

174 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

PJM Interconnection, L.L.C.

Docket No. ER20-2686-000

ORDER ACCEPTING COMPLIANCE FILING

(Issued February 18, 2021)

1. On August 17, 2020, in compliance with the Commission’s order issued on June 18, 2020,¹ pursuant to section 206 of the Federal Power Act (FPA),² PJM Interconnection, L.L.C. (PJM) submitted revisions to section 1.5.8(m)(1) of Schedule 6 of the PJM Amended and Restated Operating Agreement (Operating Agreement).³ In this order, we accept PJM’s compliance filing, as discussed below.

I. Background

A. Immediate Need Reliability Project Exemption

2. In Order No. 1000,⁴ the Commission required that public utility transmission providers, among other things: (1) “eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal⁵ for an incumbent

¹ *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,212 (2020) (June 2020 Order).

² 16 U.S.C. § 824e.

³ PJM, Intra-PJM Tariffs, Operating Agreement Schedule 6, §1.5.8(m)(1).

⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁵ The phrase “a federal right of first refusal” refers only to rights of first refusal that are created by provisions in Commission-jurisdictional tariffs or agreements. Order No. 1000-A, 139 FERC ¶ 61,132 at P 415.

transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation”;⁶ (2) “establish . . . procedures to ensure that all projects are eligible to be considered for selection in the regional transmission plan for purposes of cost allocation . . . [that] could be, for example, a non-discriminatory competitive bidding process . . . [and] could also allow the sponsor of a transmission project selected in a regional transmission plan for purposes of cost allocation to use the regional cost allocation method associated with the transmission project”;⁷ and (3) provide that “a nonincumbent transmission developer must have the same eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for purposes of cost allocation.”⁸

3. In its Order No. 1000 compliance filing, PJM proposed to create an exemption, where a federal right of first refusal may be retained for transmission facilities that are needed in a short time frame to address reliability needs (i.e., immediate need reliability projects), where PJM determines that there is not sufficient time to hold a proposal window.⁹ The Commission partially accepted this proposal,¹⁰ explaining that, to avoid

⁶ “Transmission facilities selected in a regional transmission plan for purposes of cost allocation are transmission facilities that have been selected pursuant to a transmission planning region’s Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation because they are more efficient or cost-effective solutions to regional transmission needs.” Order No. 1000, 136 FERC ¶ 61,051 at P 63.

⁷ *Id.* P 336.

⁸ *Id.* P 332. The Commission also stated that “the cost of a transmission facility that is not selected in a regional transmission plan for purposes of cost allocation, whether proposed by an incumbent or by a nonincumbent transmission provider, may not be recovered through a transmission planning region’s cost allocation method or methods.” *Id.*

⁹ PJM, Intra-PJM Tariffs, Operating Agreement Schedule 6, § 1.5.8(m)(1). PJM considers the following factors in determining the infeasibility of a proposal window: (i) nature of the reliability criteria violation; (ii) nature and type of potential solution required; and (iii) projected construction time for a potential solution to the type of reliability criteria violation to be addressed. *Id.*

¹⁰ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at PP 247-251 (2013) (PJM First Compliance Order), *order on reh’g and compliance*, 147 FERC ¶ 61,128, at PP 164-167, 194-199 (2014) (PJM Second Compliance Order), *order on reh’g and*

delays in the development of projects needed to resolve a time-sensitive reliability criteria violation, it was just and reasonable for PJM to create a class of transmission projects that are exempt from competition.¹¹ The Commission also stated that “such an exception should only be used in certain limited circumstances.”¹² To that end, the Commission established five criteria for the exemption, which it believed would place reasonable bounds on PJM’s discretion to determine whether there is sufficient time to permit competition and, as a result, would ensure that the exemption is used only in limited circumstances.¹³ Those five criteria are:

- i. The project must be needed in three years or less to solve reliability criteria violations (Criterion One);¹⁴
- ii. The Regional Transmission Organization (RTO) must separately identify and then post an explanation of the reliability violations and system conditions in advance for which there is a time-sensitive need, with sufficient detail of the need and time-sensitivity (Criterion Two);
- iii. The RTO must provide to stakeholders and post on its website a full and supported written description explaining: (1) the decision to designate an incumbent transmission owner as the entity responsible for construction and ownership of the project, including an explanation of other transmission or non-transmission options that the region considered; and (2) the circumstances that generated the immediate reliability need and why that need was not identified earlier (Criterion Three);

compliance, 150 FERC ¶ 61,038, at P 74 (PJM Third Compliance Order), *order on reh’g and compliance*, 151 FERC ¶ 61,250, at P 25 (2015) (PJM Fourth Compliance Order).

