



the framework set forth in Attachment M-3 of the PJM Open Access Transmission Tariff (“Tariff”) (the “Attachment M-3 Process”), which has been repeatedly accepted by the Commission<sup>4</sup> and affirmed by the U.S. Court of Appeals of the D.C. Circuit as recently as the date of this filing.<sup>5</sup> The Complaint also proposes several sweeping remedies, principally aimed at existing regulatory processes. Nowhere in the Complaint, however, does the OCC substantiate that either PJM or the PJM Transmission Owners have violated the PJM Tariff and specifically, the Attachment M-3 Process, or the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”).

Any regulatory changes to the Commission’s processes associated with reviewing projects not ordered by the Regional Transmission Organization (“RTO”) or reviewed in the RTO planning process for purposes of cost allocation are appropriately addressed on a generic basis as they impact far more transmission owners and customers than just those in PJM. As demonstrated below, through Attachment M-3, PJM, the PJM Transmission Owners and PJM stakeholders, as well as this Commission, have significantly expanded the degree of transparency and justification provided for Supplemental Projects. The more sweeping reforms that the OCC seeks are issues not limited to PJM as detailed below, making a one-off RTO-specific solution particularly inappropriate and ineffective to address the concern raised.<sup>6</sup>

Accordingly, and for the reasons set forth below, PJM respectfully requests that the Commission deny the Complaint.

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<sup>4</sup> See Section I.B, *infra*.

<sup>5</sup> *Am. Municipal Power, Inc. v. FERC*, Case No. 20-1449, Opinion, slip op. at 16, 22 (U.S. Nov. 17, 2023) (affirming that the PJM Transmission Owners PJM transmission owners remain responsible for planning Supplemental Projects).

<sup>6</sup> For example, the OCC seeks creation of an Independent Transmission Monitor in the PJM region to review transmission costs of Supplemental Projects in Ohio. But this issue has already been thoroughly briefed and is awaiting a Commission decision in several dockets, making this proposed solution particularly inappropriate to impose on one State in PJM alone. See *infra* Section I.F.

## I. ANSWER

### A. The OCC Seeks Changes to the Broader Regulatory Oversight Process, but Fails to Demonstrate that PJM Has Violated its Tariff or That PJM's Existing Process Is Per Se Unjust and Unreasonable

Consistent with Federal Power Act (“FPA”) section 206, the OCC has the burden to prove its case that any rates, charges, classification, rule, regulation, practice or contract is unjust, unreasonable, unduly discriminatory or preferential.<sup>7</sup> The Commission and courts have consistently recognized that a complainant must do more than make unsubstantiated allegations.<sup>8</sup> Rather, consistent with Commission precedent, in order to sustain its burden, a complainant must first “demonstrate, on the basis of substantial evidence,” that the challenged tariff provisions are unjust and unreasonable.<sup>9</sup> If – and only if – a complainant puts forward sufficient evidence that the existing tariff provisions are unjust and unreasonable may a FPA section 206 complaint case proceed to the second step in which the Commission establishes a just and reasonable remedy “to be thereafter observed and in force.”<sup>10</sup>

The OCC’s primary basis for arguing that provisions of the PJM Tariff and Operating Agreement are unjust and unreasonable is its claim that there is insufficient regulatory oversight

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<sup>7</sup> 16 U.S.C. § 824e(b).

<sup>8</sup> *Interstate Power & Light Co. v. ITC Midwest, LLC*, 135 FERC ¶ 61,162 at P 18 (2011). *See also* *UNITIL Power Corp. v. Public Service Co. of New Hampshire and Northeast Utilities*, 62 FERC ¶ 61,055, at 61,287 (1993) (“The question we must answer at this stage of the proceeding is whether UNITIL has presented sufficient evidence of [Public Service of New Hampshire’s] costs so that we may assess whether a trial-type, evidentiary hearing is warranted.”). *See also* *Houlton Water Company, et al. v. Maine Public Service Co.*, 55 FERC ¶ 61,037, at 61,110 (1991) (“Maine Public correctly states that a customer seeking a section 206 investigation of existing rates *must provide some basis* to question the reasonableness of the overall rate level, taking into account changes in all cost components and not just ...”) (emphasis added).

<sup>9</sup> *E.g.*, *Nantahala Power & Light Co.*, 19 FERC ¶ 61,152, at 61,276 (1982); *Cal. Mun. Utils. Ass’n v. Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,315 at PP 69-72 (2009) (“*Nantahala Power & Light Co. Order*”).

