

172 FERC ¶ 61,136
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.
American Transmission Systems Inc.

Docket No. ER20-2046-000

ORDER ACCEPTING PROPOSED TARIFF REVISIONS

(Issued August 11, 2020)

1. On June 12, 2020, PJM Interconnection, L.L.C. (PJM) filed, on behalf of the PJM Transmission Owners (PJM TOs),¹ pursuant to section 205 of the Federal Power Act (FPA), section 35.13 of the Rules and Regulations of the Commission, and section 9.1(a) of the PJM Open Access Transmission Tariff (Tariff), proposed revisions to Attachment M-3² of the PJM Tariff (Attachment M-3 Revisions Filing)³ to (1) identify and include Asset Management Projects within the existing planning procedures of Attachment M-3 of the PJM Tariff, and (2) include procedures for the identification and planning for end-of-life needs (EOL Needs).⁴

¹ PJM filed the proposed revisions pursuant to Order No. 714, on behalf of PJM TOs, as provided by the Consolidated Transmission Owners Agreement (CTOA). *See Elec. Tariff Filings*, 124 FERC ¶ 61,270 (2008) (Order No. 714); PJM Rate Schedules, TOA-42 § 4.1.3 PJM Tariff, 0.0.0 (“Each Party shall transfer to PJM ... responsibility for administering the PJM Tariff”).

² Currently, Attachment M-3 provides additional details of the process that PJM and the PJM TOs will follow in connection with planning Supplemental Projects, as defined in the Operating Agreement, in accordance with Schedule 6 of the Operating Agreement. PJM, Intra-PJM Tariffs, OATT ATT M-3, OATT Attachment M-3, 0.1.0.

³ PJM, Intra-PJM Tariffs, [OATT ATT M-3](#), [OATT Attachment M-3, 1.0.0](#).

⁴ “EOL Need” is defined as a need to replace a transmission line between breakers operating at or above 100 kV or a transformer the high side of which operates at or above 100 kV and the low side of which is not connected to distribution facilities, which the Transmission Owner has determined to be near the end of its useful life, the replacement

2. In this order, we accept the Attachment M-3 Revisions Filing, effective August 12, 2020, as requested.

I. Background

A. PJM Consolidated Transmission Owners Agreement

3. The PJM TOs⁵ entered into the Consolidated Transmission Owners Agreement (CTOA)⁶ to: “(i) facilitate the coordination of planning and operation of their respective Transmission Facilities within the PJM Region; (ii) transfer certain planning and operating responsibilities to PJM; (iii) provide for regional transmission service pursuant to the PJM Tariff and subject to administration by PJM; and (iv) establish certain rights and obligations that will apply to the Parties and PJM.”⁷

4. Article 4 of the CTOA contains the Parties’ commitments to PJM which, in turn, permit PJM to fulfill the objectives of the CTOA. Article 4.1 lists the Parties’ rights and responsibilities transferred to PJM. Under Article 4.1.4 of the CTOA, the PJM TOs agree to “transfer to PJM ... the responsibility to prepare a Regional Transmission Expansion Plan [RTEP] and to provide information reasonably requested by PJM to prepare the [RTEP] and shall otherwise cooperate with PJM in such preparation.”⁸ Further, under Article 4.5 of the CTOA, each Party “shall operate and maintain its Transmission

of which would be an Attachment M-3 project. PJM Intra-PJM Tariffs, OATT ATT M-3, OATT Attachment M-3, 1.0.0.

⁵ Transmission Owner is defined as a member that owns or leases with rights equivalent to ownership transmission facilities and is a signatory to the CTOA. Taking transmission service is not sufficient to qualify a member as a Transmission Owner. PJM Intra-PJM Tariffs, T-U-V, OATT Definitions – T – U - V, 20.0.0.

⁶ The CTOA is made by and among the PJM TOs (hereinafter referred to collectively as Parties and individually as a Party. *See PJM Interconnection, L.L.C.*, 114 FERC ¶ 61,283 (2006) (accepting CTOA revisions to include PJM). The CTOA is defined as a certain Consolidated Transmission Owners Agreement dated as of December 15, 2005, by and among the Transmission Owners and by and between the Transmission Owners and PJM Interconnection, L.L.C. on file with the Commission, as amended from time to time. PJM, Intra-PJM Tariffs, C-D, OATT Definitions – C-D, 25.0.0.

⁷ PJM Rate Schedules, TOA-42, Article 2.

⁸ PJM Rate Schedules, TOA-42, Article 4 Parties’ Commitments (0.0.0), TOA-42, 4.1 Rights and Responsibilities Transferred to PJM (0.0.0); TOA-42 4.1.4 Planning Information (0.0.0).

Facilities in accordance with: (i) the terms of this Agreement; (ii) applicable reliability principles, guidelines, and standards of the Applicable Regional Reliability Council and NERC; (iii) the PJM Manuals; (iv) the direction of PJM consistent with this Agreement; and (v) Good Utility Practice.”⁹

5. Article 5 of the CTOA describes the Parties’ retained rights over their respective transmission facilities. Article 5.2 states that each Party “shall have the right 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.”¹⁰ Article 5.6, however, reserves to the TOs rights not specifically granted to PJM.¹¹

6. Article 6 addresses PJM’s rights and commitments to permit PJM to fulfill the objectives and purposes of the CTOA. Article 6.3.1 requires PJM to “Direct the operation and coordinate the maintenance of the Transmission Facilities of the Parties in accordance with: (i) the Operating Agreement; (ii) the PJM Tariff; (iii) Good Utility Practice; and (iv) NERC and Applicable Regional Reliability Council operation and planning standards, principles and guidelines.”¹² Article 6.3.4 contains a provision stating that PJM’s obligation under the agreement is to “[c]onduct its planning for the expansion and enhancement of transmission facilities ...”¹³

7. Article 7 of the CTOA contains the Parties’ rate and rate design rights. Article 7.2.1 provides for changes to the regional rate design and terms and conditions. Specifically, “Section 205 filings to change the PJM Regional Rate Design or file for Joint Transmission Rates may only be made by the Parties, acting collectively, pursuant to a filing approved in accordance with Section 8.5.1 of this Agreement. ...” Article 7.3.1 further provides that the Transmission Owners shall have the exclusive and

⁹ PJM Rates Schedules, TOA-42, Article 4 Parties’ Commitments (0.0.0), TOA-42, 4.5 Operation and Maintenance (0.0.0).

¹⁰ PJM Rates Schedules, TOA-42, Article 5 Parties’ Retained Rights (0.0.0), TOA-42, 5.2 Facility Rights (0.0.0).

¹¹ PJM Rates Schedules, TOA-42, Article 5 Parties’ Retained Rights (0.0.0), TOA-42, 5.6 Reservation of Rights (0.0.0).

¹² PJM Rates Schedules, TOA-42, Article 6 PJM’s Rights and Commitments (0.0.0), TOA-42 6.3 Obligations of PJM under this Agreement (0.0.0), TOA-42 6.3.1 (0.0.0).

¹³ PJM Rates Schedules, TOA-42, Article 6 PJM’s Rights and Commitments (0.0.0), TOA-42 6.3 Obligations of PJM under this Agreement (0.0.0), TOA-42, 6.3.4 (0.0.0).

unilateral rights to file pursuant to Section 205 of the FPA and the FERC's rules and regulations thereunder for any changes in or relating to the establishment and recovery of the Transmission Owners' transmission revenue requirements or the PJM Regional Rate Design,"¹⁴ Additionally, Article 7.3.3 states that "nothing in this Section 7.3 is intended to limit the rights of any Party or other person to oppose such a Section 205 filing pursuant to Section 206 or any other applicable provision of the [FPA], or to limit the right of any Party or other person to make filings under Section 206 of the [FPA]."¹⁵

B. PJM RTEP Planning Criteria

8. Under PJM's RTEP process, PJM plans for the expansion and enhancement of transmission facilities in PJM to meet system reliability, operational performance, or economic criteria. PJM's RTEP reliability planning criteria includes PJM planning procedures, NERC Reliability Standards, Regional Entity reliability principles and standards, and individual PJM TO local planning criteria as filed with the Commission in FERC Form No. 715.¹⁶

9. PJM TOs plan Supplemental Projects¹⁷ to meet local needs in their respective zones. Supplemental Projects are planned through the Order No. 890 compliant procedures set forth in Attachment M-3. For instance, PJM TOs are required to provide the models used in developing their local plans and enable stakeholder participation to

¹⁴ PJM Rates Schedules, TOA-42 Article 7, Changes To Rate Design And Tariff Terms (0.0.0), TOA-42, 7.2 PJM Regional Rate Design and Joint Transmission (0.0.0), TOA-42 7.2.1 (0.0.0); and TOA-42 7.3 Filing of Transmission Rates and Rate Design (0.0.0), TOA-42 7.3.1 (0.0.0.).

¹⁵ PJM Rates Schedules, TOA-42 Article 7, Changes To Rate Design And Tariff Terms (0.0.0), TOA-42, 7.3 Filing of Transmission Rates and Rate Design (0.0.0).

¹⁶ PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.2(e) (2.0.0). Form No. 715 is the Annual Transmission Planning and Evaluation Report that a transmitting utility that operates integrated transmission facilities at or above 100 kilovolts must file with the Commission on or before April 1 of each year.