¹¹ PJM First Compliance Order, 142 FERC ¶ 61,214 at P 247.

¹² *See id.* P 248.

¹³ *Id.*

¹⁴ The Commission has stated that it is proper to use the date a reliability need must be addressed rather than the expected in-service date of the project chosen to address that need to calculate whether a transmission project qualifies as an immediate need reliability project. *See PJM Interconnection, L.L.C.*, 156 FERC ¶ 61,030, at PP 22-24 (2016).

- iv. Stakeholders must be permitted time to provide comments in response to the project description, and such comments must be made publicly available (Criterion Four); and
 - v. The RTO must maintain and post a list of prior year designations of all immediate need reliability projects for which the incumbent transmission owner was designated as the entity responsible for construction and ownership of the project. The list must include the project's need-by date and the date the incumbent transmission owner actually energized the project. The RTO must also file the list with the Commission as an informational filing in January of each calendar year covering the designations of the prior calendar year (Criterion Five).
4. PJM implemented these criteria in section 1.5.8(m)(1) of Schedule 6 of the Operating Agreement for those immediate reliability needs for which PJM determines a proposal window may not be feasible. Specifically, PJM identifies and posts such immediate need reliability criteria violations and system conditions for review and comment by the Transmission Expansion Advisory Committee (TEAC) and stakeholders. Following review and comment, PJM develops immediate need reliability projects for those immediate reliability needs where PJM determines that a proposal window is infeasible and posts those projects on the PJM website for review and comment, including an explanation of PJM's decision to designate an incumbent transmission owner to construct the project rather than conduct a full or shortened proposal window. Following additional review and comment, PJM conducts further study and evaluation, if necessary, and posts a revised recommended plan for review and comment by the TEAC. The recommended immediate need reliability projects must be approved by the PJM Board of Managers (PJM Board) for inclusion in PJM's Regional Transmission Expansion Plan (RTEP).¹⁵

B. FPA Section 206 Proceeding

5. On October 17, 2019, the Commission instituted FPA section 206 proceedings to consider how the exemption for immediate need reliability projects was being implemented.¹⁶ The Commission stated that, based on initial analysis, it was concerned

¹⁵ PJM, Intra-PJM Tariffs, Operating Agreement Schedule 6, § 1.5.8(m)(1).

¹⁶ *ISO New Eng. Inc.*, 169 FERC ¶ 61,054 (2019) (October 2019 Order). The October 2019 Order instituted proceedings against ISO New England Inc (ISO-NE), PJM, and Southwest Power Pool, Inc. (SPP). ISO-NE's and SPP's implementation of the exemption for immediate need reliability projects are addressed in Docket Nos. EL19-90-000 and EL19-92-000, respectively.

that PJM may be implementing the exemption in a manner that is inconsistent with the Commission direction, and therefore may be unjust and unreasonable, unduly preferential and discriminatory.¹⁷ The Commission therefore directed PJM to respond to questions outlined in the October 2019 Order to: (1) demonstrate how it is complying with the immediate need reliability project criteria; (2) demonstrate that the provisions in its tariff, as implemented, containing certain exemptions to the requirements of Order No. 1000 for immediate need reliability projects remain just and reasonable; and (3) consider additional conditions or restrictions on the use of the exemption for immediate need reliability projects to appropriately balance the need to promote competition for transmission development and avoid delays that could endanger reliability.¹⁸

