *See, supra*, at 10, n. 32.

<sup>35</sup> September 26 Attachment M-3 Order P 13 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 440).

**2. The Joint Stakeholder Proposal Contravenes Commission Rulings Relative to Planning of Transmission Owner Supplemental Projects, Including End of Life Transmission Facilities**

**a. Tariff, Attachment M-3 Supplemental Project Planning Process**

The Commission's Orders accepting the PJM Transmission Owners' Tariff, Attachment M-3 process for the planning of Supplemental Projects, including end of life transmission facilities, made clear that because the Transmission Owners "bear primary responsibility to plan Supplemental Projects . . . it is just and reasonable for the provisions governing the Supplemental Project transmission planning process to be contained within the PJM [Tariff] with the Transmission Owners retaining section 205 filing rights."<sup>36</sup>

The Commission affirmed that holding on rehearing stating that Order No. 890 did not require Transmission Owners who participate in an RTO to allow the RTO to do all planning for local or Supplemental Projects. Rather, "RTO planning processes may focus principally on regional problems and solutions, not local planning issues that may be addressed by individual transmission owners."<sup>37</sup> The Commission elaborated stating that PJM stakeholders' greater control over the planning of RTEP projects does not change the Commission's holding that it is just and reasonable for Transmission Owners to have FPA section 205 filing rights over the matters addressed in Attachment M-3.<sup>38</sup>

The Commission disagreed with arguments that the Supplemental Project planning process is simply a component of the RTEP planning process, stating:

The PJM Transmission Owners have primary responsibility for planning Supplemental Projects and, therefore, retain the filing rights to make modifications to these provisions. Unlike the RTEP transmission projects, for which the PJM

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<sup>36</sup> February 15 Attachment M-3 Order at P 97.

<sup>37</sup> September 26 Attachment M-3 Order at P 13.

<sup>38</sup> September 26 Attachment M-3 Order at P 14.

Transmission Owners have ceded planning to PJM as part of establishing an RTO, the PJM Transmission Owners remain responsible for planning Supplemental Projects, and we find that it is just and reasonable for the PJM Transmission Owners to establish the process for planning these transmission projects and to initiate under section 205 any proposed revisions. Moreover, the PJM Transmission Owners do not have unfettered agency to change the Supplemental Projects planning process at will, as alleged by the rehearing requests; changes to Attachment M-3 take effect only if the Commission finds them to be just and reasonable and not unduly discriminatory or preferential under FPA section 205.<sup>39</sup>

Finally, the Commission denied rehearing and declined any request to direct the PJM Transmission Owners to integrate the Attachment M-3 process into PJM's RTEP planning process. Instead, the Commission determined that:

[T]he PJM Transmission Owners are permitted to retain responsibility for planning Supplemental Projects on their own systems. PJM plays only a small role by reviewing the proposed Supplemental Projects to ensure that they do not have adverse reliability impacts. We therefore do not find that the Supplemental Projects planning process provisions adopted by the Commission are required to be more fully integrated with PJM's RTEP process.<sup>40</sup>

**b. The Commission Recent Order on Planning of CIP-014 Mitigation Projects ("CMPs") under Tariff, Attachment M-4 Affirmed PJM Transmission Owners' Authority over the Planning of Supplemental Projects under Tariff, Attachment M-3**

On March 1, 2020, the Commission issued an Order<sup>41</sup> accepting the PJM Transmission Owners proposal<sup>42</sup> to add a new Tariff, Attachment M-4 setting forth planning procedures that the Transmission Owners propose to apply to a limited subset of Supplemental Projects designed to mitigate the risk associated with critical transmission stations and substations identified as NERC CIP-014-2 Transmission Facilities. The Commission agreed with the PJM Transmission Owners

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<sup>39</sup> *Id.* at P 14 (citations omitted).

<sup>40</sup> *Id.* at P 22.

<sup>41</sup> *Appalachian Power Co.*, 170 FERC ¶ 61,196 (Mar. 17, 2020) ("CMP Order").

<sup>42</sup> *Appalachia Power Co.*, PJM Transmission Owners Proposed Tariff, Attachment M-4, Docket No. ER20-841-000 (Jan. 17, 2020) ("CMP Proposal").

that “[CMPs] comprise a subset of Supplemental Projects and therefore are appropriately planned by the PJM Transmission Owners, rather than PJM.”<sup>43</sup> In support of its ruling, the Commission cited to its September 26 Attachment M-3 Order thus reinforcing that the PJM Transmission Owners retain responsibility for planning Supplemental Projects as well as the filing rights to make modifications to the Supplemental Projects planning provisions in Attachment M-3.<sup>44</sup>

**c. The Joint Stakeholder Proposal Contravenes Commission Orders Relative to Planning and Allocating Costs of RTEP Projects Addressing End of Life Criteria Included in Individual Transmission Owners Form No. 715 Criteria and Cost allocation**

On August 30, 2019, the Commission issued an order on remand<sup>45</sup> rejecting Tariff provisions to allocate projects addressing individual Transmission Owners’ Form No. 715 local planning criteria (“Form 715 Projects”) 100 percent to the zone of the Transmission Owner that filed the Form No. 715. The Form 715 Remand Order also directed PJM to file revised cost allocation assignments to Schedule 12-Appendix to reflect the rejection of the Form 715 cost allocation methodology set forth at Tariff, Schedule 12, section (b)(xv).