¹⁷ PJM, Intra-PJM Tariffs, Operating Agreement, Section I, Definitions S-T (defining a "Supplemental Project" as "a transmission expansion or enhancement that is not required for compliance with the following PJM criteria: system reliability, operational performance or economic criteria, pursuant to a determination by the Office of the Interconnection and is not state public policy project pursuant to Operating Agreement, Schedule 6, section 1.5.9(a)(ii)"). See *Appalachian Power Co.*, 170 FERC ¶ 61,196, at P 1 (2020).

review and comment on their plans. Additionally, Supplemental Projects do not qualify for region-wide cost allocation under Schedule 12 of the PJM Tariff.¹⁸

C. Order No. 890

10. In Order No 890, the Commission reformed the *pro forma* open access transmission tariff to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a basis that is just, reasonable and not unduly discriminatory or preferential. Among other things, in Order No. 890, the Commission directed all transmission providers to develop a transmission planning process that satisfied nine transmission planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchanges; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects.¹⁹ The Commission explained that, collectively, these principles would reduce “opportunities for undue discrimination in transmission planning” by requiring transmission providers to facilitate the timely and meaningful input and participation of stakeholders in the development of transmission plans.²⁰ The Commission further explained that doing so would help to avoid “after-the-fact” litigation by stakeholders regarding “transmission plans that were developed in the first instance without their input.”²¹

D. PJM Attachment M-3 Supplemental Projects

11. On August 26, 2016, the Commission, pursuant to section 206 of the FPA, established a proceeding to determine whether the PJM TOs were complying with their Order No. 890 obligations related to openness, transparency, and information exchange with respect to planning Supplemental Projects.²² PJM filed, on behalf of the PJM TOs, pursuant to section 205 of the FPA, an amendment to Attachment M-3 and a revision to Schedule 6 of the PJM Operating Agreement in response to the Show Cause Order. On

¹⁸ PJM Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 12.0.0, (14.0.0).

¹⁹ *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).

²⁰ *Id.* P 425.

²¹ *Id.* PP 425, 454.

²² *Monongahela Power Co.*, 156 FERC ¶ 61,134 (2016) (Show Cause Order).

February 15, 2018, Commission determined that the PJM TOs had not demonstrated that their filing was just and reasonable,²³ and pursuant to section 206 the Commission established a just and reasonable set of tariff provisions which now comprises the Order No. 890-compliant Attachment M-3 process, and on September 26, 2018, the Commission accepted the current Attachment M-3 planning process.²⁴

E. California Orders

12. In a series of orders, the *California Orders*, the Commission found that Order No. 890's transmission planning requirements do not apply to a transmission owner "asset management project or activity" even if the project or activity results in an "incidental increase in transmission capacity."²⁵ The Commission in the *California Orders* stated that although California Independent System Operator Corporation (CAISO) transmission owners' definitions of asset management projects and activities varied slightly, "they all encompass the maintenance, repair, and replacement work done on existing transmission facilities as necessary to maintain a safe, reliable, and compliant grid based on existing topology."²⁶ The Commission noted that, in some instances, an asset management project or activity may result in an incidental increase in transmission capacity that is not reasonably severable from the asset management project or activity. However, the Commission found that an incidental increase in transmission capacity that is a function of advancements in technology of the replaced equipment, and is not reasonably severable from the asset management project or activity, would not render the asset management project or activity in question a transmission expansion that is subject to the transmission planning requirements of Order No. 890.²⁷

13. The Commission in the *California Orders* also recognized that there may also be instances in which a transmission owner's asset management project or activity may

²³ *Monongahela Power Co.*, 162 FERC ¶ 61,129 (2018).

²⁴ *Monongahela Power Co.*, 164 FERC ¶ 61,217 (2018) (Attachment M-3 Order).

²⁵ *So. Cal. Edison Co.*, 164 FERC ¶ 61,160, at P 33 (2018); *Cal. Pub. Util. Comm'n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161, at P 68 (2018) [hereinafter *California Orders*].

²⁶ *So. Cal. Edison Co.*, 164 FERC ¶ 61,160 at n.55; *Cal. Pub. Util. Comm'n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161 at n.119.

²⁷ *So. Cal. Edison Co.*, 164 FERC ¶ 61,160 at P 33; *Cal. Pub. Util. Comm'n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161 at P 68.

result in an increase in transmission capacity that is not incidental.²⁸ For example, where a transmission owner determines that it can address a CAISO-identified transmission need by expanding the scope of an asset management or activity to result in a capacity increase the additional work would not be incidental to but would be incremental to the asset management project or activity and would represent an expansion of the CAISO grid.²⁹ Such expansions would need to be planned under an Order No. 890-compliant transmission planning process.

II. Filing Summary

14. PJM TOs state the existing provisions of Attachment M-3 provide only for the planning of Supplemental Projects³⁰ and that the proposed revisions expand the applicability of Attachment M-3.³¹ Specifically, the PJM TOs state the proposed revisions require each PJM TO to present its criteria for assessing whether a need exists to replace an existing transmission facility for stakeholder input at least annually. The PJM TOs state their filing seeks to achieve two goals. First, by expanding the scope of the Attachment M-3 process, the PJM TOs state the filing will enhance transparency and the opportunity for stakeholder review of EOL Needs. Second, the PJM TOs state the proposed revisions will better coordinate the Transmission Owners' end of useful life asset management activities with PJM's planning to address RTEP³² planning criteria. The PJM TOs note that the filing also increases transparency regarding the process that the PJM TOs use to evaluate the need to replace transmission facilities and provide PJM up to five years of projected replacements that a Transmission Owner has identified (on a confidential basis).³³

²⁸ *Cal. Pub. Util. Comm'n*, 164 FERC ¶ 61,161 at PP 68, 72.

²⁹ *So. Cal. Edison Co*, 164 FERC ¶ 61,160 at P 34; *Cal. Pub. Util. Comm'n*, 164 FERC ¶ 61,161, at P 69 (2018).

³⁰ PJM, Intra-PJM Tariffs, OATT ATT M-3, OATT Attachment M-3, 0.1.0.

³¹ PJM TOs do not address or modify any Tariff provisions related to the cost allocation provisions of Schedule 12 of the PJM Tariff.

³² RTEP is defined as the plan prepared by the Office of the Interconnection pursuant to Operating Agreement, Schedule 6 for the enhancement and expansion of the Transmission System in order to meet the demands for firm transmission service in the PJM Region. PJM, Intra-PJM Tariffs, OATT Definitions – R - S, OATT Definitions – R - S, 23.0.0.

³³ PJM TOs Transmittal at 11.

15. The PJM TOs propose revisions to add numerous definitions related to the expanded applicability of the existing Attachment M-3 provisions.³⁴

16. Asset Management Projects are defined as “any modification or replacement of a [TO]’s Transmission Facilities that results in no more than an Incidental Increase in transmission capacity undertaken to perform maintenance, repair, and replacement work, to address an EOL Need, or to effect infrastructure security, system reliability, and automation projects the [TO] undertakes to maintain its existing electric transmission system and meet regulatory compliance requirements.”

17. An EOL Need is defined as “a need to replace a transmission line between breakers operating at or above 100 kV or a transformer, the high side of which operates at or above 100 kV and the low side of which is not connected to distribution facilities, which the [TO] has determined to be near the end of its useful life, the replacement of which would be an Attachment M-3 Project.”

18. Attachment M-3 Projects are defined as “(i) an Asset Management Project that affects the connectivity of Transmission Facilities that are included in the Transmission System, affects Transmission Facility ratings or significantly changes the impedance of Transmission Facilities; (ii) a Supplemental Project; or (iii) any other expansion or enhancement of Transmission Facilities that is not excluded from this Attachment M-3 ‘Attachment M-3 Project’ does not include a project to address Form No. 715 EOL Planning Criteria.”

19. Form No. 715 EOL Planning Criteria is defined as “planning criteria filed by a [TO] in FERC Form No. 715³⁵ to address EOL Needs. No Transmission Owner may be compelled to file a Form No. 715 EOL Planning Criteria not required to be filed pursuant to FERC regulations applicable to Form No. 715.”

20. Incidental Increase is defined as “an increase in transmission capacity achieved by advancements in technology and/or replacements consistent with current Transmission Owner design standards, industry standards, codes, laws or regulations, which is not reasonably severable from an Asset Management Project. A transmission project that

³⁴Attachment M-3 Revisions Filing, Exh. A, (b) Definitions.

³⁵ Form No. 715 is the Annual Transmission Planning and Evaluation Report that any transmitting utility that operates integrated transmission facilities at or above 100 kilovolts must file with the Commission on or before April 1 of each year. See 18 C.F.R. § 141.300 (2019). *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,133 (2019).

results in more than an Incidental Increase in transmission capacity is an expansion or enhancement of Transmission Facilities.”³⁶

21. PJM TOs state the proposed revisions for Attachment M-3 Projects revise the existing planning process for Supplemental Projects, and as noted above, an Attachment M-3 Project does not include a project to address Form No. 715 EOL Planning Criteria. Instead, the proposed revisions require that each PJM TO develop documentation for its EOL Planning Criteria, present its EOL Planning Criteria at least once annually, and annually provide PJM a Candidate EOL Needs List comprising a non-binding five-year projection of its EOL Needs. PJM TOs note that the proposed revisions to Attachment M-3 include additional provisions for the identification and planning of EOL Needs pursuant to the Attachment M-3 EOL Planning Criteria and/or the Form No. 715 EOL Planning Criteria, and coordination with the existing PJM RTEP planning processes in the PJM Operating Agreement.

22. The PJM TOs have proposed a mechanism to address the possible situation of any potential electrical overlap between an Attachment M-3 Project that is designed to address an EOL Need that a PJM TO plans under the expanded Attachment M-3 process and a transmission project that PJM plans and selects in the RTEP process. Specifically, the PJM TOs propose that if PJM determines that a transmission project that is a more efficient and cost-effective solution to a regional need in PJM’s RTEP would also address a PJM TO’s EOL Need, and the PJM TO disagrees with PJM’s determination that its EOL Need is met by the selected RTEP transmission project, then the PJM TO may decide to continue to develop the Attachment M-3 Project. However, the PJM TO must provide PJM and stakeholders with its rationale for developing the Attachment M-3 Project that addresses the EOL Need notwithstanding PJM’s determination that the RTEP transmission project would address the EOL Need.³⁷

23. The PJM TOs contend that section 4 of the CTOA, which states that PJM “[c]onduct its planning for the expansion and enhancement of transmission facilities,” limits PJM’s planning responsibilities to only transmission projects that expand or enhance transmission facilities, and that the PJM TOs retain responsibility for planning and constructing their own transmission facilities.³⁸ The PJM TOs also note that their role was to address the needs unique to their Transmission Zones and to maintain and build their transmission facilities consistent with the findings in *Atlantic City Electric*

³⁶ Attachment M-3 Revisions Filing, Exh. A, (b) Definitions.