6. On December 27, 2019, PJM filed its response to the October 2019 Order.¹⁹ PJM stated that it complied with all of the requirements of the immediate need reliability project exemption.²⁰ Specifically for Criterion Two, Criterion Three, and Criterion Four, PJM explained that it has a dedicated webpage for its competitive transmission planning process where it posts presentation materials that provide an update to PJM's reliability analysis a minimum of three days prior to the TEAC meetings, to allow stakeholders to review in advance of the meetings and provide comments. PJM stated that the TEAC presentation materials for a given transmission project describe the criteria violations, why the need was not identified earlier, and alternatives that were considered for each baseline upgrade.²¹ For Criterion Five, PJM stated that it had complied with the annual reporting requirement but noted that its methodology had overestimated the number of immediate need reliability projects for years 2015 through 2018, in effort to provide additional granularity. PJM explained that the informational reports for these years included individual baseline upgrades, not projects (which can be made up of several baseline upgrades), and included all baseline upgrades that qualified as immediate need reliability projects even if they fell under a separate exemption to its competitive proposal window process. PJM stated that beginning with the 2019 annual informational filing, it had improved its methodology to report only transmission projects that qualify for the immediate need reliability project exemption and no longer report baseline upgrades that also qualify for a separate exemption from PJM's competitive proposal window process. PJM also aggregated baseline upgrades into their respective projects in the

¹⁷ October 2019 Order, 169 FERC ¶ 61,054 at P 1.

¹⁸ *Id.* PP 1, 4, 16.

¹⁹ PJM Interconnection, L.L.C., Response, Docket No. EL19-91-000 (filed Dec. 27, 2019) (December 2019 PJM Response).

²⁰ *Id.* at 2-5, 9-17, 61-95.

²¹ *Id.* at 12; 15-17.

December 2019 PJM Response, reducing the total number of immediate need reliability projects during the period 2015 through 2018 from 237 to 63.²²

C. June 2020 Order

7. Based on the December 2019 PJM Response to the October 2019 Order and parties' comments, in the June 2020 Order, the Commission found that PJM was compliant with Criterion One and Criterion Five²³ of the immediate need reliability project exemption. However, the Commission found that that PJM's implementation of the exemption for immediate need reliability projects was unjust and unreasonable because PJM was implementing the exemption in a manner inconsistent with Criterion Two, Criterion Three, and Criterion Four. The Commission directed PJM to submit revisions to its Operating Agreement to provide for additional transparency in its prospective compliance with Criterion Two, Criterion Three, and Criterion Four.²⁴

8. Specifically, regarding Criterion Two, the Commission stated that PJM did not comply with the requirement that it separately identify and then post an explanation of the reliability violations and system conditions for which there is a time-sensitive need, with sufficient detail of the need and time-sensitivity. The Commission found that PJM's explanations did not provide sufficient detail and generally failed to include any discussion about system conditions related to the reliability violations. The Commission noted that, while an exhaustive description is not required, PJM could prospectively provide, for example, details regarding the specifics of the violation; why the violation arose; when it first occurred; the implications of the violation in terms of generation, load, congestion, etc.; the severity of the problem; and expectations for the violation's severity in the future (i.e., will the problem get worse or have a cascading effect at a later point in time).²⁵

9. For Criterion Three, the Commission found that PJM did not comply with the requirement that it provide to stakeholders and post on its website a full and supported

²² *Id.* at 2-9; 32.

²³ The Commission found that, in compliance with Criterion Five, PJM had maintained and timely submitted the required annual informational filings. The Commission also stated that it agreed with PJM's proposal to modify its reporting practice to report both baseline upgrades and projects subject only to the immediate need reliability project exemption, noting that it would provide additional transparency. June 2020 Order, 171 FERC ¶ 61,212 at P 49.

²⁴ *Id.* PP 50-54.

²⁵ *Id.* P 50.

written description explaining: (1) the decision to designate an incumbent transmission owner as the entity responsible for construction and ownership of the project, including an explanation of other transmission or non-transmission options that the region considered; and (2) the circumstances that generated the immediate reliability need and why that need was not identified earlier. The Commission stated that the TEAC presentation materials provided little insight into PJM's reasoning to select an incumbent transmission owner for an immediate need reliability project or why the reliability violations were not identified earlier. In particular, the Commission found that PJM did not explain that there was insufficient time to open a full or shortened proposal window, which would support its decision to designate the incumbent transmission owner to develop an immediate need reliability project. The Commission found that it was unclear whether PJM was considering factors beyond a need-by date of three years. The Commission directed PJM to expound on its description to support the designation of its immediate need reliability projects on a prospective basis, specifically addressing the time-sensitive nature of the need, why the incumbent transmission owner was selected, alternatives considered, and why the need was not identified earlier. For additional transparency, the Commission stated that PJM could describe how it is making its determination that a full or shortened proposal window is infeasible, in consideration of the factors in section 1.5.8(m)(1) of Schedule 6 of its Operating Agreement, by fully explaining how it considers the nature of the reliability criteria, the nature and type of potential solution required, and the projected construction time for a potential solution to the type of reliability criteria to be addressed and that PJM could also explain the urgency of the violation and explain how the proposal window would delay the solution further.²⁶