<sup>10</sup> *Cities of Bethany, Bushnell, Cal. v. FERC*, 727 F.2d 1131, 1143 (D.C. Cir. 1984) (“[U]nder Section 206, FERC itself may establish the just and reasonable rate, provided that it first determines that a rate set by a public utility is unjust, unreasonable or unduly discriminatory.”); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 353 (1956); *Cal. Indep. Sys. Operator Corp.*, 111 FERC ¶ 61,337, P 27 (2005) (current rates “must first be found to be unjust, unreasonable or unduly discriminatory before alternative proposals are ripe for consideration”).

with respect to the local transmission costs paid by consumers in Ohio.<sup>11</sup> Mere assertions that spending on Supplemental Projects in Ohio have increased, and that there is “inadequate oversight” to review the need, prudence and cost-effectiveness of such projects, do not amount to substantial evidence that the Commission-approved Attachment M-3 Process is no longer just and reasonable. The OCC makes no attempt to show that the costs associated with any Supplemental Project were imprudent, or how the total amount spent on Supplemental Projects has led to unjust and unreasonable rates making this issue ill-suited to the complaint process. A broad brush attack that costs are “too high,” without pleading specific facts to support its assertion that costs of specific approved projects are unjust and unreasonable, simply does not satisfy the burden of proof required under FPA section 206 and leaves the Commission with little to work with in the way of a record upon which it can craft a specific remedy.

The OCC has not submitted any evidence – let alone substantial evidence – demonstrating that PJM’s Governing Documents are unjust and unreasonable, which is a prerequisite for an FPA section 206 complaint. Accordingly, PJM respectfully requests that the Commission deny the Complaint. Instead, any consideration of the OCC’s issues should be addressed, if at all, on a more generic basis as issues with the level of regulatory oversight of certain projects and the rate setting process utilized by the Commission are not issues limited to the PJM region. A single RTO solution aimed at such projects in PJM would only work to drive investors to fund projects in other regions but do little to address the degree of regulatory oversight nationwide on such projects or the need to enhance transmission infrastructure across the country.

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<sup>11</sup> See, e.g., Complaint at 8, 17, 34, 38.

## **B. The Complaint is a Collateral Attack on the Commission’s Orders Accepting the Attachment M-3 Process**

The Commission has explained that a “collateral attack is ‘[a]n attack on a judgment in a proceeding other than a direct appeal’ and is generally prohibited.”<sup>12</sup> The Commission has further stated that “[d]isfavor for collateral attacks is embodied in the doctrine of collateral estoppel: once a court or adjudicative body has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.”<sup>13</sup> The Complaint is a collateral attack on prior Commission orders accepting the Attachment M-3 process and should therefore be denied.

In particular, the OCC argues that the PJM Tariff and Operating Agreement are unjust and unreasonable because they do not “provide any oversight of the need, prudence and cost-effectiveness of Ohio local transmission projects despite the requirement that local transmission planning be part of Order No. 890 requirements.”<sup>14</sup> Order No. 890<sup>15</sup> required all transmission providers to develop a transmission planning process that, among other things, satisfied nine transmission planning principles designed to reduce “opportunities for undue discrimination in transmission planning.”<sup>16</sup> As relevant here, transmission providers were directed to provide customers and other stakeholders the opportunity to participate fully in the transmission planning

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<sup>12</sup> *New England Conference of Pub. Utilities Commissioners, Inc. v. Bangor Hydro-Electric Co.*, 135 FERC ¶ 61,140 at P 27 (2011).

<sup>13</sup> *Id.* at P 28, n.42 (citing *Oregon v. Guzek*, 546 U.S. 517, 526-27 (2006) (“The law typically discourages collateral attacks . . . .”) (citing *Allen v. McCurry*, 449 U.S. 90, 94 (1980) (“As this Court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.”)).

<sup>14</sup> Complaint at 10.

<sup>15</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, at P 444, *order on reh’g*, Order No. 890-A, 121 FERC ¶ 61,297 (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).

<sup>16</sup> Order No. 890 at P 425.

process by facilitating their timely and meaningful input and participation, particularly at the early stages, in the development of transmission plans.<sup>17</sup>

The PJM Transmission Owners' Attachment M-3 Process stems from a Commission-established proceeding<sup>18</sup> to determine whether the PJM Transmission Owners were complying with their Order No. 890 obligations with respect to local planning of Supplemental Projects. In conjunction with the PJM Transmission Owners' response to the Show Cause Order, which demonstrated that the process for planning Supplemental Projects was consistent with Order No. 890, the PJM Transmission Owners and PJM jointly submitted revisions to the PJM Tariff to include a new Attachment M-3, and revisions to Schedule 6 of the Operating Agreement to implement the Attachment M-3 Process with respect to Supplemental Projects.<sup>19</sup> The new Attachment M-3 Process provided additional detail and transparency regarding the PJM Transmission Owners' process for planning Supplemental Projects.<sup>20</sup>