³⁷ PJM TOs Transmittal at 18.

³⁸ *Id.* at 7-8 (citing *PJM Interconnection L.L.C.*, 114 FERC ¶ 61,283, at P 10 (2006); PJM Rates Schedules, 6.3.4, TOA-42 6.3.4, 0.0.0.

Co., v. FERC.³⁹ Moreover, the PJM TOs state that the Commission already has found that asset management activities are not subject to the transmission planning requirements of Order No. 890.⁴⁰ However, PJM TOs state that they have agreed to include these requirements in Attachment M-3 to (1) increase the transparency of PJM TO asset management activities and projects and (2) improve coordination of the PJM TOs' planning for certain Asset Management Projects to address EOL Needs with the development of the RTEP.

24. The PJM TOs request an effective date of August 12, 2020 in anticipation of preparation activities for the 2021 planning year.

III. Notice and Interventions

25. Notice of the PJM TOs' filing was published in the *Federal Register*, 85 Fed. Reg. 36,842 (June 18, 2020), with interventions and protests due on or before July 6, 2020. Appendix A to this order lists the entities that filed notices of intervention, timely-filed motions to intervene, and out of time motions to intervene.

26. Comments were filed by LS Power, Load Group,⁴¹ NJ BPU, Interested Parties,⁴² WIRES, J-POWER, OCC, Ohio FEA, Duquesne, and EEI.

³⁹ *Id.* at 7-8 (citing *Atlantic City Electric Co., v. FERC*, 295 F.3d 1, 6 (D.C. Cir. 2002) (“there was no transfer of ownership or even physical operation of their facilities . . . [and] each of the [transmission owners] retained both ownership and physical control of their facilities[.]”).

⁴⁰ *Id.* at 3 (citing *Calif. Publ. Util. Comm'n.*, 164 FERC ¶ 61,161, *reh'g denied*, 168 FERC ¶ 61,171, at P 7, n.19 (2019); *So. Calif. Edison Co.*, 164 FERC ¶ 61,160 (2018), *reh'g denied*, 168 FERC ¶ 61,170, at P 7 n.15 (2019)).

⁴¹ Load Group includes: American Municipal Power, Inc., Old Dominion Electric Cooperative, PJM Industrial Customer Coalition, Public Power Association of New Jersey, People's Counsel for the District of Columbia, Delaware Division of the Public Advocate, West Virginia Consumer Advocate, Indiana Office of Utility Consumer Counselor, Blue Ridge Power Agency, and Central Virginia Electric Cooperative.

⁴² Interested Parties' includes: Office of the Peoples Counsel for the District of Columbia, Delaware Division of the Public Advocate, and Old Dominion Electric Cooperative.

27. On June 18, 2020, AMPT and ODEC (collectively, Movants) filed a motion to dismiss the Attachment M-3 Revisions Filing (Motion). On June 26, 2020, the Indicated PJM TOs filed an answer.⁴³

28. On July 21, 2020, PJM filed a limited answer, and the PJM TOs filed an answer to the protests and comments. On July 29, 2020, LS Power filed an answer, and on July 31, 2020, the Load Group filed an answer. On August 3, 2020, PJM TOs filed a motion for leave to answer and limited answer to LS Power and Load Group. On August 5, 2020, J-Power and NJ BPU filed answers to the PJM TOs' July 21, 2020 answer.

A. Motion to Dismiss

29. Movants contend that the Attachment M-3 Revisions Filing should not have been made because the PJM TOs did not adhere to the procedural requirements of the CTOA.⁴⁴ While Movants agree that on May 7, 2020, pursuant to section 9.1(b) of the PJM Tariff, the PJM TOs initiated consultation with PJM and with the PJM Members Committee by providing notice of the proposed revisions, Movants contend that the CTOA-Administrative Committee (Administrative Committee)⁴⁵ failed to hold a meeting and take a formal vote before initiating the consultation process.⁴⁶ Movants state that section 8.5⁴⁷ of the CTOA provides “*any action taken by the Administrative Committee*

⁴³ The Indicated Transmission Owners are: American Electric Power Corporation; Dayton; Duke Energy Corporation; East Kentucky Power Cooperative; Exelon Corporation; FirstEnergy Service Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; and Virginia Electric and Power Company.

⁴⁴ Motion at 2.

⁴⁵ The Administrative Committee shall have the authority to propose policies and recommendations to PJM as to any matters relating to the Parties' Transmission Facilities; provided, however, that PJM shall not be required to adopt such policies or recommendations and that the Administrative Committee shall not exercise any control over functions and responsibilities transferred to PJM pursuant to this Agreement, the PJM Tariff or the Operating Agreement. PJM Rate Schedules, 8.1, TOA-42 8.1 Duties and Responsibilities (0.0.0).

⁴⁶ *Id.* at 3.

⁴⁷ Subject to the limitations of section 9.7.1(a), any action taken by the Administrative Committee shall require a combination of the concurrence of the representatives' Individual Votes of the representatives of those Parties entitled to vote on such matters and Weighted Votes as specified in this section 8.5. PJM Rate Schedules, 8.5, TOA-42 8.5 Manner of Acting, 1.0.0.

shall require a combination of the concurrence of the representatives' Individual Votes of the representatives of those Parties entitled to vote on such matters.”⁴⁸ Accordingly, Movants contend that the notification to commence the consultation process should have been preceded by a vote, and because no vote was taken by the Administrative Committee prior to providing notice to PJM and the PJM Members Committee that the PJM TOs contemplated a filing pursuant to section 205 of the FPA, Movants request that the Attachment M-3 Revisions Filing be dismissed.⁴⁹

30. In the alternative, Movants request that the Commission suspend the date for intervention and comments during the pendency of this motion, and issue a deficiency letter requiring that the PJM TOs refile the proposed revisions once they have cured any deficiency in the meeting and voting requirements of the CTOA.⁵⁰

31. In answer to the Motion, Indicated PJM TOs contend that nothing in the CTOA or the Tariff requires the Administrative Committee to take a formal vote to issue a notice to initiate consultation regarding a potential section 205 filing.⁵¹ Indicated PJM TOs contend that, unless exempted, all that the CTOA and the Tariff require is that consultation take place beginning at least 30 days prior to the filing,⁵² and that notice of initiation of consultation is not a formal action of the Administrative Committee that requires approval through the voting process set forth in the CTOA.⁵³ Indicated PJM TOs maintain that since neither the CTOA nor the Tariff explicitly require an Administrative Committee notice or vote before consultation commences on a proposed section 205 of the FPA filing, the Commission should decline to impose such a requirement.⁵⁴

32. Indicated PJM TOs contend that section 7.3.2⁵⁵ of the CTOA and section 9.1(b) of the Tariff states that any such changes must be in accordance with section 8.5.1 of the

⁴⁸ *Id.* at 4 (citing PJM, Rate Schedules, 8.5, TOA-42 8.5 Manner of Acting, 1.0.0).

⁴⁹ *Id.* at 5-6.

⁵⁰ *Id.* at 8-9.

⁵¹ Indicated PJM TOs Answer at 3-4.

⁵² *Id.* at 5.

⁵³ *Id.*

⁵⁴ *Id.* at 7.

⁵⁵ Section 7.3.2 of the CTOA states, “The Transmission Owners shall consult with PJM and the PJM Members Committee beginning no less than thirty (30) days prior to

CTOA, which requires approval of a two-thirds majority of individual Transmission Owner votes and votes weighted by net transmission investment, and that pursuant to section 9.1(b) of the Tariff, before making such a filing the Transmission Owners “shall consult with PJM and the PJM Members Committee beginning no less than 30 days prior to any [such] [s]ection 205 filing.”⁵⁶

33. Indicated PJM TOs contend that both requirements in connection with the proposed revisions were satisfied.⁵⁷ Specifically, they assert that PJM TOs began the consultation process on May 7, 2020, when, at their request, PJM issued notice of consultation process and a June 10, 2020 meeting, and the Administrative Committee authorized the submission of the FPA section 205 filing.

34. Indicated PJM TOs further contend that the action referred to in section 8.5 of the CTOA is an authorization for the submission of an FPA section 205 filing, and that the notice required to start that consultation process is ministerial.⁵⁸ Indicated PJM TOs contend that under Movants’ reading, every preliminary step that may lead to an Administrative Committee vote would itself be an Administrative Committee action requiring an Administrative Committee vote, and such an interpretation of the CTOA is simply not workable.⁵⁹

any section 205 filing hereunder, but neither PJM (except as provided for in Section 7.6) nor the PJM Members Committee shall have any rights to veto or delay the Transmission Owners’ section 205 filing hereunder; provided that the Transmission Owners may file with less than a full 30 day advance consultation in circumstances where imminent harm to system reliability or imminent severe economic harm to electric consumers requires a prompt section 205 filing; provided further that the Transmission Owners shall provide as much advance notice and consultation with PJM and the PJM Members Committee as is practicable in such circumstances and no such filing shall be made with less than 24 hours’ advance notice.” PJM Rate Schedules, 7.3, TOA-42 7.3 Filing of Transmission Rates and Rate Design (0.0.0).

⁵⁶ *Id.* at 4 (citing PJM, Rate Schedules, 7.3.2, TOA-42 7.3.2, 0.0.0; PJM, Intra-PJM Tariffs, 9.1, OATT 9.1 Rights of the Transmission Owners, 2.1.0).