Form No. 715 requires Transmission Owners to submit the transmission planning reliability criteria the Transmission Owner uses to assess and test the strength and limits of the transmission system.<sup>46</sup> In its October 29, 2019 compliance filing, PJM submitted revised cost responsibility allocations for Form 715 Projects applying the cost allocation methodology used for reliability projects included in the RTEP.<sup>47</sup> In its order accepting the October 29 Compliance

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<sup>43</sup> CMP Order at P 57.

<sup>44</sup> CMP Order at P 59 (*citing* to September 26 Attachment M-3 Order at PP 13-14).

<sup>45</sup> *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,133 (Aug. 30, 2019) (“Form 715 Remand Order”).

<sup>46</sup> *Id.* at P 3.

<sup>47</sup> *PJM Interconnection, L.L.C.*, Compliance Filing, Docket No. ER15-1344-007 (Oct. 29, 2019) (“October 29 Compliance Filing”).

Filing, the Commission found PJM satisfied the compliance directive by allocating such projects consistent with the Schedule 12 cost allocation methodology for reliability projects.<sup>48</sup>

On August 30, 2019, the Commission also issued a separate order instituting a FPA section 206 proceeding directing PJM to submit revisions to the Operating Agreement to remove the proposal window exemption for Form 715 Projects.<sup>49</sup> In compliance, PJM proposed to remove competitive window exemption for criteria included in a Transmission Owner's Form No. 715, including end of life criteria. Going forward, PJM proposed to treat criteria included in a Transmission Owner's Form No. 715 the same as all other projects addressing reliability criteria.<sup>50</sup>

Thus, the Joint Stakeholders' proposal to remove the planning of facilities under the end of life criteria included in a Transmission Owner's Form No. 715 and, instead, create a new category of facilities for planning only end of life needs is contrary to the Commission's holdings, discussed above, establishing the planning of Form 715 Projects in a manner consistent with (i) reliability criteria and (ii) allocating costs of such projects pursuant to the cost allocation methodologies for reliability projects. Additionally, their proposal fails to address how end of life projects would be allocated costs under the Tariff, Schedule 12.

### **3. Commission Precedent**

#### **a. The California Orders**

As noted by PJM in its request for Commission guidance in its October 7 Compliance Filing for Form 715 Projects, the Commission's "California Orders" are "[a]t the heart of this

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<sup>48</sup> *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,013 at PP 40 - 41 (Apr. 3, 2020).

<sup>49</sup> *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,132 (Aug. 30, 2019) ("August 30 Show Cause Order").

<sup>50</sup> *PJM Interconnection, L.L.C.*, PJM Amended and Restated Operating Agreement, Schedule 6 Compliance Filing, Docket No. ER20-45-000 at 7 (Oct. 7, 2019) ("October 7 Compliance Filing for Form 715 Projects").

debate” because they “clearly describe when a transmission owner’s asset management projects and activities fall within the scope of Order No. 890.”<sup>51</sup>

The California Orders stemmed from two proceedings addressing the applicability of Order No. 890 to the planning of transmission owner local projects that are insulated from the California Independent System Operator Corporation’s (“CAISO”) transmission planning process. In those Orders, the Commission held that to the extent a transmission owner’s asset management projects and activities do not expand the grid, they do not fall within the scope of Order No. 890.<sup>52</sup> The Commission clarified that asset management projects and activities that may result in an incidental increase in transmission capacity (and are not reasonably severable from the asset management project or activity) would not render the asset management project or activity a transmission expansion subject to the transmission planning requirements of Order No. 890.<sup>53</sup> The Commission further stated that in those instances in which a transmission owner’s asset management project or activity may result in an increase in transmission capacity that is not incidental, such as where a transmission owner determines it can address an RTO’s identified transmission need by expanding the scope of an asset management project or activity to result in a capacity increase, such additional work would be incremental to the asset management project or activity and would represent an expansion of the transmission system.<sup>54</sup> Consequently, the California Orders established that only the incremental portion of the project that increased capacity would be subject to the transmission

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<sup>51</sup> *PJM Interconnection, L.L.C.*, Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C. or, in the Alternative, Request for Clarification of the August 30 Orders, Docket No. ER20-45-000 and EL19-61-000 at 6 (Nov. 12, 2019).

<sup>52</sup> *See, e.g.*, PG&E Order at P 66.

<sup>53</sup> *Id.* at P 68.

<sup>54</sup> *Id.* at P 69.



planning requirements of Order No. 890 and would have to be submitted for consideration in the CAISO's transmission planning process through a request window.<sup>55</sup>

On their face, the California Orders are guiding precedent on asset management activities and planning for the PJM Transmission Owners' facilities at issue here. Nonetheless, Joint Stakeholders argue the California Orders are not precedential here because the Commission's had found in those orders that PJM's February 15 Order was not relevant to the question whether asset management projects that do not increase the capacity of the grid must go through an Order No. 890-compliance planning process.<sup>56</sup> To the contrary, the California Orders are directly relevant to the question presented. Disregarding the precedent would be inconsistent with reasoned decision-making. Accordingly, application here of the Commission's holdings in the California Orders will help ensure consistency in the treatment of transmission owners' asset management activities and projects.