10. With respect to Criterion Four, the Commission determined that PJM did not comply with the requirement that stakeholders must be permitted time to provide comments in response to the project description and that PJM must make such comments publicly available. The Commission found that providing three days for stakeholders to review immediate need reliability project materials before providing comments at stakeholder meetings was not an adequate amount of time for stakeholders to review the project descriptions before providing comments. Accordingly, the Commission directed PJM to submit revisions to its Operating Agreement that would designate a specific time period greater than three days for stakeholders to provide comments in response to the project description. In addition, the Commission required PJM to improve the transparency of stakeholder feedback by prospectively posting on its website

²⁶ *Id.* PP 51-52.

all stakeholder comments and answers, whether provided in writing or submitted verbally at TEAC meetings, regarding immediate need reliability projects.²⁷

11. The Commission stated that with respect to the transparency needed to comply with the criteria, PJM needed to do more to provide stakeholders access to information related to immediate need reliability projects and, thus, directed PJM to post all information regarding immediate need reliability projects in a manner that is more easily accessible to stakeholders than the current approach, which could but was not required to be a central location on the PJM website.²⁸

12. Finally, in response to commenters' suggestions that the Commission modify the criteria or require additional criteria applicable to PJM's immediate need reliability project exemption, the Commission stated that those suggestions were not supported by the record in that proceeding.²⁹ The Commission stated that the five criterion applicable to the immediate need reliability project exemption appropriately maintain the balance between reliability and competition and ensure that immediate need reliability projects continue to be designated as an exception that should only be used in limited circumstances. Therefore, the Commission stated, it will not impose additional conditions or restrictions on the immediate need reliability project exemption.³⁰

II. PJM Compliance Filing

13. In its compliance filing, PJM proposes revisions to its Operating Agreement, Schedule 6, section 1.5.8(m)(1) to satisfy the Commission's directives in the June 2020 Order.³¹

14. To comply with the Commission's directives on Criterion Two, PJM states it will post transmission project-specific supplemental documents on its website that detail each identified immediate need reliability violation that PJM proposes to exempt from the competitive proposal window process. PJM states that, going forward, in addition to posting them on its website, it will include these supplemental documents with the TEAC

²⁷ *Id.* PP 53-54. The Commission stated that PJM had discretion as to how verbal feedback from stakeholders should be recorded (e.g., spreadsheet, meeting notes, or other means). *Id.* P 54.

²⁸ *Id.* P 55.

²⁹ *See id.* PP 87-93.

³⁰ *Id.* P 94.

³¹ Proposed Tariff Revisions, Schedule 6, section 1.5.8(m)(1).

meeting materials in order to provide greater detail regarding reliability violations and system conditions for reliability violations identified as needed in three years or less. PJM notes that, as of the date of the compliance filing, consistent with Manual 14F, section 5.3.1, it has identified and posted two sets of potential immediate need reliability violations that it is proposing to exempt from the competitive proposal window process in 2020. PJM states that it has included transmission project-specific supplemental documents detailing the reasons for the immediate need status to the Competitive Planning Process section of its website for the Northern Neck Area and Manassas Area.³² PJM states that Manual 14F, section 5.3.1 permits stakeholders 30 days after the opening of the window to provide comments regarding PJM's determination to exempt these potential violations from a competitive proposal window.³³ PJM states that, following the 30-day comment and answer period, if PJM determines to move forward with an immediate need reliability project to address the reliability violation, PJM will present the proposed immediate need reliability project to the TEAC with the detail required by the June 18 Order, including transmission project-specific supplemental documents.³⁴ PJM states that these two immediate need reliability violations will be presented at subsequent TEAC meetings as immediate need reliability projects for further review and comment by stakeholders. PJM states that, at that time, it will add more details, if applicable, specific to the immediate need reliability project proposed to address the violations.³⁵

15. To comply with the Commission's directive on Criterion Three, PJM proposes to use the same transmission project-specific supplemental document it proposes to use to comply with Criterion Two. Specifically, PJM states that, as examples of these transmission project-specific supplemental documents, it will provide the following details: operating procedures related to the identified violation, the underlying cause of the violation, and issues specific to that Transmission Owner.³⁶ PJM adds that it intends

³² PJM explains that both sets of potential immediate need reliability violations are located in the Dominion Zone in: (i) the Manassas area of northern Virginia (Manassas Area); and (ii) the Northern Neck Load pocket (Northern Neck Area). PJM submits the supplemental document for the Manassas Area reliability violation in Attachment C and for the Northern Neck Area reliability violation in Attachment D (together Compliance Attachments). PJM Compliance Transmittal at 3-4.