⁵⁷ *Id.*

⁵⁸ *Id.* at 7.

⁵⁹ *Id.*

B. Pleadings

1. PJM CTOA

35. In support of the Attachment M-3 Revisions Filing, WIRES and EEI argue that the CTOA leaves the responsibilities of planning for Asset Management or EOL Need projects to the PJM TOs.⁶⁰ EEI claims that only Transmission Owners have the specialized knowledge necessary to plan for asset replacement, including EOL determinations, and that the sole responsibility for decisions about when and how to replace an asset lies with the Transmission Owner. WIRES also argues that the Attachment M-3 Revisions Filing appropriately recognizes the rights and responsibilities of all Transmission Owners as asset owners and the role of Regional Transmission Organizations/Independent System Operators (RTOs/ISOs) as regional planners.

36. Conversely, Ohio FEA, LS Power, and Load Group argue that PJM is in the best position to plan for Asset Management or EOL Need projects.⁶¹ Ohio FEA asserts that PJM is in the best position to identify a cost-effective solution to replace a transmission facility for an EOL Need or to identify the intersection of a potential EOL Need and a regional planning need. LS Power asserts that, if the Attachment M-3 Revisions Filing is accepted, it would stymie PJM from conducting regional transmission planning by allowing Transmission Owners to exclusively reserve certain planning activities for the region's needs while also prohibiting stakeholders from improving regional planning rules. Further, LS Power argues the sections of the CTOA on which the PJM TOs rely upon to support their filing, do not limit the scope of regional planning. LS Power argues that these provisions only pertain to transmission facilities that were brought into PJM as a result of a transmission owner joining PJM, not future facilities. Load Group states that the PJM TOs conflate certain sections of the CTOA as support for the view that they may conduct transmission planning essentially as they see fit absent a specific PJM RTEP criterion; however, Load Group explains that this section addresses operation and maintenance, not transmission planning. Load Group argues the Attachment M-3 Revisions Filing goes well beyond what the Commission permitted in approving Attachment M-3.

37. LS Power argues that PJM TOs' reliance on section 9.1 of the PJM Tariff and the court's determination in *Atlantic City v. FERC*, is misplaced. LS Power states that while both the PJM Tariff and *Atlantic City v. FERC* established certain FPA section 205 filing rights for Transmission Owners regarding rates and revenue requirements, both remained

⁶⁰ WIRES Comment at 4-5; EEI Comment at 5.

⁶¹ Ohio FEA comments at 8; LS Power Protest at 53; Load Group Protest at 17-18.

silent on transmission planning.⁶² Rather, LS Power offers that transmission planning is one of the core functions of an RTO or ISO. LS Power adds that Order No. 2000 found that RTOs/ISOs “have ultimate responsibility for both transmission planning and expansion within its region...”⁶³ As such, LS Power states, accepting the Attachment M-3 Revisions Filing, would grant PJM TOs unilateral filing rights for transmission projects for which the RTOs/ISOs should hold responsibility.⁶⁴

38. Duquesne argues that the Attachment M-3 Revisions Filing imposes several new mandatory obligations on Transmission Owners, including requiring Asset Management Projects to be included and subject to stakeholder comment in the Attachment M-3 process, that encroach upon Duquesne’s right under the CTOA. Duquesne asserts that asset management activities do not expand the transmission system and are not subject to the transmission planning requirements of Order No. 890, consistent with the Commission’s findings in the *California Orders*. Duquesne argues that the proposal fundamentally deviates from this allocation of responsibility, noting that PJM would be required to look for overlap with EOL Need projects to determine if the EOL Need could be met by an RTEP project, even though EOL Need projects are Asset Management Projects required to meet local needs.⁶⁵ Finally, Duquesne argues that the proposal is an improper attempt to circumvent the process to amend the CTOA and is therefore unjust and unreasonable.⁶⁶

39. Interested Parties and Load Group argue that the Attachment M-3 Revisions Filing was filed in violation of the CTOA.⁶⁷ Interested Parties contend the Attachment M-3 Revisions Filing arrived at the Commission by short-circuiting the stakeholder process and violating the very agreement that provides for certain Transmission Owner section 205 filing rights. Interested Parties assert that the PJM TOs ignored various provisions of

⁶² LS Power Protest at 17-19 (citing PJM Tariff section 9.1(a); *Atl. City Elec., et al v. FERC* 295 F. 3d 1 (D.C. Cir. 2002)).

⁶³ LS Power Protest at 19-20 (citing *Reg’l Transmission Organs.*, Order No. 2000, 89 FERC ¶ 61,284, at P 485, *order on reh’g*, Order No. 2000-A, (2000), *aff’d sub nom.*, *Pub. Util. Dist. No. 1. Of Snohomish Cty., Wash. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)).

⁶⁴ *Id.* at 19-20 (citations omitted).

⁶⁵ Duquesne Protest at 4-8.

⁶⁶ *Id.* at 9-11.

⁶⁷ Interested Parties Protest at 15-16; Load Group Protest at 11-13.

the CTOA in their rush to circumvent the stakeholder process.⁶⁸ Load Group asserts that section 9.1(a) of the Tariff specifies that the PJM TOs can “only file under Section 205 to change the transmission rate design for the PJM Region pursuant to a filing approved in accordance with Section 8.5.1 of the CTOA.” Load Group emphasizes that the PJM TOs’ authority ends there, as PJM’s regional transmission planning process, with the exception of the local transmission planning process for Supplemental Projects, is set forth in Schedule 6 to the PJM Operating Agreement.

40. Ohio FEA states that the Commission should eliminate any ambiguity regarding the scope of PJM’s authority that results in no or a deficient review of Transmission Owner transmission investment proposals and confirm PJM’s responsibility to equip itself with the required expertise to function comprehensively and effectively as a regional planner.⁶⁹

2. PJM Joint Stakeholder Proposal

41. Load Group recommends that the Commission reject the Attachment M-3 Revisions Filing and instead approve the proposal developed and approved by a super-majority of PJM Members filed in Docket No. ER20-2308-000 (Joint Stakeholder Proposal).⁷⁰ Load Group explains that stakeholders seek to have PJM use all of its tools and insights to centrally plan, on a regional and cost effective basis, for new transmission expansions and enhancements that are required to replace transmission facilities that have reached the end of their operational lives for the grid of the future.

42. Interested Parties argue that approval of the Joint Stakeholder Proposal is consistent with established Commission preference for a stakeholder vetted and approved approach.⁷¹ Interested Parties contend it provides for the transparency and meaningful participation Order No. 890 requires and will allow PJM to meet its regional transmission planning obligations under Order No. 1000.⁷² Interested Parties further contend that the

⁶⁸ Interested Parties Protest at 15.

⁶⁹ Ohio FEA Comments at 9.

⁷⁰ Load Group Protest at 36-37.

⁷¹ Interested Parties Protest at 12-13.

⁷² *Id.* at 16 (citing *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011) (Order No. 1000), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g & 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).

Joint Stakeholder Proposal is just and reasonable and should be accepted because it adheres to and furthers these long established Commission policy goals.⁷³

3. EOL Terms and Process

43. Regarding the Attachment M-3 Revisions Filing's provisions on notifications and forecasts for future EOL Need projects, Ohio FEA supports the identification of EOL projects through the PJM TOs' proposed 5-year forecast and their incorporation into PJM's transmission planning framework. Additionally, Ohio FEA states that five years represents the minimum notification time that would be necessary for a project to be incorporated into the RTEP.⁷⁴

44. Load Group and LS Power argue that the definitions governing the expanded Attachment M-3 process are vague and, therefore, are unjust and unreasonable. Specifically, Load Group argues the following definitions in the Attachment M-3 Revisions Filing are unjust and unreasonable: Asset Management Project, Attachment M-3 Project, Form No. 715 EOL Planning Criteria, EOL Need, Attachment M-3 EOL Planning Criteria, Candidate EOL Needs List, and PJM Planning Criteria.⁷⁵ LS Power argues that the definitions that underlie the Attachment M-3 Revisions Filing are unjust and unreasonable. LS Power states that the definition of "asset management" is not defined by the Commission, North American Electric Reliability Corporation (NERC), or PJM. LS Power notes that the *California Orders* stated that "asset management" is "maintenance, repair and replacement work *done on existing transmission facilities.*" LS Power states that this definition does not apply to retiring transmission facilities that will be governed by the revisions for EOL drivers.⁷⁶ LS Power argues that the proposed definition of "EOL Need" in the Attachment M-3 Revisions Filing, by only applying to transmission facilities greater than 100 kV, provides another backdoor right of first refusal (ROFR) on substations and any other non-line transmission equipment. Further, LS Power notes, the definition of "EOL Need" limits EOL Needs to just transmission lines, meaning that replacements of substations in PJM would no longer be subject to the regional planning process or cost allocation.⁷⁷

⁷³ *Id.* at 18.

⁷⁴ Ohio FEA Comments at 11-12.

⁷⁵ Load Group Protest at 38.

⁷⁶ LS Power Protest at 39-42 (citations omitted).

⁷⁷ *Id.* at 48-51.

45. Load Group claims the Attachment M-3 Revisions Filing's reliance on the *California Orders* is misplaced and those orders do not apply to the breadth of projects under consideration in these proposed tariff revisions.⁷⁸ Further, Load Group argues the Commission made it clear in the *California Orders* that its determination was based on the specific circumstances of those proceedings, so the Commission should not import and impose those determinations in this proceeding. Though the PJM TOs claim their proposal is consistent with the *California Orders*, Load Group states the Attachment M-3 Revisions Filing goes well beyond the *California Orders*, including the PJM TOs' proposed definition for Asset Management Projects and conflates the Commission's guidance on incidental increases to transmission system capacity.