The Commission ultimately accepted the PJM Transmission Owners' Attachment M-3 Process as compliant with Order No. 890, finding that it provides "sufficient transparency to stakeholders regarding the basic criteria, assumptions, and data that underlie their transmission system plans and ensure[s] appropriate lines of communication between stakeholders and the PJM [TOs]."<sup>21</sup> Additionally, in response to the PJM Transmission Owners' most recent changes to

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

<sup>18</sup> *Monongahela Power Co.*, 156 FERC ¶ 61,134 (2016) ("Show Cause Order").

<sup>19</sup> *PPL Electric Utilities Corp., et al.*, Proposed Tariff Revisions in Response to Show Cause Order, Docket No. ER17-179-000, at 2 (Oct. 25, 2016) ("Attachment M-3 Filing"). As further discussed below, in August 2020, the Commission accepted revisions to Attachment M-3 to (i) identify and include Asset Management Projects within the planning procedures of Attachment M-3, and (ii) include procedures for the identification and planning for end-of-life ("EOL") needs. *See infra*, n.14.

<sup>20</sup> Attachment M-3 Filing at 2.

<sup>21</sup> *Monongahela Power Co.*, 164 FERC ¶ 61,217, at P 30 (2018) ("Attachment M-3 Order").

Attachment M-3,<sup>22</sup> which extended the Attachment M-3 Process to Asset Management Projects and certain end-of-life projects, the Commission found that those revisions “maintain the existing just and reasonable Attachment M-3 process and provide greater transparency into certain planning activities.”<sup>23</sup> The Commission further stated with respect to the Attachment M-3 Revisions:

In addition to expanding the applicability of the existing Attachment M-3 to include Asset Management Projects, the proposed revisions also include a process for the identification and planning for EOL Needs. Significantly, the proposed revisions provide for coordination of EOL Needs with the PJM [Regional Transmission Expansion Plan (“RTEP”)] planning criteria needs. This provides PJM and stakeholders with increased opportunities to review and comment on EOL Need transmission projects, and thus provides greater transparency.<sup>24</sup>

In short, the Commission has previously found that the Attachment M-3 Process complies with the Order No. 890 requirements.<sup>25</sup> The OCC’s claims to the contrary are a collateral attack on these Commission orders and should be rejected.

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<sup>22</sup> *Am. Transmission Sys., Inc.*, Amendments to Attachment M-3 to the PJM Tariff of the PJM Transmission Owners, Docket No. ER20-2046-000 (June 12, 2020) (“Attachment M-3 Revisions”).

<sup>23</sup> *Am. Transmission Sys., Inc.*, 172 FERC ¶ 61,136, at P 88 (2020), *reh’g denied*, 173 FERC ¶ 62,021 (2020).

<sup>24</sup> *Id.* at P 88.

<sup>25</sup> More recently, in the pending proceeding in which the Commission proposes revisions to long-term regional transmission planning processes, the Commission expressed concern that, broadly speaking, local transmission planning processes may not comply with Order No. 890. *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, Notice of Proposed Rulemaking*, 179 FERC ¶ 61,028, 87 Fed. Reg. 26,504, at P 398 (May 4, 2022) (“NOPR” or “LTRTP NOPR”) (stating that “local transmission planning processes may lack adequate provisions for transparency and meaningful input from stakeholders, and that regional transmission planning processes may not adequately coordinate with local transmission planning processes”). In particular, the Commission was concerned that local transmission planning processes may lack adequate provisions for transparency and meaningful input from stakeholders, and that regional transmission planning processes may not be adequately coordinated with local transmission planning processes. In order to address these concerns, the Commission proposed that transmission providers be required to adopt an iterative stakeholder meeting process that largely replicates the PJM Transmission Owners’ currently-effective Attachment M-3 Process. *See id.* at PP 400-415.