³³ *Id.* at 4 n.11.

³⁴ *Id.* at 5, 7.

³⁵ *Id.* at 5.

³⁶ For instance, PJM states that the description of the Northern Neck Area reliability violation explains that the issue is specific to Dominion serving its load as well as future load. Accordingly, PJM states that Dominion would likely be the transmission

to keep refining this effort based on stakeholder feedback, with the goal of providing greater details regarding the specifics of the violation, including why the reliability violations were not identified earlier and insight into PJM's reasoning for selecting an incumbent transmission owner to build an immediate need reliability project.³⁷

16. To comply with the Commission's directive on Criterion Four, PJM proposes to revise Schedule 6, section 1.5.8(m)(1) of the Operating Agreement to add a specific time period of "no less than 10 days" for stakeholders to review the meeting materials and transmission project-specific supplemental documents before providing comments on the specific proposed immediate need reliability project at a subsequent TEAC meeting.³⁸ However, PJM proposes for an exception such that PJM may review immediate need reliability project materials with stakeholders without the requisite 10-day notice so long as: (i) stakeholders do not object to reviewing the materials or (ii) PJM identifies in its posting to the meeting materials extenuating circumstances identified by PJM that require review of the materials at the stakeholder meeting. Additionally, PJM commits, on a prospective basis, to post on its website all stakeholder comments and answers (whether presented in writing or submitted verbally at TEAC meetings) related to immediate need reliability projects. PJM clarifies that for verbal comments received, PJM will request stakeholders to provide their verbal comments in writing to PJM and PJM will post the comments with response, if any, on its Planning Community web page. PJM states that once it develops a web page designated solely to immediate need reliability issues, as discussed below, all comments will be accessible through that page.³⁹

17. In response to the directive to post all information regarding immediate need reliability projects in a manner that is more easily accessible to stakeholders than the current approach, PJM states that it is working with its internal staff to implement potential software and workflow changes in order to develop a web page designated solely to immediate need reliability issues by end of year 2020 or first quarter 2021. PJM states that, in order to consolidate access to the information related to each identified

owner designated the immediate need reliability project because it would be impractical and infeasible for anyone other than Dominion to solve this load-specific issue. *Id.* at 5-6 (citing Compliance Attachments).

³⁷ *Id.* at 7-8.

³⁸ Proposed Tariff Revisions, Schedule 6, section 1.5.8(m)(1).

³⁹ PJM Compliance Transmittal at 9 & n.24.

immediate need reliability violation and project listed on that web page, PJM is planning to include links to the information related to each violation/project.⁴⁰

18. PJM requests that the compliance filing become effective as of the date of a Commission order accepting the compliance filing.⁴¹

III. Notice

19. Notice of PJM's filing was published in the *Federal Register*, 85 Fed. Reg. 52,112 (Aug. 24, 2020), with interventions and protests due on or before September 8, 2020. American Electric Power Service Corporation, American Municipal Power, Inc., Calpine Corporation, Delaware Division of the Public Advocate, Dominion Energy Services, Inc., Exelon Corporation, Independent Market Monitor for PJM, LSP Transmission Holdings II, LLC (LS Power), New Jersey Board of Public Utilities (NJ BPU), North Carolina Electric Membership Corporation, Rockland Electric Company, and Silver Run Electric, LLC filed timely motions to intervene.

20. LS Power and NJ BPU filed protests. On October 14, 2020, LS Power filed a supplemental protest. On October 27, 2020, PJM filed an answer.