46. LS Power and Load Group also protest the PJM TOs' proposed definition of "Incidental Increase."⁷⁹ LS Power notes that while the term "Incidental Increase" was the mechanism by which the *California Orders* determined whether a transmission project was an "expansion" of the transmission system, the Attachment M-3 Revisions Filing ignores PJM's transmission planning structure in which both regional planning and Supplemental Projects cover expansions and enhancements. LS Power argues PJM TOs' proposed definition conflates expansions, which relate exclusively to increases in delivery potential with "enhancements," which can mean new facilities that result in no capacity increase. Due to this lack of clarity on the PJM TOs' proposed definition for "Incidental Increase," LS Power argues, it will be applied discriminatorily across the PJM region since Transmission Owners' design standards differ. Load Group states the proposed definition of Incidental Increase is unjust and unreasonable as it is unreasonably broad and susceptible to manipulation through a modification of Transmission Owner design standards and it seeks to apply an interpretation of a Commission Order that is explicitly inapplicable to PJM.

47. Ohio FEA, Load Group, LS Power, NJ BPU, and OCC argue that the Attachment M-3 Revisions Filing should be more transparent than as-filed.⁸⁰ Ohio FEA argues that the proposal could be strengthened such that stakeholders may provide input when the Transmission Owners are developing their planning criteria and not just on the final decisions made utilizing such criteria. Load Group warns that having these critical planning provisions in Attachment M-3 to the PJM Tariff as opposed to the Operating Agreement, gives the PJM TOs control and veto authority over adding additional regional planning categories to the PJM RTEP. NJ BPU states that under the Attachment M-3 Revisions Filing, stakeholders will only have ten days to review and provide input on

⁷⁸ Load Group Protest at 24-30.

⁷⁹ LS Power Protest at 44-48; Load Group Protest at 38-39.

⁸⁰ Ohio FEA Comments at 6-10; Load Group Protest at 21-22; LS Power Protest at 4; NJ BPU Protest at 4-9; OCC Protest at 8-12.

EOL Needs projects. OCC states that the proposal is fundamentally deficient because it fails to include all Asset Management Projects within the scope of the transmission planning process and fails to provide for any regulatory oversight of the selection and cost of projects.

48. LS Power, NJ BPU, and OCC argue that the Attachment M-3 Revisions Filing, by permitting PJM TOs to provide PJM, and only PJM, a Candidate EOL Needs List comprising the non-public confidential, non-binding projection of up to five years of EOL Needs, deprives stakeholders (including consumer advocate groups) the necessary transparency to avoid undue discrimination.⁸¹ LS Power states the Attachment M-3 Revisions Filing's proposal to share the Candidate EOL Needs List with PJM, and not stakeholders or state commissions, should be rejected because there is no justification for keeping this list a secret and is inconsistent with the Commission's efforts to ensure that transmission planning is transparent and permits stakeholder participation.

49. LS Power argues that the Attachment M-3 Revisions Filing represents an effort by PJM TOs to circumvent PJM's regional transmission planning processes by removing the ability of PJM Stakeholders to determine the scope of regional planning within the Operating Agreement. LS Power asserts the impact of the Attachment M-3 Revisions Filing would continue the transition in PJM to move local and short-term planning to the forefront, while relegating regional planning to an afterthought.⁸² Similarly, Interested Parties argue the Attachment M-3 Revisions Filing is not the product of an extensive stakeholder process but is rather a deliberate series of actions designed to avoid and ignore input from other PJM Members and stakeholders.⁸³

50. Ohio FEA supports identification of Transmission Owner EOL projects that also overlap with PJM RTEP projects.⁸⁴ However, Ohio FEA contends that in order to strengthen this requirement, and avoid duplication of projects, the PJM TOs should not be permitted to proceed with a project that overlaps with a PJM RTEP project. Ohio FEA argues that if PJM TOs object to the findings of the RTEP planning process as it pertains to their project candidates, the PJM TOs will be under no obligation to abide by the findings. Ohio FEA contends that to facilitate meaningful improvement in the planning process, Transmission Owners must be bound by the findings based upon the information they provided.

⁸¹ LS Power Protest at 52-53; NJ BPU Protest at 7-8; OCC Protest at 8-12.

⁸² LS Power Protest at 4.

⁸³ Interested Parties Protest at 13-16.

⁸⁴ Ohio FEA comments at 7, 11-12.

51. LS Power argues that the Attachment M-3 Revisions Filing, if accepted, would conflict with existing Operating Agreement transmission planning requirements. Specifically, LS Power argues the following: (1) the proposed tariff revisions do not respect PJM's existing provisions related to transmission projects driven by Public Policy Requirements or Multi-Driver transmission projects; (2) inappropriately expands the definition of Supplemental Projects without corresponding revisions to Schedule 6 of the Operating Agreement; (3) effectively establishes Transmission Owner veto rights to PJM's determination of projects that can be included in PJM's Order No. 1000-compliant transmission planning process; and (4) since EOL or Asset Management Projects qualify as Supplemental Projects under the existing Operating Agreement, the Attachment M-3 Revisions Filing is unnecessary.⁸⁵

4. Expanded Attachment M-3 Impacts

52. Ohio FEA supports that Asset Management and EOL projects be vetted through the Attachment M-3 process. However, Ohio FEA contends that more should be done to align the PJM regional transmission planning process with the Attachment M-3 process due to the recent escalation in transmission investment driven primarily by Transmission Owners' projects that occur independent of RTEP review.⁸⁶

53. Interested Parties argue that the Attachment M-3 Revisions Filing completely avoids the non-binding, ten-year look-ahead and replaced the required six-year notification of EOL Need status with a voluntary five-year notice that would only be shared with PJM.⁸⁷ Rather than enhancing transparency to allow stakeholders to better align their own commercial and regulatory activities with the changing topography of the grid, Interested Parties contend, the Attachment M-3 Revisions Filing creates a black box around transmission planning into which only the Transmission Owner and PJM may look. Furthermore, Interested Parties contend, it is not entirely clear what PJM would do with its increased "transparency," as Attachment M-3 Revisions Filing still leaves the vast majority of EOL planning to the Transmission Owner.⁸⁸ Interested Parties contend only when there is a related PJM reliability open window violation *and* the EOL need can be combined with a PJM open window reliability violation *and* the EOL Need project is

⁸⁵ LS Power Protest at 21-32 (internal citations omitted).

⁸⁶ Ohio FEA Comments at 5-6 & 7-8.

⁸⁷ Interested Parties Protest at 8-9.

⁸⁸ *Id.* at 8.

over 200 kV *and* the EOL project relates only to poles and wires (i.e., no substation equipment, including transformers) would PJM plan the EOL project.⁸⁹

54. Interested Parties, Load Group, and LS Power contend that the Attachment M-3 Revisions Filing undermines the Commission's policy goals regarding regional transmission planning as articulated in Order Nos. 890, 1000, and 2000.⁹⁰ Interested Parties argue it would significantly reduce transparency and limit meaningful stakeholder participation, contrary to the requirements of Order No. 890. Interested Parties argue because of the prevalence of EOL projects in the PJM footprint, allowing the Transmission Owner to address them through the Attachment M-3 Process all but guarantees that PJM will be unable to develop the type of regional planning envisioned under Order No. 1000. Load Group also suggests that the proposed applicability provision limits PJM's ability to add additional regional transmission planning categories to the PJM RTEP absent PJM TOs' approval to modify the Tariff, which Load Group explains would prevent PJM from independently making changes to the RTEP and is the exact opposite of the spirit and letter of Order No. 2000. LS Power states, the Commission found in Order No. 1000 that, "it is necessary to have an affirmative obligation in these transmission planning regions to evaluate alternatives that may meet the needs of the region more efficiently or cost-effectively."⁹¹ Given the Commission's statement in Order No. 1000, LS Power argues that the Attachment M-3 Revisions Filing would deprive PJM of its ability to holistically plan on a regional basis and determine whether a regional solution would more efficiently or cost-effectively meet the region's needs.

55. LS Power argues that the Attachment M-3 Revisions Filing elevates local planning over regional planning contrary to Commission precedent on transmission planning. Specifically, LS Power argues that the Attachment M-3 Revisions Filing is inconsistent with Order No. 888-A's guidance that encouraged transmission providers to engage in regional planning with transmission customers to "ensur[e] that regional transmission needs are met efficiently."⁹² LS Power further states the Attachment M-3 Revisions Filing conflicts with the Commission's finding in Order No. 890 that, "[t]he coordination of planning on a regional basis will also increase efficiency through the coordination of transmission upgrades that have region-wide benefits, as opposed to pursuing transmission expansion on a piecemeal basis." LS Power adds that the impacts of the

⁸⁹ *Id.* at 8-9.

⁹⁰ Interested Parties Protest at 16-18; Load Group Protest at 24; LS Power Protest at 55-58.

⁹¹ Order No. 1000 at P 80.

⁹² LS Power Protest at 55 (citations omitted).

Attachment M-3 Revisions Filing would create a perpetual right to locally plan and rebuild the existing transmission system in perpetuity.

56. LS Power and NJ BPU argue that EOL Need transmission projects developed under the expanded Attachment M-3 process should be subject to competitive solicitation windows.⁹³ LS Power asserts that the real-world impacts of the Attachment M-3 Revisions Filing is to institute a new ROFR in the PJM Tariff nine years after the Commission mandated the removal of ROFRs. The NJ BPU asserts the Attachment M-3 Revisions Filing, by not permitting EOL Need projects to be subject to competition, creates preferential treatment for the PJM TOs and likely results in a failure to consider more efficient or cost-effective solutions for these projects and runs counter to the Commission's findings in Order No. 1000.