#### **IV. THE PJM BOARD'S TIMELY AND DETAILED GUIDANCE TO STAKEHOLDERS ON ITS VIEWS**

As noted above, Mr. O. H. Dean Oskvig, Chair of the Reliability and Security Committee of the PJM Board of Managers, presented to PJM stakeholders in a May 27 Board Letter the Board's views on "the issues surrounding investment in Supplemental Projects, including end of life condition assessments and replacement projects."<sup>57</sup> Recognizing its "responsibility to ensure that PJM is fulfilling its role as the independent regional planner, maintaining compliance with its governing agreements and system reliability into the future,"<sup>58</sup> the PJM Board explained that it

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<sup>55</sup> *Id.* at P 69.

<sup>56</sup> PG&E Rehearing Order at P 8.

<sup>57</sup> Attachment A, May 27 Board Letter at 1.

<sup>58</sup> *Id.* at 2.

“views the execution of its responsibilities in regional planning as requiring the proper exercise of its authority, appropriate transparency, and a commitment to a non-discriminatory independent process, including the consideration of competitive solutions where appropriate.”<sup>59</sup> The PJM Board added that “an appropriate exercise of PJM’s regional planning authority is to identify the intersection of potential end of life conditions with regional planning needs, and to identify and plan the cost-effective and efficient regional solution,” including appropriate use of competitive window processes.<sup>60</sup>

More specifically, the PJM Board advised stakeholders that it considered the PJM proposed solution package on the end-of-life planning issues “a reasonable approach that (i) reflects the guidance provided by FERC in its orders, (ii) respects the authorities defined within the governing documents, and (iii) enhances the existing PJM’s RTEP process.”<sup>61</sup>

The PJM Board attached and included “as part of its response and its comments” on the Joint Stakeholder proposed Operating Agreement revisions “a more detailed response and feedback” document prepared by PJM.<sup>62</sup> That more detailed response explained and emphasized:

- PJM’s role as the independent regional planner, including that “PJM’s role is bounded by numerous regulatory constraints and contractual obligations that define the limits of its authority over the planning process.”
- The proper recognition that “PJM does not have the information or authority to make assessments or determinations regarding asset condition.
- PJM’s support for “transparency regarding end of life determinations and supplemental projects,” including affirmation that “[i]t is a legitimate expansion of PJM’s authority to require that the Transmission Owners clearly delineate their end of life planning criteria to identify end of life needs.”

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

- That “requiring each Transmission Owner to provide advance notice of its potential end of life facilities . . . five years forward at the start of an annual RTEP cycle is appropriate because it aligns with PJM’s planning process;” but “[t]here is little value to PJM to attempt to identify end of life facilities ten years forward because of the uncertainty of any determination made that far ahead;” and “any requirement for such notice, even at the five year mark, must provide the Transmission Owners with the flexibility to add projects, delay retirements or replacements, or otherwise adjust course” in response to changing conditions.
- Given well-established, and recently enhanced, rules on planning for Form 715 projects, “[i]t is not apparent that any changes are needed or appropriate for such Form 715 projects.”
- Given proper recognition of “the rights transferred to PJM and to the rights reserved by the Transmission Owners under the CTOA,” even though there may be “a desire to broaden the category of projects under PJM’s authority by . . . effectively amending the definition of Supplemental Projects,” that amendment “is beyond the scope of the authority transferred to PJM by the PJM Transmission Owners.”
- Within the last year, the Commission has provided “precedential guidance regarding the boundary between asset management activities and transmission planning activities subject to the Order No. 890 planning requirements;” and held that “asset management activities are not ‘planning’ so long as any capacity increase is only incidental to the replacement project.” In the same orders, the Commission made clear that “to the extent PJM’s Supplemental Projects include asset management activities, then the Attachment M-3 process actually provides greater transparency than what FERC ultimately required in California for asset management activities.”
- Finally, that “PJM’s role in regional planning and the intersection of end of life replacement facilities can be further clarified,” such that “[w]here there is an intersection of a candidate with a regional need, it is appropriate for PJM, as the regional planner, to pursue the more efficient and cost-effective solution for the regional need, which may include an end-of-life replacement project.”

## **V. PJM’s OBSERVATIONS REGARDING CERTAIN OF THE SPECIFIC PROPOSALS WITHIN THE JOINT STAKEHOLDER PROPOSAL**

PJM notes that a number of the Operating Agreement revisions were presented for the first time at the May 28, 2020 MRC for endorsement and at the June 18, 2020 Members Committee prior to endorsement. With regard to those particular revisions, as well as the proposal in general, PJM makes the following observations regarding certain of the proposed revisions to the Operating Agreement. PJM offers these observations at the outset of the comment process to encourage

stakeholders to comment on these issues so that the Commission has a complete record to address the Schedule 6, Section 205 Filing, as well as a clear picture of the challenges PJM would face in implementing the proposal were it accepted by the Commission.<sup>63</sup>

First, the Section 205 Filing proposes “binding” EOL Notifications on PJM Transmission Owners’ determinations six years forward declaring their Transmission Facilities “to have reached the end of their operational life.”<sup>64</sup> Such revisions unreasonably restrict Transmission Owners’ flexibility regarding their end of life decisions over their transmission assets. More specifically, this lack of flexibility potentially impedes a Transmission Owner’s ability to modify its end of life decisions due to changes to system conditions or unforeseen circumstances that can impact an assets life. Instead, the proposal assigns the responsibility to PJM to determine whether to escalate or delay replacement of the Transmission Owner’s asset.