### **C. Issues Raised in the Complaint Are Pending in Several Other Rulemaking Dockets**

As the OCC acknowledges,<sup>26</sup> several issues raised in its Complaint are pending in other Commission rulemaking proceedings. For instance, the Commission is currently considering the following issues in other open dockets: (i) how transmission providers develop local planning criteria and whether those processes are sufficiently transparent; (ii) the role of cost management measures for solutions selected to address identified local transmission and regional reliability-related transmission needs; (iii) whether and how the Commission should establish an independent transmission monitor for various regions around the country; (iv) the processes through which transmission developers recover their cost to ensure just and reasonable rates; and (v) whether the level of review at the state and federal levels is sufficient to ensure that a cost-effective mix of local, asset management, and regional reliability transmission projects is developed.<sup>27</sup>

PJM anticipates that the Commission will provide industry-wide guidance through these pending proceedings. Narrowing resolution of these issues to a single State within the PJM Region would be ineffective as transmission projects not subject to RTO approval for purposes of cost allocation is a more generic issue. It would be discriminatory on its face and also highly disruptive for the Commission to address this generic issue solely with respect to PJM, particularly given the sweeping allegations and lack of specifics of unreasonable costs of any particular project or set of projects in the OCC submittal. PJM respectfully submits that there are already numerous open rulemaking and administrative proceedings in which OCC and others have raised these very issues.

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<sup>26</sup> See Complaint at 18-21.

<sup>27</sup> See, e.g., *Transmission Planning and Cost Management*, Notice Inviting Post-Technical Conference Comments, Docket Nos. AD22-8-000 (“Transmission Planning and Cost Management Docket”); *Joint Federal-State Task Force on Electric Transmission*, Notice Inviting Post-Meeting Comments, Docket No. AD21-15-000 (“Joint Task Force Docket”); *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Advance Notice of Proposed Rulemaking, 176 FERC ¶ 61,024, at P 163 (2021) (“ANOPR”).



The Commission should be reluctant to sanction the filing of “single State” or “single RTO” complaints overtaking the Commission’s NOPR process.

**D. The Commission Should Not Infringe on States’ Rights to Determine Which Transmission Facilities to Review Under State Siting Processes**

The OCC complains that neither the Public Utilities Commission of Ohio (“PUCO”) nor the Ohio Power Siting Board (“OPSB”) oversee the need for transmission facilities under 100 kV or review the cost-effectiveness of any transmission facilities.<sup>28</sup> The OCC maintains that the Commission is obligated to fill this alleged “regulatory gap” by itself “review[ing] the need, prudence and cost-effectiveness of Supplemental Projects to consumers in retail choice states,” including Ohio.<sup>29</sup> As the Commission has previously recognized, the authority to site electric transmission facilities has traditionally resided solely with the States.<sup>30</sup> That is, States have the jurisdiction to decide whether and to what extent to exercise siting authority over transmission facilities proposing to site within their State.<sup>31</sup> As the OCC acknowledges, the Ohio General Assembly and PUCO recently declined to expand state regulatory authority over local transmission project planning in Ohio.<sup>32</sup> The Commission should decline to infringe on Ohio’s choice.

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<sup>28</sup> See Complaint at 22-24.

<sup>29</sup> Complaint at 31.

<sup>30</sup> See *Applications for Permits to Site Interstate Elec. Transmission Facilities*, 182 FERC ¶ 61,205, at P 2 (2022); see also *Errata Notice*, 182 FERC ¶ 61,020 (2023).

<sup>31</sup> See *Piedmont Env’t Council v. FERC*, 558 F.3d 304, 310 (4th Cir. 2009) (“The states have traditionally assumed all jurisdiction to approve or deny permits for the siting and construction of electric transmission facilities”).

<sup>32</sup> See Complaint at 23-24.

## **E. The Current Regulatory Oversight of Supplemental Projects in PJM**

The OCC repeatedly asserts that there is inadequate oversight over Supplemental Projects, resulting in insufficient review of the need, prudence or cost effectiveness of such projects.<sup>33</sup> PJM has explained above, however, that the Commission has found in multiple instances that the Attachment M-3 Process is an open and transparent process that provides sufficient opportunity for meaningful input from stakeholders.<sup>34</sup> PJM summarizes the Attachment M-3 Process below, and describes its role in reviewing Supplemental Projects.

### **1. The PJM Transmission Owners Plan Supplemental Projects Consistent with the Commission-Accepted Attachment M-3 Process**

As described above, the Attachment M-3 Process serves as a framework through which the PJM Transmission Owners develop and select their respective Supplemental Projects in an open and transparent forum accessible to all stakeholders, including state regulators and state consumer advocates.<sup>35</sup> The Attachment M-3 Process requires the relevant PJM Transmission Owner to present its proposed needs and solutions to stakeholders through the Transmission Expansion Advisory Committee (“TEAC”) (for 230 kV and above facilities) or the Subregional RTEP Committees (Mid-Atlantic, Southern and Western) (for below 230 kV facilities)<sup>36</sup> for review and comment in a three-part meeting process that includes, at a minimum:

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<sup>33</sup> See, e.g., Complaint at 3-4; 9-10; 18; 29.