5. Attachment M-3 Supplemental Projects

57. Interested Parties, OCC, and LS Power make arguments opposing EOL Need projects being developed under the expanded Attachment M-3 process compared to the existing Attachment M-3 Supplemental Projects process.⁹⁴ Interested Parties argue EOL projects are often addressed as either Supplemental Projects or FERC Form 715 criteria projects, minimizing any effective oversight by either PJM or stakeholders. Rather than addressing these deficiencies, Interested Parties argue, the PJM TO Proposal compounds them, unlawfully expanding the reach of its Supplemental Projects Attachment M-3 Process. LS Power states that as is apparent from Supplemental Project spending for EOL projects, and the Attachment M-3 Revisions Filing, Transmission Owners have criteria by which they make EOL Need determinations. LS Power states by withholding EOL Need planning criteria from its Form No. 715 submission, a Transmission Owner can build EOL Need projects without competition as a Supplemental Project – EOL Need projects are a subset of Supplemental Projects.

58. Load Group notes that the proposed revisions of the Attachment M-3 Revisions Filing are not limited to modifications to the Supplemental Project planning process in Attachment M-3 and includes expansive modifications to Attachment M-3. Load Group also states the Attachment M-3 Revisions Filing explicitly limits PJM's flexibility to improve its structure and operations to meet demand by restricting the PJM planning criteria. Load Group argues that the PJM TOs cannot turn Attachment M-3 into an

⁹³ *Id.* at 13-14; NJ BPU Protest at 2-3 (citations omitted).

⁹⁴ Interested Parties Protest at 4; OCC Protest at 16; LS Power Protest at 62-64.

expansive catchall that allows the PJM TOs to declare whatever they choose to be an “Attachment M-3 Project” absent defined PJM criteria.⁹⁵

6. Cost Causation Principles

59. LS Power and NJ BPU both contend that the Attachment M-3 Revisions Filing is inconsistent with cost causation principles. LS Power states that, if accepted, the Attachment M-3 Revisions Filing would violate the long-standing cost allocation precedent that requires that beneficiaries of a project pay the cost of the project.⁹⁶ NJ BPU argues that the Attachment M-3 Revisions Filing violates cost causation principles. Specifically, NJ BPU argues the court’s findings in *ODEC v. FERC* which stated “the cost-causation principle, by allocating project costs consistent with project benefits”⁹⁷ signaled that the Attachment M-3 Revisions Filing is not consistent with this principle since EOL Need projects that PJM TOs develop under the expanded Attachment M-3 process will receive local cost allocation to the transmission zone where the project is located.

60. NJ BPU offers the example of PSEG’s Metuchen-Trenton-Burlington Project (MTB Project) which addressed end-of-life transmission needs. NJ BPU states that the MTB Project received proper cost allocation under PJM’s Order No. 1000-compliant RTEP process, but had the MTB Project been developed under the Attachment M-3 Revisions Filing, it would have only received local cost allocation. NJ BPU concludes that since the PJM TOs failed to address the cost causation principles in their filing, they have not meet the FPA section 205 filing burden.⁹⁸

7. Miscellaneous

61. J-POWER claims that it does not take a position on the proposed revisions or an alternate proposal, but instead urges the Commission to request additional information regarding the process for EOL transmission replacements to avoid creating additional roadblocks for merchant generators trying to interconnect to the PJM system.⁹⁹

⁹⁵ Load Group Protest at 13-15.

⁹⁶ LS Power Protest at 35-36 (citing *Old Dominion Elect. Coop. v. FERC*, 898 F.3d 1254 (D.C. Cir.), *reh’g denied*, 905 F.3d 671 (D.C. Cir. 2018) [hereinafter *ODEC*]).

⁹⁷ *ODEC*, 898 F.3d 1254 at 1263.

⁹⁸ NJ BPU Protest at 10-15.

⁹⁹ J-POWER Comment at 1.

62. OCC states that the instant proposal lacks recommendations of effective regulation of costs to protect consumers because it does not provide for any timely review of the need for and cost of proposed Supplemental Projects including Asset Management and EOL projects. OCC notes that even if the Commission were to require PJM to be responsible for determining the most cost effective solution for reliability concerns driven by end-of-life considerations, that solution will not necessarily guarantee a cost-efficient transmission grid and PJM's independent and timely review of the estimated costs of those projects is necessary. OCC states that the Commission should require a third party or PJM to review Supplemental Projects for a demonstration of need to maintain reliability and costs.¹⁰⁰

C. Responsive Pleadings

63. In their limited answer, PJM responds to J-Power's concerns. Specifically, PJM states the Commission's acceptance of the Attachment M-3 Revisions Filing is not anticipated to affect interconnection costs. PJM explains that the Attachment M-3 Revisions Filing merely provides more transparency to an existing process to avoid uncertainty when PJM develops the RTEP. PJM states J-Power's concerns pertain to interconnection issues which are beyond-the-scope of this proceeding.¹⁰¹

64. In their answer, the PJM TOs respond to several arguments made in the pleadings. First, the PJM TOs state that the Attachment M-3 Revisions Filing must be considered on its own merits.¹⁰² The PJM TOs argue that the Commission is under no obligation to determine whether the Attachment M-3 Revisions Filing is superior to other proposals offered by the pleadings and that the Commission only needs to determine whether the instant proposal is just and reasonable. The PJM TOs note that the Commission is not authorized, per section 205, to change the Attachment M-3 Revisions Filing to adopt protestors' alternatives, some of which, the PJM TOs assert, are beyond-the-scope of this proceeding.¹⁰³

¹⁰⁰ OCC Protest at 13-16.

¹⁰¹ PJM Limited Answer at 2-4.

¹⁰² PJM TOs Answer at 9-11 (citing *Cities of Bethany v. FERC*, 727 F.2d at 1136 ("FERC has interpreted its authority to review rates under [the FPA] as limited to an inquiry into whether the rates proposed by a utility are reasonable and not to extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs."), *cert. denied*, 469 U.S. 917 (1984); *Oxy USA*, 64 F.3d at 692 (D.C. Cir. 1995)).

¹⁰³ *Id.* at 12-14, 16-17 (citing *NRG Power Marketing*, 862 F.3d at 115-16 (holding that the Commission acted beyond the scope of its section 205 authority where its

65. Second, the PJM TOs reiterate that the Attachment M-3 Revisions Filing has been shown to be just and reasonable as it enhances transparency and opportunities for stakeholder input. In response to arguments by LS Power and the Load Group regarding the PJM TOs' rights to file changes, the PJM TOs claim that since the PJM TOs did not turn over the responsibility for Supplemental Projects to PJM, the PJM TOs maintain the right to propose revisions under section 205. The PJM TOs note that the Commission rejected similar arguments in the Attachment M-3 Order.¹⁰⁴ In response to protestors' arguments regarding the PJM TOs responsibilities under the CTOA, the PJM TOs argue that the transfer of certain transmission planning responsibilities to PJM was limited and the PJM TOs retained "the right to *build*, acquire, sell, dispose, *retire*, merge or otherwise transfer or convey all or any part of its assets, including any Transmission Facilities."¹⁰⁵

66. In further support that the Attachment M-3 Revisions Filing is just and reasonable, the PJM TOs challenge LS Power and the Load Group's arguments regarding definitions contained in the Attachment M-3 Revisions Filing. The PJM TOs argue that the proposed definition of "Asset Management Project" is consistent with the Commission's findings in the *California Orders* and note that Order No. 890 requirements do not apply to "Asset Management Projects".¹⁰⁶ Similarly, the PJM TOs argue that the Attachment M-3 Revisions Filing's proposed definition of "Incidental Increase" is consistent with Commission precedent.¹⁰⁷ In response to concerns from several protestors that the PJM TOs will not adopt uniform EOL Needs Planning Criteria, the PJM TOs argue that stakeholders will be able to review and comment on EOL Needs Planning Criteria annually so there is no need for uniformity across the PJM TOs.¹⁰⁸ Regarding protestors' objections to the provisions limiting EOL Candidate Needs List to PJM only, the PJM TOs argue the protestors ignore that under the Attachment M-3 Revisions Filing, the PJM

"proposed modifications resulted in an 'entirely different rate design' than PJM's proposal").

¹⁰⁴ *Id.* at 19-21 (citing Attachment M-3 Order at P 14).

¹⁰⁵ *Id.* at 21-23 (citing PJM Rates Schedules, TOA-42, 5.2, TOA-42, 5.2 Facility Rights, 1.0.0).

¹⁰⁶ *Id.* at 25-26.

¹⁰⁷ *Id.* at 27-31.

¹⁰⁸ *Id.* at 32-34.

TOs will have to review EOL Needs during the Attachment M-3 process and that the EOL Candidate Needs List is not a forecast of costs and is subject to changes.¹⁰⁹

67. The PJM TOs counter protestors' assertions regarding the process by which PJM and a specific PJM TO will coordinate on electrically overlapping transmission projects. PJM reiterates that the specific PJM TO responsible for the EOL Need project in question, must present documentation to PJM and stakeholders on the reasons why it has decided that the EOL Need is not addressed. Moreover, PJM TOs explain, since the CTOA requires each PJM TO to maintain their facilities consistent with Good Utility Practice, it is reasonable for each PJM TO to retain the ability to fulfil their obligations to their customers and state commissions.¹¹⁰

68. Finally, the PJM TOs argue that the Attachment M-3 Revisions Filing makes no changes to PJM planning responsibilities, cost allocation or recovery of costs. Specifically, PJM TOs argue that nothing in the Attachment M-3 Revisions Filing reduces the opportunities for stakeholders to review and comment on EOL Need projects. PJM TOs further note that stakeholders will have at least the same opportunity they had before to raise the need for a project at the Attachment M-3 Needs meeting and to challenge it.¹¹¹ In response to LS Power's concerns that the Attachment M-3 Revisions Filing – effectively – permits PJM TOs “veto” power over certain transmission projects, PJM TOs note there is nothing in their filing that permits an individual PJM TO to block PJM from developing a transmission project. Similarly, the PJM TOs argue, there are no changes to several other matters raised by protestors such as ROFR, FERC Form No. 715 transmission planning, the applicability of Attachment M-3 to Supplemental Projects, the authority of state commissions to access transmission planning data, or the interconnection process. The PJM TOs add that nothing in the Attachment M-3 Revisions Filing will impact Duquesne's rights as a party under the CTOA.¹¹² Regarding the arguments about cost allocation and recovery of costs, the PJM TOs argue those issues are beyond-the-scope of this proceeding. The PJM TOs note that the court's

¹⁰⁹ *Id.* at 35-37.