Second, the Joint Stakeholder Proposal is silent as to how the Transmission Owner may submit and PJM may address EOL Notifications less than six years forward. For example, it is possible that a Transmission Owner that has not made a final determination to repair or replace an asset six years forward finds in year five or less due to increased monitoring or diagnostic testing as part of the broader asset management program that a facility must be replaced. There is no provision to address that scenario. Similarly, the proposal does not explain how a Transmission Owner submits an EOL Notification for facilities needed in three years or less as an immediate-need reliability project.

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<sup>63</sup> The list is not all inclusive but rather highlights some key areas that would benefit from further discussion or input.

<sup>64</sup> See Schedule 6, Section 205 Filing at Attachment A, Operating Agreement, Section 1, Definitions E-F *proposed*.

Third, while the proposal states that “determination of EOL is still a [Transmission Owner] determination,”<sup>65</sup> the proposed revisions specific to EOL Conditions<sup>66</sup> seem to effectively assign that responsibility to PJM. For example, it appears that PJM could effectively be making asset management determinations if Transmission Owners submit EOL Conditions for their transmission facilities ten years forward that PJM might then include in its RTEP planning process before such facilities are submitted by the Transmission Owner in an EOL Notification.<sup>67</sup>

Fourth, there appears to be an inconsistency between, on the one hand, exempting from the competitive window process EOL Notifications on substation equipment;<sup>68</sup> while on the other hand *not* exempting from the competitive window process EOL Notifications on facilities below 200 kV.<sup>69</sup> In finding both exemptions just and reasonable, the Commission relied upon evidence submitted by PJM which found that based on the PJM data submitted with the respective filings, the projects selected were inevitably designated to the incumbent transmission owner. In including this revision to the exemption for reliability violations on transmission facilities below 200 kV,

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<sup>65</sup> See Joint Stakeholder June 18 MC Presentation entitled Package A for End of Life Transmission Facilities at Slides 2 and 5 found at <https://pjm.com/-/media/committees-groups/committees/mc/2020/20200618/20200618-item-02-1-joint-stakeholders-solution-package-presentation.ashx>. See also OA, Schedule 6, section 1.2 that proposes PJM “may address *any* Transmission Facilities that a Transmission Owner’s EOL Look-ahead Program designates as reaching EOL Condition.”

<sup>66</sup> See Schedule 6, Section 205 Filing at Attachment A, Operating Agreement, Section 1, Definitions E-F *proposed*.

<sup>67</sup> See OA, Schedule 6, section 1.5.6(f) *proposed*.

<sup>68</sup> See *PJM Interconnection, L.L.C.*, Proposed Transmission Substation Equipment Exemption, Docket No. 17-1619-000 at 11 - 12 (accepted by letter Order issued Oct. 11, 2017) (supporting the proposal with PJM’s data confirming that solutions for reliability violations on transmission substation equipment were inevitably resolved with an upgrade to existing transmission substation equipment that must be designated to the incumbent transmission owner).

<sup>69</sup> *PJM Interconnection, L.L.C.*, 156 FERC ¶ 61,132 at P 34 (Aug. 26, 2016) (finding that the PJM data demonstrated that the number of cases in which a reliability violation identified on a below 200 kV facility would be awarded to a nonincumbent is *de minimis* as compared to the total number of reliability violations on transmission facilities operating below 200 kV; and in order to address such circumstances, PJM included by way of compliance revisions to its proposal to ensure the costs of transmission facilities addressing below 200 kV reliability violations are not allocated to more than one transmission zone until the need is subject to a competitive proposal window). See *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,124 (Feb. 2, 2017) (accepting revisions submitted in compliance with the August 26 Order).

the Joint Stakeholders have not demonstrated how the results would be different by adding all facilities identified at their end of useful life.

Fifth, it is unclear how PJM will select an end of life replacement facility under the category EOL Notification if the replacement facility is needed only to address an individual Transmission Owner's local planning needs such as those associated with maintaining customer service, new retail load additions, specific customer reliability standards, CIP-014 mitigation projects or accommodating local operational needs. Local planning associated with the sub-transmission system generally addresses the needs specific to the type or size of the customer in that locale. The Joint Stakeholder Proposal effectively unravels the Commission's clear direction that local transmission planning is to be undertaken by the transmission owners and not by the RTO.<sup>70</sup>

Sixth, because the Joint Stakeholders propose to carve out a separate category of EOL Notification driving the need for a solution and the fact that Joint Stakeholder Proposal appears to separate that driver from reliability needs, there is no indication how such projects would be cost allocated pursuant to Tariff, Schedule 12.

Seventh, under the Operating Agreement, Schedule 6, section 1.5.10(e), the actual costs of a Multi-Driver Project are apportioned to the different components (reliability-based enhancement or expansion, EOL Notification-based enhancement or expansion, Economic-based Enhancement or Expansion, and/or Public Policy Requirement) based on initial estimated costs of the project consistent with the cost allocation methodology set forth in Tariff, Schedule 12. There is no explanation in this proposal as to how the costs of a Multi-Driver Project will be apportioned to

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<sup>70</sup> September 26 Attachment M-3 Order at P 13.

EOL Notification-based enhancement or expansion if a separate cost allocation methodology is not included in Tariff, Schedule 12 for that EOL Notification component.<sup>71</sup>


Eighth, the Joint Stakeholder Proposal is silent as to how PJM and the PJM Transmission Owners should address the transition should the Commission accept the proposed revisions. For example, there will be EOL Notifications that do not comport with this revision and without a transition provision, this proposal is incomplete.