<sup>34</sup> See Section I.B, *supra*. See also n.5, *supra*.

<sup>35</sup> PJM Transmission Owners have developed and adopted Attachment M-3 Process guidelines (“Attachment M-3 Process Guidelines”), which provide increased details regarding the implementation of the Attachment M-3 Process. See <https://www.pjm.com/-/media/planning/rtep-dev/pjm-to-attachment-m3-process-guidelines.ashx>. The Attachment M-3 Process Guidelines provide stakeholders with an understanding of the step-by-step iterative information exchange details under the Attachment M-3 Process, including how they can best provide input at various stages of the process.

<sup>36</sup> Transmission Owners that comprise each of the various subregions must participate in the Subregional RTEP Committee meeting that includes their area and each PJM Transmission Owner must be present at the TEAC meeting where its Supplemental Projects are presented. In addition, membership and participation at the TEAC and Subregional RTEP Committee meetings is open to: (i) all Transmission Customers and applicants for transmission service; (ii) any other entity proposing to provide Transmission Facilities to be integrated into the PJM Region; (iii) all Members; (iv) the agencies and offices of consumer advocates of the States in the PJM Region exercising regulatory

- i. an assumptions meeting, during which each PJM Transmission Owner reviews its criteria, assumptions and models that will be used to develop its Supplemental Projects;
- ii. a needs meeting where each PJM Transmission Owner reviews its identified system needs based on its criteria, assumptions and models vetted during the assumptions meeting; and
- iii. a solutions meeting at which time the PJM Transmission Owner presents potential solutions developed to address previously identified system needs.<sup>37</sup>

All stakeholders, including state regulators and state consumer advocates, have the opportunity to ask questions and provide feedback throughout the development and selection of Supplemental Projects. Information about Supplemental Project assumptions is posted on the PJM website 20 days prior to the relevant TEAC or Subregional RTEP Committee meeting, and information about Supplemental Project needs is posted on the PJM website 10 days prior to the relevant TEAC or Subregional RTEP Committee meeting, to allow stakeholders to review materials in advance of the meeting.<sup>38</sup> Additionally, all stakeholders, including state regulators and state consumer advocates, may attend TEAC and Subregional RTEP Committee meetings,

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authority over the rates, terms or conditions of electric service or the planning, siting, construction or operation of electric facilities and (v) any other interested entities or persons. See Operating Agreement, Schedule 6, sections 1.3(b) and (e).

<sup>37</sup> Appendix B of the Attachment M-3 Guidelines lists the information that the PJM PJM Transmission Owners include in the materials prepared for the TEAC and Subregional RTEP Committee meetings, which includes information such as: a description of the project driver; the model required to represent the current topology of the systems which might be necessary for modeling the needs; a problem statement or description of the facilities and associated problems and relevant supporting information; a map identifying the geographic location of the transmission facilities; a description of the potential solution, which may include a primary and multiple alternate solutions; a project cost estimate for proposed solution; the expected or projected in-service date of the proposed solution; a connection diagram to visualize the solution on the system; a description of each alternative solution considered by the PJM Transmission Owner, including cost information, as relevant; a description of the selected solution; a description of the current status of the project (*i.e.*, conceptual, engineering, construction, in-service, other); and a description of any ancillary system benefits provided by the solution which exceed requirements of the stated needs.

<sup>38</sup> *See id.* Additionally, a presentation prepared by a PJM Transmission Owner for a Subregional RTEP Committee meeting can be found at the following link: <https://www.pjm.com/-/media/committees-groups/committees/srtep-w/2020/20200117/20200117-aep-supplemental-projects.ashx>. The information contained in this PJM Transmission Owner's presentation is representative of the type of information the PJM Transmission Owners prepare and present to stakeholders during TEAC and Subregional RTEP Committee meetings.

and are invited to provide feedback, either through formal presentations, questions raised during the meetings, or written comments before, during or after the meetings. Stakeholders can also submit questions or comments via the PJM Planning Community tool on PJM.com.<sup>39</sup> All stakeholders, including state regulators and state consumer advocates, have access to all of the information posted on the PJM Planning Community tool, including questions and answers between PJM and other stakeholders.<sup>40</sup>

