

173 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and James P. Danly.

PJM Interconnection, L.L.C.

Docket No. ER19-2915-002

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued October 26, 2020)

1. On March 20, 2020, the Commission accepted a filing submitted by PJM Interconnection, L.L.C. (PJM), pursuant to section 205 of the Federal Power Act (FPA),¹ proposing revisions to the PJM Amended and Restated Operating Agreement (Operating Agreement).² The revisions allow a transmission developer to submit information about the binding nature of its voluntary cost commitment proposal and require PJM to undertake a comparative review and analysis of any binding cost commitments voluntarily presented as part of proposals submitted in PJM's competitive proposal window process.³ Public Service Electric and Gas Company (PSEG), PPL Electric Utilities Corporation (PPL), and American Electric Power Service Corporation (AEP) (together, PSEG/PPL/AEP) filed a joint request for rehearing of the March 2020 Order. PPL and The Dayton Power and Light Company (Dayton) (together PPL/Dayton) also filed a joint request for rehearing.

2. Pursuant to *Allegheny Defense Project v. FERC*,⁴ the rehearing requests filed in this proceeding may be deemed denied by operation of law. However, as permitted by

¹ 16 U.S.C. § 824d.

² *PJM Interconnection, L.L.C.*, 170 FERC ¶ 61,243 (2020) (March 2020 Order).

³ PJM Interconnection, L.L.C., Intra-PJM Tariffs, OA Sched. 6, §§ 1.5.8(c)(2) & (e).

⁴ 964 F.3d 1 (D.C. Cir. 2020) (en banc).

section 313(a) of the FPA,⁵ we are modifying the discussion in the March 2020 Order and continue to reach the same result in this proceeding, as discussed below.⁶

I. Background

3. Under the competitive proposal window process used to develop the PJM Regional Transmission Expansion Plan (RTEP), transmission developers submit certain information including, among other things, relevant engineering studies, a proposed initial construction schedule, and cost estimates and analyses that provide sufficient detail for PJM to review and analyze the proposed cost of the project proposal.⁷ In addition, under section 1.5.8(c)(2) of the Operating Agreement, transmission developers may submit further information to demonstrate “other advantages the entity may have to construct, operate, and maintain the proposed project, including any cost commitment the entity may wish to submit.” After a proposal window closes, PJM reviews the submitted proposals and is required to consider multiple criteria, including the “cost effectiveness” of project proposals.⁸

4. On September 30, 2019, PJM proposed to modify section 1.5.8(c)(2) of the Operating Agreement to clarify that any voluntary cost commitment submitted as part of a proposal is binding and that “the entity shall submit sufficient information for [PJM] to determine the binding nature of the proposal with respect to critical elements of project development.”⁹ In addition, PJM proposed to revise section 1.5.8(e) of the Operating Agreement to provide more detail about how PJM would consider the cost-effectiveness of certain types of cost commitment proposals, which would include an evaluation of a submitted cost commitment provision that caps project construction costs (either in whole or in part), project total return on equity (ROE) (including incentive adders), or capital

⁵ 16 U.S.C. § 825l(a) (“Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.”).

⁶ *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the March 2020 Order. See *Smith Lake Improvement & Stakeholders Ass’n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

⁷ PJM Interconnection, L.L.C., Intra-PJM Tariffs, OA Sched. 6, § 1.5.8(c)(1).

⁸ *Id.* § 1.5.8(e).

⁹ PJM Filing at 4; March 2020 Order, 170 FERC ¶ 61,243 at P 5.

structure.¹⁰ PJM's proposed revisions to section 1.5.8(c) also clarify that in evaluating any cost, ROE, and/or capital structure in a binding cost commitment proposal, PJM would not be making a determination that these cost-related provisions result in just and reasonable rates, which would instead be addressed in the required rate filing with the Commission.¹¹

5. In the March 2020 Order, the Commission accepted PJM's filing, effective January 1, 2020. As relevant on rehearing, the Commission disagreed with arguments from protesters alleging that the new tariff provisions would confer a ratemaking role to PJM.¹² The Commission emphasized that the tariff provisions were "consistent with PJM's role under its existing tariff in that PJM selects the more efficient or cost-effective transmission proposal, and the Commission reviews any resulting rates."¹³ The Commission also disagreed with claims that PJM's filing lacked sufficient specificity, finding instead that the proposal includes a comparative risk analysis that adds transparency to the Operating Agreement.¹⁴