## **VI. CONCLUSION**

WHEREFORE as the public utility and the independent RTO for the PJM Region, PJM respectfully submits these comments for Commission consideration in this docket.

Respectfully submitted,

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Date: July 2, 2020

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<sup>71</sup> See Schedule 6, Section 205 Filing at Attachment A, Operating Agreement, Schedule 6, section 1.5.10(e), *proposed*.

## **Attachment A**

**May 27 Letter by the Chair of the Reliability and  
Security Committee on behalf of the PJM Board  
("May 27 Board Letter")**





2750 Monroe Blvd  
Audubon, PA 19403-2497

Dean Oskvig  
Chair, Board Reliability & Security Committee

May 27, 2020

**VIA ELECTRONIC MAIL**

Jolene M. Thompson  
President/CEO  
American Municipal Power, Inc.

Brian Vayda  
Executive Director  
Public Power Association of New Jersey

Marcus Harris  
President/CEO  
Old Dominion Electric Cooperative

Sandra Mattavous-Frye  
People's Counsel  
Karen R. Sistrunk  
Deputy People's Counsel

Sharon K. Segner  
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The Delaware Division of the Public Advocate

Alice Wolfe  
General Manager  
Blue Ridge Power Agency

Patrick E. McCullar  
President & CEO  
Delaware Municipal Electric  
Corporation, Inc.

**Re: End of Life (EOL) Conditions and Replacement Projects**

Dear Stakeholders:

Thank you for your letter of May 12<sup>th</sup> presenting your concerns and vision regarding the management of end of life conditions and replacement projects. Thank you also for sharing your proposal and Operating Agreement changes. The PJM Board of Managers appreciates the significant time and effort expended by stakeholders in considering these issues.

The PJM Board has been aware of, and engaged on, the issues surrounding investment in Supplemental Projects, including end of life condition assessments and replacement projects. Indeed, the PJM Board has been closely involved with the issues surrounding Supplemental Projects since 2016, including the prior senior task force and the proceedings before the Federal Energy Regulatory Commission.

Such matters are regularly addressed before the Board Reliability Committee (recently rechartered as the Board Reliability & Security Committee) that has been delegated primary responsibility for these topics, and are regularly reported to the full Board. As stated in the PJM Board letter cited in your correspondence, the PJM Board views the execution of its responsibilities in regional planning as requiring the proper exercise of its authority, appropriate transparency, and a commitment to a non-discriminatory independent process, including the consideration of competitive solutions where appropriate.<sup>1</sup> As noted therein, the PJM Board believes that, in some circumstances, PJM may be in the best position to determine the appropriate regional solution to replace a facility that has been identified as nearing its end of life.

PJM's end of life solution package presented at the recent meetings of the Markets & Reliability Committee appropriately applies PJM's authority. Specifically, the PJM Board supports the conclusion that an appropriate exercise of PJM's regional planning authority is to identify the intersection of potential end of life conditions with regional planning needs, and to identify and plan the cost-effective and efficient regional solution, utilizing a competitive window process where appropriate. The PJM end of life solution package takes a reasonable approach that (i) reflects the guidance provided by FERC in its orders, (ii) respects the authorities defined within the governing documents, and (iii) enhances the existing PJM's Regional Transmission Expansion Plan (RTEP) process. PJM has prepared a more detailed response and feedback to your proposed Operating Agreement revisions, and the PJM Board is providing that feedback as part of its response and its comments on the proposed Operating Agreement revisions.

These are complicated issues and it is apparent that there is not an alignment among the stakeholders and many of the Transmission Owners who are parties to the Consolidated Transmission Owners Agreement. We expect that these issues will be presented to the Commission for resolution in the near future. The PJM Board recognizes its responsibility to ensure that PJM is fulfilling its role as the independent regional planner, maintaining compliance with its governing agreements and system reliability into the future.

Sincerely,

*Dean Oskvig*

Dean Oskvig  
Chair of the Board Reliability & Security Committee

Attachment

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<sup>1</sup> See the October 4, 2019 Letter to the PJM Members Committee from Dean Oskvig, Chair-Board Reliability Committee (available at: <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20191004-pjm-board-reliability-committee-chair-dean-oskvig-regarding-supplemental-projects.ashx?la=en>).

## **Attachment**

### **Comments on the Stakeholder Proposed Operating Agreement Revisions Provided May 12th**

In your letter, you inquire how PJM, as the independent regional transmission organization (RTO), will carry out its regional planning functions in planning the “Grid of the Future.” In the relatively narrow context of end of life replacement projects, this question cannot be addressed without first considering PJM’s role as the regional planner and its core functions.

PJM’s primary planning responsibility is to provide for the safe and reliable operation of the transmission system. In addition to compliance with reliability standards, PJM’s regional planning in this context means planning to serve the native load on PJM’s system, as well as any other firm transmission service obligations. PJM’s RTEP process was designed to ensure that the *expansion* of the transmission system to deliver power to its customers occurs in an efficient, reliable, and non-discriminatory manner. Indeed, a principal focus of PJM’s RTEP is ensuring that the needs of municipalities, cooperatives, and other transmission-dependent utilities are considered on a level playing field with the needs of the larger investor-owned utilities. PJM’s RTEP process has been a tremendous success in this regard.