IV. Responsive Pleadings

A. Protests

21. LS Power argues that PJM's compliance filing fails to satisfy the Commission's directives in the June 2020 Order.⁴² Specifically, LS Power argues that the supplemental document, which PJM will designate as *informational* material leading up to TEAC meetings rather than include as a supplemental document within the *presentation* materials, conflicts with the Commission's directives on Criterion Two.⁴³ LS Power argues this is meaningful since *informational* materials: (1) are not required to be discussed during the TEAC meeting; (2) have different timing and posting requirements than formal agenda items; (3) are subject to different transparency requirements to the PJM Board; and, (4) are not used in a PJM committee for decisional or governance

⁴⁰ *Id.* at 11.

⁴¹ *Id.* at 12.

⁴² LS Power Protest at 1-2.

⁴³ *Id.* at 6 (citing June 2020 Order, 171 FERC ¶ 61,212 at P 50) ("PJM generally fails to include any discussion about system conditions related to the reliability violations in its TEAC *presentation materials*.").

purposes. Given this distinction, LS Power asserts, any future supplemental document should be a standard part of the TEAC *presentation* agenda materials thereby ensuring that stakeholders will have an opportunity to review and offer comments.⁴⁴

22. Next, LS Power argues that PJM's compliance filing creates a timing issue between when PJM posts the supplemental document for an immediate need reliability project and when PJM exempts a project from a competitive proposal window. LS Power notes that PJM states that the infeasibility determination will be made concurrently with the opening of the competitive proposal window, and stakeholders will have 30 days after the opening of the window to provide comments regarding PJM's determination to exempt these potential violations from a proposal window. LS Power argues that once the proposal window is open, the time has passed for meaningful discussion and for potential future study as required under section 1.5.8(m)(2) of the PJM Operating Agreement, particularly where there is a shortened comment window that itself is only open for 30 or 60 days.⁴⁵ LS Power argues that the time for TEAC review and discussion is before the opening of competitive project proposal windows, not concurrent with competitive project proposal windows. LS Power also purports that this timing conflicts with Criterion Two, which requires supporting documents to be posted *in advance*.⁴⁶

23. Both LS Power and NJ BPU argue that PJM's compliance filing fails to sufficiently address Criterion Three. LS Power argues that PJM's Compliance Attachments, which are examples of the supplemental documents PJM intends to provide for each immediate need reliability project, do not explain what other transmission and non-transmission options are considered, or why the immediate need was not identified earlier. LS Power asserts that the Compliance Attachments only feature sweeping statements about reliability issues and the resulting determination that a competitive proposal window is infeasible. For example, LS Power argues that PJM's Compliance Attachments for the Northern Neck Area and Manassas Area do not detail any development or construction issues that may necessitate the immediate need reliability project exemption, do not discuss other factors besides a three-year need-by date, and do

⁴⁴ *Id.* at 5-6 (citing PJM Manual 34 at 16-18, 62, 93, 107).

⁴⁵ LS Power Protest at 7 (citing PJM Compliance Transmittal at n.11). LS Power argues that a shortened proposal window would completely overlap with the potential comment window on the infeasibility determination and not allow time for further review, if warranted. *Id.* at 7-8.

⁴⁶ *Id.* at 8.

not provide other transmission projects or alternatives that may have been considered.⁴⁷ NJ BPU states PJM's Compliance Attachments for the Northern Neck Area and Manassas Area do not include a discussion of alternative solutions. NJ BPU adds that, even if PJM finds that no other technically feasible alternative exists, PJM must provide an explanation for this outcome to demonstrate compliance with Criterion Three.⁴⁸

24. Finally, LS Power objects to PJM's proposed language in Operating Agreement, Schedule 6, section 1.5.8(m)(1). LS Power argues that PJM's language does not include a justification for exemptions to transparency timing requirements. LS Power proposes alternate language which "provides [stakeholders] no less than ten days to review Immediate need Reliability Project materials prior to providing comments at stakeholder meetings."⁴⁹

25. In its supplemental protest, LS Power submits, for the purpose of including in the record for this proceeding, PJM's Compliance Attachment for the Manassas Area reliability violation that was shown to stakeholders at the October 2020 TEAC meeting. LS Power states this Compliance Attachment does not include any information about why a proposal window is infeasible, what transmission and non-transmission alternatives it considered, or why the reliability need was not identified earlier. LS Power reiterates that this example from the October 2020 TEAC meeting demonstrates that PJM is not complying with the Commission's compliance directives.⁵⁰