6. Finally, as relevant to PPL/Dayton's rehearing request, the Commission determined that the proposal was shared with the PJM Board of Managers (PJM Board) through public postings on the PJM website, and that these postings satisfied the requirements under section 18.6(a) of the Operating Agreement, which, among other things, requires that any proposed amendments to the Operating Agreement be submitted to the PJM Board for review and comment.¹⁵ In light of this finding, the Commission dismissed as moot a request for waiver of section 18.6(a).¹⁶

¹⁰ PJM Filing at 4-5; March 2020 Order, 170 FERC ¶ 61,243 at P 6.

¹¹ March 2020 Order, 170 FERC ¶ 61,243 at P 7.

¹² *Id.* P 55.

¹³ *Id.*

¹⁴ *Id.* P 32.

¹⁵ *Id.* PP 68-70.

¹⁶ *Id.* P 70.

II. Discussion

A. Procedural Matters

7. On August 14, 2020, the Delaware Division of Public Advocate (Delaware Public Advocate) filed a motion to intervene out-of-time in Docket No. ER19-2915-000. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2020), we deny Delaware Public Advocate's late intervention. In ruling on a motion to intervene out-of-time, we apply the criteria set forth in Rule 214(d) of the Commission's Rules of Practice and Procedure, and consider, among other things, whether the movant had good cause for failing to file the motion within the time prescribed. When, as here, late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, the movant bears a higher burden to demonstrate good cause for granting such late intervention.¹⁷ Delaware Public Advocate's motion to intervene out-of-time fails to address the criteria for late interventions in Rule 214(d), or explain why the motion could not have been timely filed. Accordingly, we find that Delaware Public Advocate has failed to demonstrate the requisite good cause, and we deny the motion to intervene out-of-time.

B. Statutory Ratemaking Responsibility

1. PSEG/PPL/AEP Rehearing Request

8. PSEG/PPL/AEP argue that the accepted revisions to the Operating Agreement result in an improper delegation of the Commission's statutory responsibility to PJM and, potentially, to PJM's Independent Market Monitor (Market Monitor).¹⁸ In their view, the accepted Operating Agreement revisions require PJM to "quantify the value of a binding cost commitment, including making determinations as to the likelihood that an exception might be triggered and, if triggered, the level of the adjusted rate."¹⁹ PSEG/PPL/AEP also argue that the revisions require PJM to evaluate rate determinants, such as ROE and capital structure. According to PSEG/PPL/AEP, this "effectively places PJM in the role of determining expected future rates for the life of the projects under comparison,

¹⁷ See, e.g., *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,209, at P 24 (2019); *PaTu Wind Farm LLC v. Portland Gen. Elec. Co.*, 151 FERC ¶ 61,223, at P 39 (2015); *Columbia Gas Transmission Corp.*, 113 FERC ¶ 61,066, at P 5 (2005).

¹⁸ PSEG/PPL/AEP Rehearing Request at 5.

¹⁹ *Id.* at 6.

contrary to the filed rate doctrine.”²⁰ PSEG/PPL/AEP argue that the problem is compounded by PJM’s revision to Manual 14F, which incorporates a formal role for the Market Monitor to engage in rate determinations.²¹

9. PSEG/PPL/AEP are also concerned that PJM’s cost commitment review process applies to future periods in which costs, rate elements and policies can only be projected. Accordingly, they argue that PJM’s review process will result in speculative or “hypothetical rates.”²²

10. PSEG/PPL/AEP argue that even if PJM were not setting a wholesale rate *per se*, the Commission “cannot rely on PJM to make the rate determination that [the Commission] ultimately uses to decide wholesale rates.”²³ PSEG/PPL/AEP argue that PJM does not have the ability or expertise to make determinations regarding rate elements such as ROE, capital structure, or cost-of-debt, which in turn require predictions over the next 40 to 60 years.²⁴

11. PSEG/PPL/AEP state that in the competitive process held by MISO, in which MISO made assumptions regarding the ROEs of companies that had not submitted ROE cost commitment proposals, the Commission subsequently modified the ROEs. PSEG/PPL/AEP argue that PJM is no more qualified to make this kind of determination than was MISO. Finally, PSEG/PPL/AEP cite to precedent from the U.S. Court of Appeals for the District of Columbia Circuit holding that an agency cannot abdicate its statutory responsibility.²⁵ PSEG/PPL/AEP contend that applying the principle of these cases to the instant facts, “it is clear that the Commission needs to make its own determinations regarding rate elements that affect the selection of transmission projects under the open window procedures.”²⁶

²⁰ *Id.* at 7.