¹¹⁰ *Id.* at 38-39 (citing PJM Rates Schedules, TOA-42 4.5 Operation and Maintenance, 1.0.0).

¹¹¹ *Id.* at 41-43.

¹¹² *Id.* at 44, 46-55.

decision in *ODEC v. FERC* did not address projects developed under the Attachment M-3 process.¹¹³

69. In its answer, LS Power argues it now has evidence that some Attachment M-3 Projects and Asset Management Projects are likely to have regional benefits, including Supplemental Projects that are also aging infrastructure replacement projects located throughout PJM that have regional benefits.¹¹⁴ LS Power states that while Supplemental Projects are allocated to the individual zone, the PJM TOs have provided no evidence that proposed revisions to Attachment M-3 results in a cost allocation that is just and reasonable.¹¹⁵ LS Power contends that for the Commission to accept the TO Filing, there must be evidence in the record that the cost allocation methodology applicable to the new project categories is just and reasonable.¹¹⁶

70. In their answer, the Load Group argues that the Attachment M-3 Revisions Filing exceeds the authority to file section 205 filing under both the CTOA and the Tariff. The Load Group further contends that the Attachment M-3 Revisions violate the CTOA and FERC precedent by transferring regional planning duties from PJM to the PJM TOs, limiting the scope of the PJM RTEP. The Load Group argues that the PJM TOs' claims of improved coordination between EOL Needs and PJM Planning under Operating Agreement Schedule 6 do not remedy their proposal to transfer PJM's planning authority. The Load Group further contends that the Commission should reject the PJM TOs' attempt to ignore the Commission's limited applicability of the *California Orders* and instead find that: (1) the *California Orders* do not apply beyond those specific cases; and (2) even if the *California Orders* did provide precedent, the TOs' Proposal goes well beyond any reasonable application of those orders.

71. In their answer to LS Power's and Load Group's answer, the PJM TOs argue that LS Power's arguments regarding cost allocation and cost responsibility assignment rules constitutes a collateral attack on the Commission's findings during PJM's Order No. 1000 compliance proceeding.¹¹⁷ The PJM TOs contend that LS Power's reliance on *ODEC* is misplaced since the Attachment M-3 Revisions Filing only pertains to

¹¹³ *Id.* at 44-45 (citing *ODEC v. FERC*, 898 F.3d 1254 (D.C. Cir., 2018), *reh'g denied*, 905 F.3d 671).

¹¹⁴ LS Power Answer at 2-3.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 6.

¹¹⁷ PJM TOs Answer at 5 (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at 354, 416-46 (2013)).

transmission planning.¹¹⁸ In response to LS Power's arguments regarding certain transmission projects having regional benefits but their costs are only allocated to the zone in which the transmission projects are located, the PJM TOs assert that the evidence LS Power relies on is not relevant to this proceeding since it relates to cost allocation.¹¹⁹ The PJM TOs finally respond to Load Group's assertions regarding filing rights by arguing that Load Group's views are misinterpretations of the Tariff, CTOA, or the Attachment M-3 Revisions Filing. Specifically, the PJM TOs state that Load Group's reading of these documents ignores the PJM TOs' rights to make changes to Attachment M-3 through the CTOA and falsely holds that the PJM TOs seek to extend their planning rights beyond local projects.¹²⁰

72. In their answer, J-Power contests PJM's assertions on the Attachment M-3 Revisions Filing's impacts on interconnection costs. Specifically, J-Power states, for example, a scenario where an EOL Need project could result in the installation of facilities that could negate the need for transmission upgrades that have been identified as necessary to accommodate an interconnection request.¹²¹ J-Power asserts that the Commission should not dismiss J-Power concern's since transmission planning and interconnection processes are complex matters. Accordingly, J-Power states, the Commission should consider the Attachment M-3 Revisions Filing's impacts on interconnection costs.¹²²

73. In their answer, NJ BPU contests the PJM TOs' assertions that the Commission need not consider whether the Attachment M-3 Revisions Filing is superior to other proposals. NJ BPU reiterates that, rather, the PJM TOs have not shown that the Attachment M-3 Revisions Filing is just and reasonable.¹²³ Furthermore, NJ BPU argues that the PJM TOs' claims that cost allocation issues are beyond-the-scope of this proceeding are incorrect. NJ BPU states that the PJM TOs must demonstrate the Attachment M-3 Revisions Filing is just and reasonable. By not addressing the cost allocation arguments protestors made, the PJM TOs failed to meet the burden of showing the Attachment M-3 Revisions Filing is just and reasonable.

¹¹⁸ PJM TOs Answer at 7-8.

¹¹⁹ *Id.* at 9.

¹²⁰ *Id.* at 10-13.

¹²¹ J-Power Answer at 2-3.

¹²² *Id.* at 4-5.

¹²³ NJ BPU Answer at 4-5.

74. Additionally, in their answer, NJ BPU argues that the PJM TOs' reliance on the *California Orders* is misplaced since the *California Orders* do not apply here. NJ BPU states that the transmission planning activities pursuant to the Attachment M-3 Revisions Filing extend beyond those discussed in the *California Orders*. Specifically, NJ BPU states the record in the *California Orders* demonstrates that asset management activities did not include replacements of transmission facilities.¹²⁴ Further, NJ BPU states, the definition of "incidental increase" is not applicable here since upgrades to existing transmission facilities raise a host of questions regarding impacts which can be reasonably severed.¹²⁵

IV. Determination

A. Procedural Matters

1. Intervention and Pleadings

75. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

76. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant the late-filed motions to intervene of Long Island Lighting Company, a subsidiary of the Long Island Power Authority, the Illinois Commerce Commission, and NEET given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

77. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers as they have provided information that assisted us in our decision-making process.

2. Motion to Dismiss

78. We deny the motion to dismiss. At issue in this proceeding is a filing made pursuant to section 205 of the FPA, section 7.3.2 of the CTOA, and section 9.1(b) of the Tariff. Both section 7.3.2 of the CTOA and section 9.1(b) of the Tariff require that before making a filing pursuant to section 205 of the FPA, the TOs "shall consult with PJM and the PJM Members Committee beginning no less than thirty (30) days prior: to

¹²⁴ *Id.* at 8, n. 44 (citing *Cal. Pub. Utils. Comm'n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161 at P 44).

¹²⁵ *Id.* at 9-10.

any [such] Section 205 filing.”¹²⁶ The PJM TOs complied with this requirement as they began the consultation process with a notice issued on May 7, 2020, and did not file until June 12, 2020.

79. Movants contend that the CTOA requires two votes under section 8.5,¹²⁷ the first to initiate the consultative process and the second to approve the change after the consultative process. However, section 8.5 of the CTOA does not require a vote to initiate the consultative process. Section 8.5 sets out the voting procedures necessary for the PJM TOs to make the section 205 filing with the Commission. Neither section 7.3.2 of the CTOA nor section 9.1(b) of the Tariff require any formal prerequisite for initiating the consultation with PJM and the PJM Members Committee. As the Indicated PJM TOs point out, this has been a long-standing understanding of these provisions.¹²⁸ Indeed, initiating the consultation prior to the formal vote ensures that the PJM TOs may consider the opinions of PJM and the Members Committee prior to the formal vote on the proposal under section 8.5 of the CTOA.

B. Substantive Matters

80. We accept the proposed Attachment M-3 Revisions Filing effective August 12, 2020, as requested. As discussed below, we find that this filing is within the filing rights reserved by the PJM TOs and also is just and reasonable and not unduly discriminatory or preferential.

1. Proposed Revisions Are Within the Transmission Owners’ Exclusive Retained Responsibilities

81. The protesters contend the PJM TOs do not have exclusive filing rights to make this filing, particularly with respect to the EOL projects, and that the PJM stakeholders maintain rights under the Operating Agreement to make filings related to EOL projects. As discussed below, given the specific facts and circumstances before us, we find that the

¹²⁶ PJM, Rate Schedules, 7.3.2, TOA-42, 7.3.2, 0.0.0; PJM, Intra-PJM Tariffs, 9.1, OATT 9.1 Rights of the Transmission Owners, 2.1.0.

¹²⁷ Section 8.5 of the CTOA provides the manner of action; specifically, “any action taken by the Administrative Committee shall require a combination of the concurrence of the representatives’ Individual Votes of the representatives of those Parties entitled to vote on such matters and Weighted Votes as specified in this Section 8.5.” PJM, Rate Schedules, 8.5, TOA-42, 8.5 Manner of Acting, 1.0.0.

¹²⁸ PJM TOs Answer to Motion to Dismiss at 8-9.

planning activities addressed by the Attachment M-3 Revisions Filing are within the exclusive rights and responsibilities retained by the PJM TOs under the CTOA.