B. Answer

26. In its answer, PJM addresses the arguments in LS Power's supplemental protest. PJM counters LS Power's claims that PJM's compliance filing and subsequent Compliance Attachments for the Northern Neck Area and Manassas Area presented at the October 2020 TEAC meeting demonstrate that PJM is not complying with the Commission's directives, arguing that LS Power's assertions do not provide a full picture for the Commission. Regarding the Compliance Attachments for the Northern Neck

⁴⁷ LS Power states that the supplemental document for the Manassas Area reliability violation provides that "load specific issues" of "a PJM planning criteria violation of dropping over 300 MW in the 2022/2023 timeframe based on PJM's 2020 load forecast" as a rationale for infeasibility, which LS Power argues is insufficient because it does not explain why there is not time to open a competitive proposal window. *Id.* at 10.

⁴⁸ NJ BPU Protest at 5-6.

⁴⁹ LS Power Protest at 12.

⁵⁰ LS Power Supplemental Protest at 1-2.

Area and Manassas Area presented at the October 2020 TEAC meeting, PJM states it inadvertently neglected to post on its website the additional information required by the Commission. PJM states it will present this information again at the December 2020 TEAC meeting.⁵¹ Nevertheless, PJM states, the Compliance Attachments for the Northern Neck Area and Manassas Area do include the information about why a proposal window is infeasible, what transmission and non-transmission alternatives it considered, or why the reliability need was not identified earlier.⁵² Specifically, to explain why the reliability need was not identified earlier, PJM provides that the Compliance Attachment identified that the Manassas area was experiencing increasing load growth but that due to the introduction of multiple new load locations and increases to existing load, the increases in new load resulted in a magnitude of load significantly greater than originally identified. To explain why a proposal window was infeasible, PJM provides that the Compliance Attachment for the Manassas Area explained that: (i) due to the significant increase in load over the near term, and the interaction of the reverse power relay scheme, the load drop violations were then anticipated to occur in the 2020 to 2023 timeframe; and (ii) the project would be designated immediate need to address the near term violation of dropping more than 300 MW in 2020 to 2023, as well as those violations seen in 2025. Finally, with respect to the transmission and non-transmission alternatives it considered, PJM acknowledges that it did not explicitly state these in the Compliance Attachment for the Manassas Area, but based on PJM's experience and engineering judgment, PJM concluded there were no alternatives but to designate Dominion as the entity to mitigate these violations because it would be impractical and infeasible for anyone else to solve the load specific issues.⁵³

V. Determination

A. Procedural Matters

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

28. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2020), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept PJM's answer as it has provided information that assisted us in our decision-making process.

⁵¹ PJM Answer at 4-5.

⁵² *Id.* at 5-6.

⁵³ *Id.* at Attachment A (Testimony of Aaron Berner) at P 5 (Berner Test.).

B. Substantive Matters

29. As discussed below, we find PJM's compliance filing complies with the Commission's directives in the June 2020 Order and establishes a just and reasonable implementation structure for immediate need reliability projects. We accept the filing effective as of the date of this order.

30. Regarding Criterion Two, we find that PJM's proposed supplemental document that provides details on each identified immediate need reliability violation that PJM proposes to exempt from the competitive proposal window process, as well as PJM's plan to both post the supplemental document on its website and include the supplemental document with the TEAC meeting materials, complies with the requirements of this criterion. As examples of what this supplemental document will look like going forward, PJM provides the Compliance Attachments for the Northern Neck Area and Manassas Area, which are transmission project-specific supplemental documents for two reliability violations that PJM has identified as immediate need reliability violations in 2020. Each of these Compliance Attachments provides an explanation of the reliability violation and system conditions for which there is a time-sensitive need and includes sufficient detail of the need and time-sensitivity, including the details of the specifics of the violation and why the violation arose.