²¹ *Id.*

²² *Id.* at 9-10.

²³ *Id.* at 10.

²⁴ *Id.* at 11.

²⁵ *Id.* at 11-12 (citing *Susquehanna Int’l Grp., LLP v. Sec. & Exch. Comm’n*, 866 F.3d 442 (D.C. Cir. 2017); *Gerber v. Norton*, 294 F.3d 173 (D.C. Cir. 2002)).

²⁶ *Id.* at 12.

2. Commission Determination

12. In the March 2020 Order, the Commission addressed, and was not persuaded by, PSEG's arguments alleging that PJM would be "stepping into the Commission's shoes" or "usurping the role of the regulator" and that "the filed rate doctrine would preclude adoption of the PJM proposal."²⁷ PSEG/PPL/AEP repeat these arguments in their rehearing request, and we disagree with them for the reasons specified in the March 2020 Order. As the Commission explained, and as is also evident from the proposed tariff language itself, PJM will not be determining whether the included rate design elements under the proposal, including ROE, will result in just and reasonable rates.²⁸ This statutory ratemaking role is reserved for the Commission and has not been delegated to PJM or to the Market Monitor.²⁹

13. We also disagree that the rate design elements of PJM's selected projects will be "endowed with the presumption that they are just and reasonable."³⁰ As noted above, PJM's proposed revisions to section 1.5.8(c) clarify that, in evaluating any cost, ROE, and/or capital structure in a binding cost commitment proposal, PJM would not be making a determination that these cost-related provisions result in just and reasonable rates, which would instead be addressed in the required rate filing with the Commission.³¹ Accordingly, neither PJM nor the Market Monitor will be engaged in "hypothetical" or "speculative" rate determinations.³²

²⁷ See March 2020 Order, 170 FERC ¶ 61,243 at P 46 (describing PSEG's arguments); *Id.* PP 55-56 (responding to PSEG's arguments).

²⁸ *Id.* P 55 (explaining that PJM's selection of a project does not confer a ratemaking role to PJM but is instead "consistent with PJM's role under its existing tariff in that PJM selects the more efficient or cost-effective transmission proposal, and the Commission reviews any resulting rates"); see also *id.* P 56 ("Nothing in PJM's proposal suggests that any other entity except the Commission will be determining rates.").

²⁹ See *id.* P 56 (explaining that PJM's evaluation of the quality and effectiveness of cost commitment proposals are "merely part of PJM's role as an independent entity evaluating whether projects are more efficient or cost-effective, not the equivalent of PJM setting the just and reasonable rate").

³⁰ PSEG/PPL/AEP Rehearing Request at 8.

³¹ March 2020 Order, 170 FERC ¶ 61,243 at P 7.

³² PSEG/PPL/AEP continue to rely on *Keogh v. Chi. & Nw. Ry. Co.*, 260 U.S. 156, 163-64 (1922) (*Keogh*) for the proposition that PJM is engaging in "hypothetical" or "speculative" ratemaking. Rehearing Request at 9-10. For the reasons discussed in the

C. Specificity of Filing

1. PSEG/PPL/AEP Rehearing Request

14. PSEG/PPL/AEP allege that the Commission ignored PSEG's arguments explaining that PJM's tariff revisions lacked sufficient specificity. For example, they note that PJM's proposed tariff provisions did not define what attributes a developer's cost commitment provision must have to be considered "binding." They argue that this deficiency renders it impossible for developers to understand how PJM intends to evaluate the binding cost commitments made in the bid selection process.³³ In addition, PSEG/PPL/AEP argue that PJM's filing did not convey sufficient information to participants regarding how various elements of a cost commitment proposal would be evaluated and weighted. For example, PSEG/PPL/AEP state that it is unclear how PJM would compare a proposal with a high ROE and high level of commitment against a proposal with a lower ROE and lower level of cost commitment.³⁴ Similarly, they note that it is unclear how PJM would make assumptions regarding debt rates and capital structure comparisons with proposals by companies that did not make a capital structure proposal.³⁵

15. PSEG/PPL/AEP allege that the Commission "simply dismisses" PJM's lack of specificity by noting that implementation details will be provided in Manual 14F.³⁶ According to PSEG/PPL/AEP, PJM's decision to address details in Manual 14F is not consistent with the Commission's policy that all practices that significantly affect rates, terms and conditions of service must be included in the tariff rather than in a manual, since the latter is not filed with the Commission.³⁷

March 2020 Order, we continue to find that PSEG/PPL/AEP's reliance on *Keogh* is misplaced. March 2020 Order, 170 FERC ¶ 61,243 at P 56.