82. Under the CTOA and the Tariff, the PJM TOs retain all rights that they have not specifically granted to PJM.¹²⁹ Under the CTOA, the PJM TOs agree to “transfer to PJM . . . the responsibility to prepare a Regional Transmission Expansion Plan and to provide information reasonably requested by PJM to prepare the Regional Transmission Expansion Plan and shall otherwise cooperate with PJM in such preparation.”¹³⁰ Pursuant to the CTOA, PJM is limited to “[c]onduct[ing] its planning for the expansion and enhancement of transmission facilities.”¹³¹ The PJM TOs specifically retain the right to “maintain” their transmission facilities¹³² and generally reserve all rights not specifically granted to PJM.¹³³

83. Asset Management Projects do not fit within the categories of projects the CTOAs have transferred to PJM. These projects do not fall under regional planning under the Operating Agreement as they relate solely to maintenance of existing facilities,¹³⁴ and they do not “expand” or “enhance” the PJM grid as the CTOA requires for planning transferred to PJM. They are solely projects that maintain the existing infrastructure by repairing or replacing equipment. These projects therefore fall within the category of rights not specifically granted to PJM and therefore reserved to the PJM TOs.

84. Our interpretation of the CTOA is consistent with the *California Orders*, in which the Commission concluded that it was appropriate to define “asset management” as

¹²⁹ See *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002). (“[N]othing in section 206 sanctions denying petitioners their right to unilaterally file rate and term changes. . . . Of course, utilities may choose to voluntarily give up, by contract, some of their rate-filing freedom under section 205.”).

¹³⁰ PJM, Rate Schedules, TOA-42 4.1.4 Planning Information (0.0.0).

¹³¹ *Id.*, TOA-42, 6.3.4 (0.0.0).

¹³² *Id.*, TOA-42, 4.5 Operation and Maintenance (0.0.0).

¹³³ *Id.*, TOA-42, Article 5 Parties’ Retained Rights (0.0.0), TOA-42, 5.6 Reservation of Rights (0.0.0).

¹³⁴ Asset Management Projects do not fall under the categories for which PJM plans under the Operating Agreement: PJM planning procedures, NERC Reliability Standards, Regional Entity reliability principles and standards, and individual PJM TO local planning criteria as filed with the Commission in FERC Form No. 715. PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.2(e) (2.0.0).

activities that “encompass the maintenance, repair, and replacement work done on existing transmission facilities as necessary to maintain a safe, reliable, and compliant grid based on existing topology,” even if these projects result in an “incidental increase in transmission capacity that is not reasonably severable from the asset management or activity.”¹³⁵ The Commission explained that an incidental increase in transmission capacity could be associated with, for example, the replacement of an aging 1940-vintage transformer at the end of its useful life with a modern transformer, which could be of higher capacity. We find that the PJM TOs’ proposed revisions in this proceeding are consistent with the type of projects and activities that the Commission found were appropriately considered transmission owner asset management projects in the *California Orders*.

85. Protesters contend that end of life criteria do not qualify as “maintenance” of facilities under the CTOA since the criteria envisions replacement, not repair of facilities. However, as the Commission found in *Cal. Pub. Util. Comm’n.*, “these asset management projects and activities include maintenance, repair, and replacement work, and infrastructure security, system reliability, and automation project.”¹³⁶ We find that the PJM TOs’ proposal to designate these types of projects as “asset management” is just and reasonable.¹³⁷

86. Moreover, the CTOA does more than just reserve maintenance to the PJM TOs, it grants to PJM only the right to plan for “expansion” and “enhancement” of the grid as part of the RTEP. As discussed above,¹³⁸ the PJM TOs did transfer to PJM the responsibility to plan for criteria included in Form No. 715, and a PJM TO may voluntarily include end of life criteria in its Form No. 715. However, the PJM TOs have not transferred to PJM planning responsibility for end of life criteria that are not included in Form No. 715.¹³⁹ The PJM TOs, therefore, did not transfer the planning responsibility for all end of life criteria to PJM.

¹³⁵ *So. Cal. Edison Co.*, 164 FERC ¶ 61,160 at P 33; *Cal. Pub. Util. Comm’n.*, 164 FERC ¶ 61,161 at P 68.

¹³⁶ *Cal. Pub. Util. Comm’n.*, 164 FERC ¶ 61,161 at P 67.

¹³⁷ Replacement activities are a logical extension of the decision that it is no longer cost-effective to perform maintenance on a transmission facility.

¹³⁸ *Supra* P 8.

¹³⁹ As previously noted, Form No. 715 is the Annual Transmission Planning and Evaluation filed by the individual transmission owners, and is not limited to EOL Needs, e.g. storm hardening. “Where a Transmission Owner has included end of useful life criteria in its Form No. 715, projects required to satisfy those criteria will continue to be

87. Some protestors argue that the Commission should reject the PJM TOs' Attachment M-3 Revisions Filing and instead accept a proposal put forth by the Joint Stakeholders. However, the Joint Stakeholders' proposal is not before us here and does not alter the FPA section 205 filing rights of the PJM TOs. As discussed herein, we find the PJM TOs' Attachment M-3 Revisions Filing just and reasonable and need not determine whether proposed alternatives are more or less reasonable. And, again, in this instance, the alternatives mentioned here consist of a filing made in a different proceeding, not this proceeding.

2. Proposed Revisions Expand the Existing Just and Reasonable Attachment M-3 Process

88. Having found above that certain planning activities remain the sole responsibility of the PJM TOs, we find the revisions proposed in the instant filing are just and reasonable, given the specific facts and circumstances presented here, because they maintain the existing just and reasonable Attachment M-3 process and provide greater transparency into certain planning activities. The Commission previously found the Attachment M-3 process for Supplemental Projects just and reasonable and compliant with Order No. 890.¹⁴⁰ Having found the existing Attachment M-3 planning process consistent with the Order No. 890 planning principles, we find the proposed revisions, which expand the applicability of existing Attachment M-3 Tariff provisions, likewise just and reasonable. 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 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.

89. We agree with the PJM TOs that where the transmission projects developed under the expanded Attachment M-3 process result in only incidental expansions of the transmission system, such asset management activities are not subject to Order No. 890 transmission planning principles.¹⁴¹ This is consistent with the finding in the *California Orders* that the Order No. 890 planning principles apply only to transmission projects

planned through PJM's regional transmission planning process; the Proposed Revisions do not bring them into the Attachment M-3 process." PJM TOs Transmittal at 4 n.10.

¹⁴⁰ Attachment M-3 Order, 164 FERC ¶ 61,217 at P 59.

¹⁴¹ We make no determination here as to whether EOL Needs or any of these Asset Management Projects, and in particular specific replacement activities, are subject to the transmission planning requirements of Order No. 890, as the PJM TOs proposed to include these types of projects in the Order No. 890 planning process in Attachment M-3.

involving grid expansion, and where Supplemental Projects result in only incidental expansions of the transmission system, do not apply to asset management activities.

90. Protesters raise concerns that the majority of transmission planning in PJM is occurring outside the purview of the PJM RTEP process. We find these arguments to be beyond the scope of this specific FPA section 205 proceeding.

3. Cost Causation Concerns

91. Protesters raise concerns that the proposed revisions result in a cost allocation that is not consistent with cost causation. The cost allocation provisions of Schedule 12 of the PJM Tariff assign cost responsibility for Required Transmission Enhancements.¹⁴² The proposed revisions to Attachment M-3 include no revisions to Schedule 12 of the PJM Tariff, and propose no changes to cost allocation. Since this FPA section 205 filing proposes no change to cost allocation, that issue is beyond the scope of this proceeding.¹⁴³

The Commission orders:

The Attachment M-3 Revisions Filing is hereby accepted for filing, effective August 12, 2020, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴² Required Transmission Enhancements are defined as “enhancements and expansions of the Transmission System that (1) a [RTEP] developed pursuant to Operating Agreement, Schedule 6 or (2) any joint planning or coordination agreement between PJM and another region or transmission planning authority set forth in Tariff, Schedule 12-Appendix B (‘Appendix B Agreement’) designates one or more of the Transmission Owner(s) to construct and own or finance.” PJM, Intra-PJM Tariffs, OATT Definitions – R - S, OATT Definitions – R - S, 18.2.0.

¹⁴³ See *ANR Pipeline Co. v. FERC*, 771 F.2d 507, 514 (D.C. Cir. 1985) (finding the Commission cannot revise an “unchanged part” of a rate under section 4 of the Natural Gas Act, the counterpart to section 205 of the Federal Power Act).

Appendix A – Intervenors

American Electric Power Service Corporation
American Municipal Power, Inc.
AMP Transmission, LLC (AMP)
Blue Ridge Power Agency
Buckeye Power, Inc.
Calpine Corporation
The Dayton Power and Light Company
Delaware Division of the Public Advocate
Dominion Energy Services, Inc.
Duke Energy Corporation
Duquesne Light Company (Duquesne)
East Kentucky Power Cooperative, Inc.
Edison Electric Institute (EEI)
EDP Renewables North America LLC
Exelon Corporation
GridLiance Holdco LP
Hudson Transmission Partners, LLC
Illinois Commerce Commission (out of time)
Indiana Office of Utility Consumer Counselor
ITC Interconnection LLC
J-POWER USA Development Co., Ltd. (J-POWER)
Long Island Lighting Company, a subsidiary of the Long Island Power Authority (out of time)
LSP Transmission Holdings II, LLC (LS Power)
Monitoring Analytics, LLC
Neptune Regional Transmission System, LLC
New Jersey Board of Public Utilities (NJ BPU)
New Jersey Division of Rate Counsel
North Carolina Electric Membership Corporation
NRDC/FERC Project
NRG Power Marketing LLC
Office of the Ohio Consumers' Counsel (OCC)
Office of the People's Counsel for the District of Columbia
Old Dominion Electric Cooperative (ODEC)
Pennsylvania Public Utility Commission

PJM Industrial Customer Coalition

PJM Interconnection, L.L.C.

PPL Electric Utilities Corporation

Public Power Association of New Jersey.

Public Service Electric and Gas Company

Public Utilities Commission of Ohio's Office of the Federal Energy Advocate (Ohio FEA)

Rockland Electric Company

Southern Maryland Electric Cooperative, Inc.

WIRES

NextEra Energy Transmission MidAtlantic Indiana, Inc (NEET), (out of time)