In ensuring non-discriminatory open access transmission service, PJM must plan for new transmission service requests. Attendant to that obligation, and as part of its commitment to ensure a robust, competitive, and non-discriminatory power market, PJM is charged with the planning associated with the processing of generator (and merchant transmission) interconnection service requests. Finally, among other things, PJM is also charged with enabling market-driven expansions to prevent and relieve congestion, accommodating state-agreement projects, and interregional planning. These regional planning responsibilities provide PJM with the opportunity to utilize the economy of scale provided by PJM’s large regional footprint, leading to more efficient and cost-effective transmission planning. These are the nature of the “planning” responsibilities conferred to PJM. But PJM did not assume all of the Transmission Owner operation, maintenance or planning responsibilities – and it is the interplay of PJM’s regional transmission planning responsibilities and the Transmission Owner reserved responsibilities that make these issues so complex.

#### ***I. PJM’s Planning Authority as the Independent Regional Planner***

PJM’s regional planning role is partially defined in the FERC’s regulations for RTOs,<sup>2</sup> in the Operating Agreement,<sup>3</sup> and in the Consolidated Transmission Owners Agreement (CTOA) wherein the PJM Transmission Owners transfer to PJM the responsibility to prepare a regional transmission expansion plan.<sup>4</sup> The RTEP is defined in the Operating Agreement as the plan prepared by PJM for the expansion

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<sup>2</sup> 18 C.F.R. § 35.34(k)(7) (2019).

<sup>3</sup> See Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement), Schedule 6.

<sup>4</sup> Consolidated Transmission Owners Agreement (CTOA), Rate Schedule FERC No. 42, section 4.1.4.

and enhancement of the transmission system *to meet the demands for firm transmission service* within its region.<sup>5</sup>

PJM's role has limitations. The Transmission Owners were explicit in the CTOA that any rights not specifically transferred by the Transmission Owners to PJM therein were expressly reserved by the Transmission Owners.<sup>6</sup> Thus, PJM's role is bounded by numerous regulatory constraints and contractual obligations that define the limits of its authority over the planning process.

## ***II. Determinations of Transmission Asset Condition***

We are appreciative that the stakeholder proposal recognizes that PJM does not have the information or authority to make assessments or determinations regarding asset condition. The physical operation and maintenance of all transmission facilities was reserved to the Transmission Owners, and clear obligations were placed upon the Transmission Owners to perform these responsibilities in accordance with Good Utility Practice.<sup>7</sup> All physical inspections, condition assessments, and asset condition determinations are the domain of the Transmission Owners. Importantly, the Transmission Owners explicitly reserved the right to determine when their facilities have reached their end of useful life.<sup>8</sup>

## ***III. Criteria Used to Assess End of Life Conditions***

Notwithstanding the foregoing, PJM is supportive of transparency regarding such end of life determinations and replacement projects. Currently, a significant amount of transparency is provided regarding end of life replacement project determinations through the recently adopted Attachment M-3 process for Supplemental Projects, including a review of the assumptions, the need, and the solution.<sup>9</sup> Indeed, in the California orders discussed further herein, FERC observed that, to the extent Supplemental Projects included projects that were identified as "asset management activities," the level of transparency that was being provided in PJM for Supplemental Projects through the Attachment M-3 process exceeded that which would be required by FERC for the California utilities.<sup>10</sup> To the extent that certain end of life replacement projects are addressed through a Transmission Owner's FERC Form 715 criteria, those projects are addressed as baseline projects under PJM's Operating Agreement with appropriate transparency.

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<sup>5</sup> Operating Agreement, Schedule 6, section 1.1 (as well as to support competition). Hand-in-hand with preparing the RTEP is the responsibility to include in the models used by PJM all system changes to ensure open, non-discriminatory access to the transmission system. And it is important that those models be as accurate as reasonably possible to support the processing of transmission service requests, including generator and merchant transmission interconnection service requests.

<sup>6</sup> CTOA, section 5.6.

<sup>7</sup> CTOA, section 4.5; *see also* CTOA, section 4.1.4.

<sup>8</sup> CTOA, sections 4.4 and 5.2

<sup>9</sup> Tariff, Attachment M-3, sections 2 and 3.

<sup>10</sup> *Southern Cal. Edison Co., et al.*, 164 FERC ¶ 61,160 (2018) (SoCal Edison Order), *order on reh'g*, 168 FERC ¶ 61,170 (Sept. 19, 2019) (SoCal Edison Order on Rehearing); *Cal. Pub. Util. Comm'n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161 (2018) (PG&E Order), *order on reh'g*, 168 FERC ¶ 61,171 (Sept. 19, 2019) (PG&E Order on Rehearing) (collectively, the California Orders).

However, we believe more could be done with respect to the Transmission Owners providing transparency regarding how they assess their assets and make end of life determinations. Thus, PJM is supportive of a requirement that each Transmission Owner make available, in writing, its criteria for making an end of life determination and, that each Transmission Owner review such criteria surrounding such determinations annually. PJM should not assume the role of specifying what the criteria should be, or otherwise providing guidelines to the Transmission Owners.