³³ *Id.* at 14.

³⁴ *Id.* at 15. PSEG/PPL/AEP also ask how PJM plans to compare an ROE commitment that could not be modified under FPA section 206 against a commitment incorporating the *Mobile-Sierra* standard. *Id.*

³⁵ *Id.*

³⁶ *Id.* at 16 (citing May 2020 Order, 170 FERC ¶ 61,243 at P 33).

³⁷ *Id.* (citing *TranSource, LLC v. PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,119, at PP 78, 84 (2019); *Monterey MA, LLC v. PJM Interconnection, L.L.C.*,

16. PSEG/PPL/AEP argue that the revisions to Manual 14F would allow the Market Monitor at its discretion to perform an independent financial analysis of projects submitted through the proposal window, which would create further ambiguities with respect to how the proposed Operating Agreement language will be applied. For example, they note that while the manual language states that risks will be evaluated for cost commitment proposals, the formula for determining “net present value” for comparison among proposals lacks a determinant to express such risks.³⁸ PSEG/PPL/AEP are also concerned about an alleged lack of clarity in the manual as to whether PJM or the Market Monitor will have the principal role in analyzing cost commitment provisions. PSEG/PPL/AEP insist that their challenges to the manual are not “premature” or “beyond the scope of this proceeding.”³⁹ They argue that the Commission cannot simultaneously rely on gaps to be filled through pending language in Manual 14F while also finding that any challenge to that language is premature.⁴⁰

2. Commission Determination

17. Contrary to PSEG/PPL/AEP’s claim on rehearing, the Commission did not ignore arguments as to an alleged lack of specificity in the filing but, instead, found that these claims were unpersuasive.⁴¹ The revised Operating Agreement contains the same requirements for project analyses that existed in the rate prior to this filing with only the following changes:

(vii) a demonstration of other advantages the entity may have to construct, operate, and maintain the proposed project, including any binding cost commitment proposal the entity may wish to submit; and (viii) any other information that may assist the Office of the Interconnection in evaluating the proposed project. To the extent that an entity submits a cost

165 FERC ¶61,201, at P 52 (2018); *Cal. Indep. Operator Corp.*, 143 FERC ¶ 61,057, at P 146 (2013)).

³⁸ *Id.* at 16-17.

³⁹ *Id.* at 17 (citing May 2020 Order, 170 FERC ¶ 61,243 at P 33). PSEG/PPL/AEP also disagree that challenges to the manual are premature, noting that the Manual 14F language had been approved and was in effect at the time PJM responded to the Commission’s deficiency letter. *Id.*

⁴⁰ *Id.*

⁴¹ March 2020 Order, 170 FERC ¶ 61,243 at PP 32-35.

containment proposal the entity shall submit sufficient information for the Office of Interconnection to determine the binding nature of the proposal with respect to critical elements of project development. PJM may not alter the requirements for proposal submission to require the submission of a binding cost containment proposal, in whole or in part, or otherwise mandate or unilaterally alter the terms of any such proposal or the requirements for proposal submission, the submission of any such proposals at all times remaining voluntary⁴²

18. PJM's filing in this proceeding did not adopt any changes to the method by which PJM evaluates an entity's cost commitment proposal, except to make such a commitment "binding" and to require sufficient information to determine the binding nature of that commitment. As the Commission explained, such revisions simply add transparency and flexibility to the existing Operating Agreement, further noting that any alleged lack of minimum characteristics defining "binding" would not render the proposal unjust and unreasonable and unduly discriminatory.⁴³ The determination of whether the provision is "binding" is not materially different from all the other determinations that PJM, as the independent system operator, must make in evaluating competing projects.⁴⁴ Parties have the opportunity to contest PJM's determinations both within the PJM process and at the Commission. PSEG/PPL/AEP's arguments on rehearing do not identify any error in the Commission's analysis or persuade us to modify the Commission's determination on this point.