## **2. PJM Plays an Important Role in the Attachment M-3 Process and the Inclusion of TOs' Local Plans in the RTEP**

The OCC argues that the PJM Tariff and Operating Agreement are unjust and unreasonable because PJM does not review Supplemental Projects for their need, prudence or their cost-effectiveness and cost efficiency for consumers.<sup>41</sup> As described above,<sup>42</sup> the Attachment M-3 Process sets forth the process by which PJM Transmission Owners review with stakeholders via the TEAC and Subregional RTEP Committees the assumptions, system needs, and potential solutions to meet those system needs. PJM describes below its role with respect to Supplemental Projects,<sup>43</sup> including: (a) the analysis PJM performs after a PJM Transmission Owner selects a

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<sup>39</sup> The PJM Planning Community tool gives stakeholders the ability to find answers to their questions by initiating discussions and collaborating with other users - including PJM subject matter experts - about planning initiatives, proposal windows and PJM Transmission Owner Attachment M-3 process questions. Discussions within the Planning Community are based on planning items discussed in the Planning Committee, TEAC, and other RTEP stakeholder forums. The PJM Planning community tool is accessible at <https://www.pjm.com/markets-and-operations/etools/planning-community>.

<sup>40</sup> As PJM explained in comments in the LTRTP NOPR docket, internal PJM data shows that since the tool's creation in 2018, the Planning Community has received 305 questions (otherwise known as "discussion threads"), focusing mainly on consideration of alternate solutions in the context of lower cost. Overall, 302 out of 305 - over 99 percent - of Planning Community discussion threads received responses. It is clear that stakeholders have made use of the Planning Community and have had a meaningful opportunity to participate in the Attachment M-3 Process. *See Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection* ("RM21-17"), Reply Comments of PJM Interconnection, L.L.C., Docket No. RM21-17-000, at 12-16 (Sept. 19, 2022).

<sup>41</sup> *See, e.g.*, Complaint at 3-4; 9-10; 18; 29.

<sup>42</sup> *See* Section I.E.1, *supra*.

<sup>43</sup> The Commission has previously recognized that not all transmission planning within Regional Transmission Organization ("RTO") must be performed by the RTO. *See PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,217, at

Supplemental Project as an appropriate solution; (b) the process by which PJM examines overlaps between baseline transmission drivers and Supplemental Project drivers; and (c) the process by which PJM tracks the scope, schedule and any cost increases of a Supplemental Project.

*a. PJM Performs a “Do No Harm” Analysis With Respect to Supplemental Projects*

After the PJM Transmission Owner selects its Supplemental Project as the appropriate solution, and before the Supplemental Project is submitted by the PJM Transmission Owner for inclusion in the Local Plan<sup>44</sup> and ultimate inclusion in the RTEP, PJM performs a “do no harm” study to evaluate whether a proposed Supplemental Project will adversely impact the reliability of the PJM transmission system as represented in the planning models used in all other reliability planning studies.<sup>45</sup> In addition, PJM examines the impact of the Local Plan on the electrical area including other regional needs or regional violations which may drive or require a broader regional solution. At the end of each planning cycle, the PJM Board of Managers (“PJM Board”)-approved baseline projects together with Supplemental Projects are integrated into the annual RTEP approved by the PJM Board.

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P 13, quoting Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 440 (2018) (“When transmission owners participate in an RTO, the Commission did not require them to allow the RTO to do all planning for local or Supplemental Projects. Rather, the Commission recognized ‘RTO planning processes may focus principally on regional problems and solutions, not local planning issues that may be addressed by individual transmission owners’”). *See also* n.5, *supra*.

<sup>44</sup> *See* Operating Agreement, Definitions I – L. *See also PJM Interconnection, L.L.C.*, 3<sup>rd</sup> Compliance Filing, Docket No. ER13-198-004 at 4 – 5 (July 14, 2014) (proposing revisions to the definition of Local Plan to clarify that the Local Plan is not developed by the TO alone; rather it is the product of the Subregional RTEP Committee and may include both Subregional RTEP projects and Supplemental Projects.).

<sup>45</sup> All stakeholders have the opportunity to provide comments on Supplemental Projects before the Local Plan is integrated in the RTEP.

*b. PJM Identifies Overlaps Between RTEP Baseline Projects and Supplemental Projects*

As discussed above, the Attachment M-3 Process allows PJM Transmission Owners to plan projects not needed to address PJM's planning criteria. In some cases, there may be projects driven by Operating Agreement, Schedule 6 (*i.e.*, baseline projects) and the Attachment M-3 Process (*i.e.*, Supplemental Projects) which require changes or upgrades to be made to the same transmission facilities on the system. PJM's RTEP process examines overlaps between a baseline RTEP project and a Supplemental Project.