It is a legitimate expansion of PJM's authority to require that the Transmission Owners clearly delineate their end of life planning criteria to identify end of life needs. Specifically, in connection with its preparation of the RTEP, PJM has the general authority to request planning criteria from the Transmission Owners. Under the terms of the CTOA, the Transmission Owners have explicitly agreed to provide information reasonably requested by PJM to prepare the RTEP and to otherwise cooperate with PJM in the preparation of the RTEP.<sup>11</sup> This transfer of authority was memorialized in the Operating Agreement. Specifically, Schedule 6 of the Operating Agreement requires the Transmission Owners to provide to PJM in the form and manner specified by PJM all criteria, assumptions and models used by the Transmission Owners, including those used to develop Supplemental Projects.<sup>12</sup>

Additionally, FERC made clear in its recent Show Cause Orders relative to the Transmission Owners' Supplemental Projects that, while the Transmission Owners' Tariff, Attachment M-3 process and the PJM Operating Agreement are adequate to ensure compliance with Order No. 890's transparency requirements, the Transmission Owners must make available the criteria guiding their decisions.<sup>13</sup> Thus, while PJM does not want the role of specifying what the criteria should be, nor did FERC assign that responsibility to PJM, PJM has the authority to require that the Transmission Owners provide their criteria and explain their programs.

#### **IV. Advance Notice of End of Life Candidates**

Although PJM does have the ability to look further forward, given the lack of material load growth, PJM plans system improvements five years forward and uses the resulting five-year model generated from its RTEP process to evaluate service requests and any resulting necessary improvements. Thus, requiring each Transmission Owner to provide advance notice of its potential end of life facilities (i.e., "candidates") five years forward at the start of an annual RTEP cycle is appropriate because it aligns with PJM's planning process. There is little value to PJM to attempt to identify end of life facilities ten years forward because of the uncertainty of any determination made that far ahead and, such an advance notice would not be utilized in PJM's five-year forward planning process. Furthermore, any requirement for such notice, even at the five year mark, must provide the Transmission Owners with the flexibility to add projects, delay retirements

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<sup>11</sup> CTOA, section 4.1.4.

<sup>12</sup> Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. Schedule 6, section 1.5.4(a). Moreover, the Operating Agreement, Schedule 6, section 1.5.4(e) requires PJM to provide access through its website to all of the Transmission Owner's criteria, assumptions and models used by the Transmission Owners in their internal planning processes, including the development of Supplemental Projects.

<sup>13</sup> *Monongahela Power Co., et al.*, 164 FERC ¶ 61,217 at P 30 (Sept. 26, 2018) (September 26 Order on Rehearing and Compliance).

or replacements, or otherwise adjust course due to changes in condition assessments, unforeseen conditions, changes in circumstances (e.g., weather/wind damage), or other developments. And Transmission Owners also need the flexibility to both expedite replacement projects to avoid run-to-failure scenarios and to delay replacement projects when condition assessments indicate that the continued operation of the facilities can be done without jeopardizing reliability.

#### **V. End of Life Replacement Projects – Form 715**

Under the PJM RTEP planning processes, the determination of when and how to replace facilities at their end of useful life can occur in two ways.<sup>14</sup> One occurs when a Transmission Owner chooses to include end of life replacement criteria in its FERC Form 715.<sup>15</sup> Under the Operating Agreement, because FERC Form 715 is designed to set forth a Transmission Owner's *planning* criteria, PJM includes projects identified by Transmission Owners as Form 715 projects in its planning process and, historically, has treated projects stemming from Form No. 715 criteria as baseline reliability projects.<sup>16</sup> And, as a result of a recent order issued by FERC,<sup>17</sup> PJM will have a role in planning Form 715 projects, and such projects may be subject to its competitive planning process (unless certain exemptions apply) and to regional cost-allocation. It is not apparent that any changes are needed or appropriate for such Form 715 projects.

#### **VI. End of Life Replacement Projects – Supplemental Projects**

The other category or type of end of life replacement projects can be found in Supplemental Projects. Supplemental Projects are defined in the Operating Agreement as any transmission expansion or enhancement that is not required for compliance with the PJM planning criteria. While the placement of this definition in the Operating Agreement may suggest an ability for the stakeholders to modify this definition, the definition is closely tied back to the rights transferred to PJM and to the rights reserved by the Transmission Owners under the CTOA. Indeed, this definition has served as the foundation for the boundary between PJM's regional planning role and the individual Transmission Owners' reserved

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<sup>14</sup> End of life replacement projects initiated by a Transmission Owner that do not enhance or expand the transmission system could be conducted outside of both the Form No. 715 and Supplemental Project processes.

<sup>15</sup> FERC Form 715 requires "submission of transmission planning reliability criteria that the Transmission Owner uses to assess and test the strength and limits of its transmission system."

<sup>16</sup> See *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,013 (Apr. 3, 2020) (Order on Compliance supporting PJM's reassignment of Form 715 projects using reliability cost allocation methodology)..

<sup>17</sup> See *PJM Interconnection, L.L.C.*, 170 FERC ¶ 61,049 at P 2 (Jan. 23, 2020) (accepting PJM's revisions to its Operating Agreement to eliminate the exemption from the competitive proposal window process for transmission projects addressing Form 715 criteria); see also *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,133 at P 34 (August 30, 2019) (accepting PJM Transmission Owners removal of the Form 715 cost allocation methodology from Tariff, Schedule 12).

authority. This authority was recognized in Order No. 1000,<sup>18</sup> as well the Commission's Orders relative to the creation of the Transmission Owners' Attachment M-3 process.<sup>19</sup> While there may be a desire to broaden the category of projects under PJM's authority by creating a new category of projects and thus effectively amending the definition of Supplemental Projects, such an amendment is beyond the scope of the authority transferred to PJM by the PJM Transmission Owners.<sup>20</sup> Moreover, these issues were recently litigated before FERC in the Attachment M-3 dockets and FERC rejected the attempts to move the planning of Supplemental Projects under PJM's RTEP processes and determined that the Attachment M-3 process provides the appropriate level of transparency to satisfy Order No. 890 requirements.<sup>21</sup> In so doing, FERC reaffirmed Supplemental Projects as being Transmission Owner directed.