19. PSEG/PPL/AEP mischaracterize the March 2020 Order in arguing that the Commission "approved a half-baked proposal because it believes that gaps will be filled

⁴² Revisions are underlined and marked in red font.

⁴³ *Id.* P 35.

⁴⁴ This filing did not change PJM's project evaluation of cost containment proposals pursuant to section 1.5.8(c)(2) of the Operating Agreement except to increase the specificity by making cost commitments binding and requiring developers to submit sufficient information. Any consideration of specificity therefore is beyond the scope of a section 205 inquiry into the proposed change. See *ANR Pipeline Co. v. FERC*, 771 F.2d 507, 514 (D.C. Cir. 1985) (citing *Pub. Serv. Comm'n of N.Y. v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980)) (holding that "when the Commission imposes a change not proposed by the natural gas company-including an alteration in an *unchanged* part of a proposed higher rate," the Commission must act pursuant to section 5 of the Natural Gas Act, 15 U.S.C. § 717c, the equivalent of section 206 of the FPA)

by pending language in a PJM manual.”⁴⁵ PSEG/PPL/AEP cite to the Commission’s statement that “PJM explains that it will include the implementation details for the comparative analysis in Manual 14F, which it is currently developing”⁴⁶ and contend that the Commission therefore was relying on the manual to fill in the details of the filing. But the Commission also explained that certain of the Manual 14F details are “beyond the scope of this proceeding, which is limited to reviewing the proposed revisions to the Operating Agreement.”⁴⁷ The Commission accepted PJM’s filing based exclusively on the provisions contained in the Operating Agreement, which, as discussed above and in the March 2020 Order, provide for additional transparency. The PJM manual provides only the means by which PJM will apply the evaluation prescribed in the tariff.

D. PJM Board Review

1. PPL/Dayton Rehearing Request

20. On rehearing, PPL/Dayton challenge the Commission’s determination that PJM complied with section 18.6(a) of the Operating Agreement, which, they argue, requires: (i) submission of the proposed amendment to the PJM Board for its review and comments; and (ii) approval by the Members Committee, after consideration of the comments of the PJM Board.⁴⁸ PPL/Dayton state that, while it is true that the word “submission” is undefined in the Operating Agreement, the Commission’s interpretation does not give it meaning and is inconsistent with accepted usage. In their view, the word “submit” unambiguously requires an act that is directed *to* the PJM Board, and a posting on a website cannot qualify.⁴⁹

⁴⁵ See Rehearing Request at 17 (arguing that the Commission “cannot approve a half-baked proposal because it believes that gaps will be filled by pending language in a PJM manual”).

⁴⁶ March 2020 Order, 170 FERC ¶ 61,243 at P 33.

⁴⁷ *Id.*

⁴⁸ PPL/Dayton Rehearing Request at 1-2.

⁴⁹ *Id.* at 8-9. PPL/Dayton argue that the vague assertion that the PJM Board was “aware” that the provisions were available to the general public cannot be squared with the mandate in section 18.6(a) that the Members Committee submit the Cost Containment Provisions to the Board. *Id.* at 13-14. Furthermore, PPL/Dayton point out that “when the Operating Agreement means to rely on ‘posting’ it does so explicitly.” *Id.* at 14 (citing PJM Interconnection L.L.C., Intra-PJM Tariffs, OA, §18.14(b), which provides for the posting of meeting notices).

21. PPL/Dayton argue that the Commission's interpretation of section 18.6(a) of the Operating Agreement falsely presumes that the PJM Board can act (or decide not to act) in the absence of quorum.⁵⁰ While recognizing that section 18.6(a) "does not explicitly require a meeting to occur for the PJM Board to provide comments," PPL/Dayton also argue that the March 2020 Order assumes that the PJM Board can act without a meeting when, in fact, there is no provision in the Operating Agreement allowing for this.⁵¹ To the contrary, they argue that, under the Operating Agreement, there is only one way for the PJM Board to conduct business: holding a meeting with a quorum present, whether in person, by teleconference or otherwise.⁵² PPL/Dayton also reiterate arguments that the presence of two voting members during a meeting of the Members Committee does not constitute compliance with section 18.6(a) of the Operating Agreement.⁵³