In PJM, a Supplemental Project is 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.<sup>46</sup> Supplemental Projects are critical to the transmission system. They are transmission expansions or enhancements that enable the continued reliable operation of the transmission system by meeting customer service needs;<sup>47</sup> enhancing grid resilience and security,<sup>48</sup> promoting operational flexibility,<sup>49</sup> addressing transmission asset health and ensuring public safety,<sup>50</sup> among other things.<sup>51</sup> Supplemental Projects may also address

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<sup>46</sup> See n.1, *supra*.

<sup>47</sup> Supplemental Projects to address customer service needs could include facilities needed to provide service to new and existing customers; interconnect new customer load; or address distribution load growth, customer outage exposure, and equipment loading.

<sup>48</sup> Supplemental Projects to enhance grid resiliency and security could include facilities needed to improve system ability to anticipate, absorb, adapt to, and/or rapidly recover from a potentially disruptive event, including severe weather, or geomagnetic disturbances.

<sup>49</sup> Supplemental Projects to promote operational flexibility and efficiency could include projects needed to optimize system configuration, equipment duty cycles and restoration capability, as well as minimizing outages.

<sup>50</sup> Supplemental Projects to address transmission asset health and ensure public safety could include facilities needed to address degraded equipment performance, material condition, obsolescence, including at the end of the useful life of equipment or a facility, equipment failure, employee and public safety and environmental impact.

<sup>51</sup> Other Supplemental Projects could include facilities needed to meet objectives such as, but not limited to, technological pilots, industry recommendations, and environmental and safety impacts.

reliability issues for transmission facilities that are not considered under NERC requirements or other PJM planning criteria.

During the course of reviewing any upgrade or project, PJM will identify any upgrades or projects, or portions thereof that interact electrically. Where there is an intersection between a proposed Supplemental Project and a baseline RTEP project that would address a regional need, it is appropriate for PJM, as the regional planner, to examine other violations identified as part of the baseline RTEP process in the electrical area and determine the more efficient or cost-effective enhancements and expansions to address the overall need.<sup>52</sup>

*c. PJM Has Processes in Place to Track the Scope, Schedule and Any Cost Increases of a Supplemental Project*

PJM currently has processes in place pursuant to which a PJM Transmission Owner constructing a Supplemental Project provides reports to PJM, which allows PJM to track the project's scope, schedule and any cost increases.<sup>53</sup> PJM uses the revised data to evaluate whether a different, more economical solution is better suited to solve the issue.<sup>54</sup> Specifically, with respect to Supplemental Projects, PJM requires the relevant PJM Transmission Owner to provide regular status updates including engineering progress, cost estimates, and construction updates.<sup>55</sup> If there are any significant changes in project scope, cost or schedule related to the Supplemental Project, the PJM Transmission Owner presents updates at the TEAC or Subregional RTEP meetings, and a re-evaluation of the project may be warranted. The PJM Transmission Owner would need to

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<sup>52</sup> See PJM, *Manual 14B: PJM Region Transmission Planning Process*, § 1.4.2 (rev. 54, July 26, 2023), <https://www.pjm.com/~media/documents/manuals/m14b.ashx>.

<sup>53</sup> See PJM, *Manual 14C: Interconnection Facilities and Network Upgrades Construction*, § 6.1.2.1 (rev. 16, July 26, 2023), §§ 6.1.7 and 6.2.1.1 (rev. 14, Jan. 27, 2021), <https://www.pjm.com/~media/documents/manuals/m14c.ashx>.

<sup>54</sup> See *id.*

<sup>55</sup> See *id.*, § 6.1.2.1. At a minimum, these updates, including cost estimate updates, are required when the PJM Transmission Owner provides the following project status updates and milestones: posting of the Local Plan; status change from Engineering & Procurement to Under Construction; and Status change to In-Service.

ensure that the updated solution addresses the identified need, and PJM would perform a “do no harm” analysis for the updated solution.

PJM believes that these current processes provide it with the necessary information to effectively develop and update the RTEP, while also providing opportunity for stakeholders to monitor and provide feedback on changes to project status or cost.

#### **F. The Commission Should Reject the OCC’s Request to Establish an Independent Transmission Monitor**

The OCC requests that the Commission require the establishment of an Independent Transmission Monitor to oversee the Ohio Transmission Owners’ local transmission planning processes.<sup>56</sup> The Commission should reject this request for several reasons.