31. We are not persuaded by LS Power's argument that the supplemental document should be part of the TEAC "presentation" materials rather than "informational" materials. The definitions of presentation materials and informational materials are spelled out in PJM's business practice manuals, as these terms are related to tariff implementation and are not themselves terms or conditions of service.⁵⁴ As we note below, we expect PJM to adequately inform its stakeholders about all immediate need reliability transmission projects such that transmission project-specific information will be included in the materials for TEAC meetings, included for discussion, and stakeholders will have opportunities to raise comments and questions about specific immediate need reliability projects. Finally, we find that PJM has addressed LS Power's concern that PJM would provide stakeholders with 30 days from opening a proposal window to comment regarding PJM's decision that it is infeasible to open a proposal window for a particular immediate need reliability violation. PJM clarified that it posted the Compliance Attachments for the Northern Neck Area and Manassas Area violations on its website and then provided parties with 30 days to comment on PJM's determination to exempt the projects as immediate need reliability projects

⁵⁴ The Commission does not approve the content of manuals that merely contain "implementation details" of tariffs or "general operating procedures." *See, e.g., California Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271, at P 16 (2008).

prior to opening of a proposal window,⁵⁵ which we find makes clear that the 30 day comment period runs from PJM's posting of the relevant reliability violation for which it intends to propose an immediate need reliability project, not the opening of a proposal window. Pursuant to this procedural structure, PJM should evaluate any comments received, and consider whether the stated reasons for proceeding without a competitive solicitation for the identified immediate need reliability project remain valid in light of those comments, before proceeding without opening a proposal window for that project.

32. With respect to Criterion Three, we find that PJM's proposed supplemental document complies with the requirement to provide a full and supported description of its decision to designate the immediate need reliability project to the incumbent transmission owner, the alternatives considered, and the circumstances generating the need, including why the need was not identified earlier. Protesters argue that, as examples of the supplemental document, the Compliance Attachments do not explain what other transmission and non-transmission alternatives were considered or why a time-sensitive reliability need was not identified earlier. LS Power also argues that the Compliance Attachments make only sweeping statements about the reliability issues and the resulting determination that a competitive proposal window is infeasible. We find PJM's clarifications adequately responsive to these concerns. Specifically, PJM details that the Compliance Attachment for the Manassas area identified why reliability need was not identified earlier, i.e., that it was due to increasing load growth from the introduction of multiple new load locations and increases to existing load that was significantly greater than originally identified. PJM also explains that the Compliance Attachment for the Manassas area found that a proposal window was infeasible due to load drop violations that were anticipated to occur in the 2020 to 2023 timeframe.⁵⁶ However, we note that PJM acknowledges that it did not explicitly provide discussion of the alternative transmission and non-transmission options considered in the Compliance Attachment but, instead, based on its judgment, concluded that there were no alternatives to designating the immediate need reliability project to the incumbent transmission owner.⁵⁷ In all future supplemental documents, we expect PJM to include an explicit explanation of other transmission or non-transmission options that it considered before designating an immediate need reliability project.

33. Regarding Criterion Four, we find that PJM's proposed revisions to Operating Agreement, Schedule 6, section 1.5.8(m)(1) comply with the directive of the June 2020 Order to designate a specific time period greater than three days for

⁵⁵ PJM Answer at 3-4.

⁵⁶ Berner Test. P 5.

⁵⁷ *Id.*

stakeholders to provide comments in response to an immediate need reliability project description. In these Operating Agreement revisions, PJM clarifies that stakeholders shall have no less than 10 days to review the Compliance Attachments in anticipation of TEAC meetings for the purposes of reviewing and offering potential comments, absent any extenuating circumstances identified by PJM or any objections from stakeholders to review the materials with PJM without the 10-day notice. In response to LS Power's objection to the exceptions allowing for less than 10-day notice and alternative Operating Agreement language providing for "no less than" 10-day notice, we find that PJM's proposed revisions are just and reasonable given the time-sensitivity of the reliability violations being addressed by proposed immediate need reliability projects. That is, there may be circumstances where stakeholders agree to discuss the materials with PJM before the end of the 10 days or where PJM identifies extenuating circumstances that require expedited review of the project, and these exceptions provide for this flexibility. However, we expect that these situations will remain exceptions to the rule and not become the standard practice by PJM.

34. We find that PJM adequately responds to the directive to post all information regarding immediate need reliability projects in a manner that is more easily accessible to stakeholders than the current approach. PJM states that it is currently working to develop a web page designated solely to immediate need reliability issues by end of year 2020 or first quarter 2021. PJM states that it plans to consolidate access to the information related to each identified immediate need reliability violation and project listed on that web page by providing links to the relevant information. We agree that this webpage, once implemented, satisfies PJM's compliance directive.

The Commission orders:

PJM's compliance filing is hereby accepted, effective as of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.