22. PPL/Dayton disagree that a PJM Board meeting is required only where explicitly provided for in the Operating Agreement. For example, PPL/Dayton observe that other provisions of the Operating Agreement, which govern other PJM actions (e.g., election of PJM's president, adopting the PJM budget, approving the RTEP) do not explicitly require a Board meeting.⁵⁴ However, in PPL/Dayton's view, these actions could not be undertaken without a Board meeting.⁵⁵

23. PPL/Dayton insist that the cost containment provisions were not – and could not have been – submitted to the PJM Board for its review and comment because the posting did not happen prior to the Members Committee vote and adoption.⁵⁶ Specifically, they claim that the cost containment provisions were the subject of a friendly amendment at that Members Committee meeting, which occurred immediately before the vote was taken to approve the language.⁵⁷

⁵⁰ *Id.* at 9.

⁵¹ *Id.* at 10.

⁵² *Id.*

⁵³ *Id.* at 12.

⁵⁴ PPL/Dayton Rehearing Request at 11.

⁵⁵ *Id.*

⁵⁶ *Id.* at 12, 14

⁵⁷ *Id.* at 14.

24. PPL/Dayton also argue that the Commission erred by “excusing the failure of the Members Committee to submit the Cost Containment Provisions to the PJM Board by citing and endorsing previous violations of the Operating Agreement.”⁵⁸ PPL/Dayton emphasize that section 15.5 of the Operating Agreement rejects the argument that the incidence of past violations cannot be construed as waiver. PPL/Dayton also argue that the filed rate doctrine requires that the Operating Agreement be enforced according to its terms.⁵⁹

25. Finally, PPL/Dayton argue that the March 2020 Order “effectively remove[s] from the Operating Agreement a key provision supporting PJM Board independence and the prevention of undue influence by group members.”⁶⁰ They insist that the Operating Agreement acts as a check on the Members Committee to ensure that the Board with its “broad base of experience and judgment” can provide its “important advice and insight.”⁶¹ PPL/Dayton explain that the PJM Board’s ability to review and comment on proposed Operating Agreement changes is “an important tool that the PJM Board uses to maintain the independence and neutrality of PJM” and to ensure that “a group of Members shall not have undue influence” over PJM’s operation.⁶²

2. Commission Determination

26. Section 18.6 provides that the Operating Agreement may be amended 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 of the comments of the PJM Board, in accordance with Operating Agreement, section 8.4, or written agreement to an amendment of all Members not in default at the time the amendment is agreed upon; and (iii) approval and/or acceptance for filing of the amendment by FERC and any other regulatory body with jurisdiction thereof as may be required by law.⁶³

⁵⁸ *Id.*

⁵⁹ *Id.* at 16.

⁶⁰ *Id.*

⁶¹ *Id.* at 17.

⁶² *Id.*

⁶³ PJM Interconnection, L.L.C., Intra-PJM Tariffs, OA, § 18.6(a). Operating Agreement, § 8.4 (Manner of Acting) describes the procedures for conducting meetings

27. Contrary to PPL/Dayton's arguments on rehearing, the language in section 18.6(a) differs from language in the Operating Agreement governing other PJM actions, such as election of PJM's president, adopting the PJM budget, and approving the RTEP. Section 7.7 of the Operating Agreement, which describes the duties and responsibilities of the PJM Board, requires the PJM Board to "select" officers, "adopt" budgets, and "approve" the RTEP.⁶⁴ In contrast, section 18.6(a) is written more passively, providing only for "submission of the proposed amendment to the PJM Board for its review and comments" and "approval of the amendment. . . *by the Members Committee*, after consideration of the comments of the PJM Board."⁶⁵ Here, the Members Committee approved the amendment after it had been posted on PJM's website, such that the PJM Board had the opportunity to provide comments on the amendment.⁶⁶ We continue to find that the sequence of actions in this case complies with the requirements of section 18.6(a) of the Operating Agreement. Our finding here with regard to the specific facts and circumstances of this case has no effect on what actions may be required by the PJM Board in other circumstances.

28. We are also unpersuaded by PPL/Dayton's argument that the proposed revisions to the Operating Agreement "could not have been" submitted to the PJM Board. PPL/Dayton contend that "the record in this proceeding is clear that this posting did not happen prior to the Members Committee vote"⁶⁷ but offer no evidence from the record to support this claim, nor do they specify the date on which they believe the posting occurred relative to the June 21, 2018 Members Committee meeting. The record instead indicates that PJM Board members were aware of the proposed revisions during the Members Committee meeting⁶⁸ and that there had been public posting of various

and voting for the Members Committee. PJM Interconnection, L.L.C., Intra-PJM Tariffs, OA, § 8.4.