First, as indicated above,<sup>57</sup> the issue whether the Commission should establish a role for an Independent Transmission Monitor is pending in several administrative rulemaking dockets.<sup>58</sup> PJM expects that, through these proceedings, the Commission will provide industry-wide guidance on this issue. The Commission should therefore decline to require the establishment of an Independent Transmission Monitor for one State, and instead defer to those ongoing proceedings. It would be highly disruptive to PJM transmission owners’ and other transmission developers’ ability to raise capital if an Independent Transmission Monitor existed solely in one State or in the PJM region (and not in other parts of the country) to review costs. This is simply not a solution that is workable on a single State within an RTO basis (to the extent the Commission determines its appropriate and workable at all based on the submitted record in the pending rulemaking proceedings). The OCC has not even addressed how a “one-off” solution for the PJM region

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<sup>56</sup> Complaint at 35-36.

<sup>57</sup> See Section I.C, *supra*.

<sup>58</sup> See *id*.



would be workable nor how it would impact the competition among regions across the country to raise capital for needed transmission infrastructure.

Second, the Commission has previously expressly declined to require the establishment of an independent third party coordinator as part of the RTO/ISO regions' planning processes, finding there is no need for an independent evaluator in an RTO/ISO region, which already is a Commission-approved independent organization.<sup>59</sup> Consistent with the requirements of Order Nos. 890 and 1000, PJM has a coordinated open and transparent planning process, as well as meaningful dispute resolution processes for both planning and generator interconnection projects. Accordingly, PJM urged that absent any evidence that an independent RTO, like PJM, is not implementing its regional transmission planning process in a just, reasonable and not unduly discriminatory or preferential manner, the Commission should follow its decision in Order No. 890,<sup>60</sup> and allow independent RTOs to address concerns related to oversight of local or regional transmission planning processes by continuing to demonstrate that they have a coordinated open and transparent planning process and meaningful dispute resolution processes.<sup>61</sup> This would be far more efficient than simply creating another independent entity to review a NERC-registered independent entity.

Third, an Independent Transmission Monitor would add another layer to an already challenging environment to get transmission built in the PJM Region. Adding additional layers of

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<sup>59</sup> See Order No. 890 at P 567.

<sup>60</sup> In Order No. 890, the Commission expressly declined to require the establishment of an independent third party coordinator as part of the RTO/ISO regions' planning processes. Order No. 890 at P 567. Despite arguments in favor of such a proposal, the Commission found no need for an independent evaluator in an RTO/ISO region, which already is a Commission-approved independent organization. While the Commission found that there may be benefits to be gained from independent third party oversight, transmission providers, customers and other stakeholders should determine for themselves in developing their regional planning process whether and, if so, how to utilize an independent third party. Order No. 890-A at P 258 (citing to Order No. 890 at P 567).

<sup>61</sup> See *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, PJM Initial ANOPR Comments, Docket No. RM21-17-000, at 75-80 (Oct. 12, 2021).

regulatory oversight where it is already challenging to get transmission sited and built, will only serve to slow the pace of meeting the needs of the ongoing energy transition. Rather than simply layering another level of independent oversight onto a Commission-approved independent RTO/ISO, the oversight function over costs of transmission and the prudence of those investments not reviewed through the RTEP process are best addressed by improving customers' ability to make their voices heard through the Commission's regulatory processes.

## **II. ADMISSIONS AND DENIALS PURSUANT TO 18 C.F.R. § 385.213(c)(2)(i)**

Pursuant to Rule 213(c)(2)(i) of the Commission's Rules of Practice and Procedure,<sup>62</sup> PJM admits or denies the alleged material facts stated in the Complaint as follows: to the extent that any allegation set forth in the Complaint is not specifically admitted in this Answer, it is denied.

## **III. AFFIRMATIVE DEFENSES PURSUANT TO 18 C.F.R. § 385.213(c)(2)(ii)**

PJM's affirmative defenses are set forth above in this Answer, and include the following, subject to amendment and supplementation.

1. The Complainant has failed to satisfy its burden of proof under FPA section 206 (16 U.S.C. § 824e) and has not demonstrated that PJM violated any Commission order, the Tariff, the Operating Agreement, the Reliability Assurance Agreement, the Consolidated Transmission Owners Agreement, or any other Commission-jurisdictional governing document.

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<sup>62</sup> 18 C.F.R. § 385.213(c)(2)(i).

#### IV. COMMUNICATIONS AND SERVICE

PJM requests that the Commission place the following individuals on the official service list for this proceeding:

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#### V. CONCLUSION

For the reasons set forth in this Answer, PJM respectfully requests that the Commission deny the Complaint.

Respectfully submitted,

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*/s/ Jessica M. Lynch*  
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*On behalf of PJM Interconnection, L.L.C*

**CERTIFICATE OF SERVICE**

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

Dated at Audubon, PA this 17th day of November, 2023.

*/s/ Jessica M. Lynch*

Jessica M. Lynch