## **VII. Asset Management Activities**

In addition, the two California Orders involving California utilities provide precedential guidance regarding the boundary between asset management activities and transmission planning activities subject to the Order No. 890 planning requirements.<sup>22</sup> In those orders, FERC offered clarity as to the meaning and characterization of asset management activities and projects. Importantly, FERC determined that asset management activities are not "planning" so long as any capacity increase is only incidental to the replacement project.<sup>23</sup> Some stakeholders disagree as to the relevance of the California orders to the PJM paradigm, but we believe that FERC was simply observing that Supplemental Projects is a broader

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<sup>18</sup> *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 at P 64 (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) clarifying that:

In some regions, transmission facilities not selected for purposes of regional or interregional cost allocation nonetheless may be in a regional transmission plan for informational purposes, and the presence of such transmission projects in the regional transmission plan does not necessarily indicate an evaluation whether such transmission facilities are more efficient or cost-effective solutions to a regional transmission need . . . [and] we do not intend to disturb regional practices with regard to other transmission facilities that also may be in the regional transmission plan.

See also *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 65 (Mar. 22, 2013) (accepting PJM's Order No. 1000 Compliance Filing, including: "Supplemental Projects, which are projects that are not identified by PJM as necessary for reliability or economic reasons, but may address local planning criteria or public policy requirements . . . that may be included in the RTEP for information purposes and its costs are not eligible for cost allocation under Schedule 12.").

<sup>19</sup> See *Monongahela Power Co.*, 162 FERC ¶ 61,129 (Feb. 15, 2018) (accepting in part and requiring further compliance filing relative to Tariff, Attachment M-3 provision); see also September 26 Order on Rehearing and Compliance at P 37 (finding Attachment M-3 and the Operating Agreement, as revised, adequate to ensure compliance with Order No. 890).

<sup>20</sup> Arguments that Transmission Facilities turned over to PJM's operational control are subject to PJM's planning authority are without basis. Under the CTOA, the Transmission Owners explicitly separated the authority transferred to PJM relative to the operational control of their assets and the authority transferred to PJM relative to planning the transmission system.

<sup>21</sup> See, e.g., *Appalachian Power Co., et al.*, 170 FERC ¶ 61,196 at P 59 (Mar. 17, 2020) (citing to September 26 Order on Rehearing and Compliance at PP 13, 14, and 22 stating "[i]n *Monongahela Power Co.*, the Commission made clear that the PJM Transmission Owners retain responsibility for planning Supplemental Projects, and therefore 'retain the filing rights to make modifications to [the Supplemental Project planning] provisions' in the Tariff."

<sup>22</sup> See SoCal Edison Order at P 55 and PG&E Order at P 37:

Whether or not other transmission planning regions are considering asset management projects and activities through their regional transmission planning process does not, in and of itself, determine whether Order No. 890 requires them to do so.

<sup>23</sup> In the stakeholder process, PJM proposed to clarify the definition of incidental: "*Incidental expansion is defined as those achieved by advancements in technology and/or replacements consistent with current TO design standards, industry standards, codes, laws or regulations.*"

category than asset management activities, including replacement projects that increase the capacity of the grid beyond an incidental increase.<sup>24</sup> The question before FERC in the show cause orders related to Attachment M-3 was simply whether Supplemental Projects were being treated consistent with PJM's Order No. 890-compliant transmission planning process.<sup>25</sup> As recognized by FERC in the *CPUC v. PG&E* orders, to the extent PJM's Supplemental Projects include asset management activities, then the Attachment M-3 process actually provides *greater* transparency than what FERC ultimately required in California for asset management activities.<sup>26</sup>

### ***VIII. Intersection of Supplemental Projects and Regional Needs***

PJM's role in regional planning and the intersection of end of life replacement facilities can be further clarified. Specifically, PJM has proposed reviewing the five-year forward candidate list and comparing that list with any identified regional needs. Where there is an intersection of a candidate with a regional need, it is appropriate for PJM, as the regional planner, to pursue the more efficient and cost-effective solution for the regional need, which may include an end-of-life replacement project. In those cases where there is an intersection, the solution may be different than a Transmission Owner-identified replacement project and, accordingly, would be part of the baseline regional solution.

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<sup>24</sup> In the California Orders, the Commission observed that PJM's Supplemental Projects provided greater transparency than was required under Order No.890. See SoCal Edison Order on Rehearing at P 57 and PG&E Order on Rehearing at P 57.

<sup>25</sup> See *Southern California Edison Co.*, 168 FERC ¶ 61,170 at P 54 (Sept. 19, 2019).


<sup>26</sup> *Id.*



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document on those parties on the official Service List compiled by the Secretary in these proceedings.

Dated at Audubon, Pennsylvania this 2<sup>nd</sup> day of July, 2020.

/s/   
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