

151 FERC ¶ 61,250
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
and Tony Clark.

PJM Interconnection, L.L.C.

Docket Nos. ER13-198-006
ER13-198-007

ORDER ON REHEARING AND COMPLIANCE

(Issued June 22, 2015)

1. On January 22, 2015, the Commission issued an order accepting, subject to modifications, PJM Interconnection, L.L.C.'s (PJM) and PJM Transmission Owners' third compliance filings¹ made to comply with the directives of the Second Compliance Order² and the local and regional transmission planning and cost allocation requirements of Order No. 1000.³ The Commission also denied in part and granted in part the requests for rehearing and clarification of the Second Compliance Order.

2. On February 22, 2015, Old Dominion Electric Cooperative (ODEC) submitted a timely request for clarification or, in the alternative, request for rehearing of the Third Compliance Order. On the same date, PJM submitted revisions to Schedule 6 of the PJM Operating Agreement (Operating Agreement) to comply with the Third Compliance Order (i.e., fourth compliance filing).

¹ *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,038 (2015) (Third Compliance Order).

² *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128 (2014) (Second Compliance Order).

³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, 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).

3. For the reasons discussed below, we grant in part and deny in part the request for clarification and deny rehearing. We find that PJM has complied with the directives in the Third Compliance Order and thus accept PJM's proposed Operating Agreement revisions.

I. Background

4. On October 11, 2012, PJM Transmission Owners submitted, in Docket No. ER13-90-000, revisions to Schedule 12 of the PJM Open Access Transmission Tariff (OATT) to comply with the regional cost allocation requirements of Order No. 1000. On October 25, 2012, PJM submitted, in Docket No. ER13-198-000, revisions to Schedule 6 of the Operating Agreement, as well as conforming revisions to the OATT, to comply with the local and regional transmission planning requirements of Order No. 1000. On March 22, 2013, the Commission accepted, subject to modifications, the compliance filings of PJM and PJM Transmission Owners (together, PJM Parties).⁴

5. On July 22, 2013, PJM and PJM Transmission Owners separately submitted, in Docket Nos. ER13-198-002 and ER13-90-002, respectively, revisions to Schedule 6 of the Operating Agreement and Schedule 12 of the OATT, as well as conforming revisions to the Operating Agreement and OATT, to comply with the First Compliance Order. On May 15, 2014, in the Second Compliance Order, the Commission denied rehearing and accepted in part PJM Parties' respective proposed Operating Agreement and OATT revisions, subject to conditions.

6. On July 14, 2014, PJM and PJM Transmission Owners separately submitted, in Docket Nos. ER13-198-004 and ER13-90-004, respectively, revisions to Schedule 6 of the Operating Agreement and Schedule 12 of the PJM OATT, as well as conforming revisions to the Operating Agreement and the OATT, to comply with the Second Compliance Order. The July 14, 2014 filing in Docket No. ER13-198-004 also included a *pro forma* Designated Entity Agreement. In addition, also on July 14, 2014, PJM separately filed a new *pro forma* Interconnection Coordination Agreement in Docket No. ER14-2426-000.

⁴ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013) (First Compliance Order).

7. On September 12, 2014, in Docket Nos. ER13-198-004 and ER14-2426-000, the Commission conditionally accepted the part of PJM's compliance filing in Docket No. ER13-198-004 related to the Designated Entity Agreement and the Interconnection Coordination Agreement filed in Docket No. ER14-2426-000.⁵ On January 22, 2015, in the Third Compliance Order, the Commission denied in part and granted in part the requests for rehearing and clarification and accepted in part PJM and PJM Transmission Owners' respective proposed Operating Agreement and OATT revisions, subject to conditions.

8. On February 22, 2015, ODEC submitted a timely request for clarification or, in the alternative, request for rehearing, of the Third Compliance Order.

9. Likewise, on February 22, 2015, PJM submitted, in Docket No. ER13-198-007 its fourth compliance filing proposing revisions to Schedule 6 of the Operating Agreement to comply with the Third Compliance Order.

II. Notice of Filing

10. Notice of PJM's fourth compliance filing was published in the *Federal Register*, 80 Fed. Reg. 11,188 (2015), with protests and interventions due on or before March 16, 2015. None was filed.

III. Discussion

11. As discussed below, we grant in part and deny in part ODEC's request for clarification and deny ODEC's alternative request for rehearing. We also find that PJM's proposed revisions to Schedule 6 of the Operating Agreement comply with the directives in the Third Compliance Order. Accordingly, we accept PJM's compliance filing to be effective January 1, 2014, as requested.