⁶⁴ PJM Interconnection, L.L.C., Intra-PJM Tariffs, OA, § 7.7(ii)-(iv). We also note that section 7.7(viii) allows the PJM Board to intervene in any proceeding at the Commission. None of the PJM Board members either individually or as a group has intervened in this proceeding, and we find no evidence to suggest that the PJM Board had any objections to the amendment.

⁶⁵ *Id.* § 18.6(a) (emphasis added).

⁶⁶ One PJM Board member did provide comments at the meeting prior to the vote. PJM November 2019 Answer at 6.

⁶⁷ PPL/Dayton Rehearing Request at 12.

⁶⁸ PJM Nov. 5, 2019 Answer at 6 (noting that three Board members were in attendance before the Members Committee meeting and that one of the Board members provided comments); LSP Transmission Holdings II, LLC Dec. 10, 2019 Answer at 4-9

iterations of the stakeholder materials on the PJM website.⁶⁹ The fact that a friendly amendment occurred during the Members Committee vote does not invalidate the prior postings of the proposed amendments.

29. Finally, we disagree with PPL/Dayton's contention that the word "submission" in section 18.6(a) "unambiguously requires an act that is directed *to* the PJM Board."⁷⁰ As PPL/Dayton note in their rehearing request, the word "submit" is defined as "present[ing] or propos[ing] to another for review, consideration or decision."⁷¹ We find that the posting of materials on PJM's website reasonably falls within this definition because the verb "present" is in turn defined as "to bring . . . before the public"⁷² and the verb "post" is defined as "to publish . . . in an online forum."⁷³ As the Commission explained in the March 2020 Order, section 18.6(a) of the Operating Agreement "is not prescriptive about how submission . . . must occur."⁷⁴ Based on the aforementioned definitions and the lack of prescription in the Operating Agreement, we conclude that in this proceeding, the act of presenting, publishing, and posting are all reasonably encompassed in the definition of "submission." We also note that PJM's posting is consistent with its normal course of business in communicating with Board.⁷⁵ The Commission's statement that PJM "has not deviated from its ordinary course in meeting the requirements of the Operating

(referencing a May 22, 2018 correspondence between the Board and certain PJM Transmission Owners regarding the cost containment proposal).

⁶⁹ PJM November 5, 2019 Answer at 6 ("The stakeholder proposal was shared with the PJM Board for its review and comment through, among other things, public posting of the various iterations of the stakeholder materials on the PJM website.").

⁷⁰ PPL/Dayton Rehearing Request at 9 (emphasis in pleading).

⁷¹ *Id.* (citing Merriam-Webster, Definition of "Submit," <https://www.merriam-webster.com/dictionary/submit>).

⁷² Merriam-Webster, Definition of "Present" <https://www.merriam-webster.com/dictionary/present>.

⁷³ Merriam-Webster, Definition of "Post," <https://www.merriam-webster.com/dictionary/post>.

⁷⁴ March 2020 Order, 170 FERC ¶ 61,243 at P 70.

⁷⁵ *See* PJM Deficiency Letter Response at 14 ("PJM's public posting on the PJM website is one of the means by which PJM shares proposed Operating Agreement revisions with the PJM Board. In sharing materials in this manner, the PJM Board is given the opportunity for 'review and comment.'").

Agreement for Board review”⁷⁶ is not, as PPL/Dayton contend, an excuse or an endorsement of a previous violation.⁷⁷ Rather, this observation is consistent with our finding here that PJM has acted in compliance with the requirements of section 18.6(a).⁷⁸

The Commission orders:

In response to the requests for rehearing, the March 2020 Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷⁶ *Id.*

⁷⁷ *See* PPL/Dayton Rehearing Request at 14.

⁷⁸ Having found no violation, the Commission dismissed as moot a request by LS Power for waiver of section 18.6(a). March 2020 Order, 170 FERC ¶ 61,243 at P 70. As the Commission found that PJM complied with section 18.6(a), PPL/Dayton are incorrect in alleging that the Commission has failed to enforce the filed rate doctrine. *See* PPL/Dayton Rehearing Request at 14-18.