⁵ *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187 (2014). On October 14, 2014, in Docket No. ER13-198-005, PJM filed revisions to its Designated Entity Agreement to comply with this order. The Commission accepted the proposed revisions on November 18, 2014. *PJM Interconnection L.L.C.*, Docket No. ER13-198-005 (Nov. 18, 2014) (delegated letter order).

A. Stakeholder Input in Local Transmission Planning Process

1. Third Compliance Order

12. In the Third Compliance Order, the Commission found that PJM's proposed revisions to Schedule 6 of the Operating Agreement clarified that the Local Plan⁶ is a product of the Subregional RTEP Committees⁷ rather than an independently existing local plan presented by the transmission owners to the Subregional RTEP Committee for review.⁸ The Commission disagreed with the assertion ODEC made in its protest that even under the existing rules, stakeholders did not have meaningful opportunity for comment on Supplemental Projects,⁹ and its argument that PJM's proposed revisions create an even narrower process for such projects. The Commission stated that it had already found that Supplemental Projects are part of the PJM transmission planning process that the Commission previously found complies with Order No. 890.¹⁰ The

⁶ "Local Plan" shall mean the plan as developed by the Transmission Owners. The Local Plan shall include, at a minimum, the Subregional RTEP Projects and Supplemental Projects as identified by the Transmission Owners within their zone. The Local Plan will include those projects that are developed to comply with the Transmission Owner planning criteria. PJM, Intra-PJM Tariffs, Operating Agreement (Definitions) (4.0.0).

⁷ The Subregional RTEP Committees are open to participation by: (1) all Transmission Customers and applicants for transmission service; (2) any other entity proposing to provide Transmission Facilities to be integrated into the PJM Region; (3) all Members; (4) the electric utility regulatory agencies within the States in the PJM Region, the Independent State Agencies Committee, and the State Consumer Advocates; and (5) any other interested entities or persons. PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(e).

⁸ Third Compliance Order, 150 FERC ¶ 61,038 at P 34.

⁹ A Supplemental Project is defined 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 PJM, and is not a state public policy project pursuant to section 1.5.9(a)(ii) of Schedule 6 of the Operating Agreement. PJM, Intra-PJM Tariffs, Operating Agreement (Definitions) (6.0.0).

¹⁰ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (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*,
(continued ...)

Commission noted that, in addition, PJM proposed changes clarifying that the Subregional RTEP Committee process includes Supplemental Projects, and, therefore, comments from the Subregional RTEP Committee on both Supplemental and Subregional RTEP Projects will be included in the local planning process prior to finalizing the Local Plans.¹¹ The Commission found that PJM's proposed revisions make explicit the opportunity for review and comment on Supplemental Projects in the Subregional RTEP Committees. The Commission also declined to require the transmission owners in PJM to prove that they have provided stakeholders an opportunity to comment on Supplemental Projects prior to the Subregional RTEP Committee process.¹²

2. Request for Clarification

13. ODEC requests clarification, or, in the alternative, rehearing of the Commission's findings concerning the local transmission planning process in PJM, including the review process for Supplemental Projects planned by individual PJM Transmission Owners. ODEC argues that the scope and timing of the stakeholder process for Supplemental Projects under the revised Operating Agreement remains unreasonably ambiguous. Absent clarification, ODEC contends that the ambiguity could result in the diminishment of stakeholders' rights and opportunities to provide meaningful input on Supplemental Projects to the degree the Commission found was necessary to comply with Order No. 890 and Order No. 1000.¹³

14. ODEC requests the Commission confirm that, under the revised Operating Agreement provisions, stakeholders are entitled access to and an opportunity to comment on the criteria, assumptions, and models used by individual PJM transmission owners in planning for Supplemental Projects prior to finalizing the Local Plan. ODEC also requests the Commission clarify that stakeholders have the right to review and comment on proposed Supplemental Projects prior to finalizing the Local Plan. In addition, ODEC requests that the Commission clarify that "prior to the finalizing of the Local Plan" means at the early stages of a transmission owners' planning of Supplemental Projects.¹⁴

Order No. 890-D, 129 FERC ¶ 61,126 (2009).

¹¹ Third Compliance Order, 150 FERC ¶ 61,038 at P 39.

¹² *Id.* P 40.

¹³ ODEC Request at 1-3.

¹⁴ *Id.* at 14-15 (referencing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d) "The Subregional RTEP Committees will be provided sufficient opportunity to review and provide written comments on the criteria, assumptions, and
(continued ...)

Finally, ODEC requests the Commission clarify that transmission owners must explain in the Subregional RTEP Committee process how they incorporated any modifications into their planning for Supplemental Projects in response to stakeholder comments, or provide the reason why they did not.¹⁵

15. To the extent the Commission denies the clarifications requested, ODEC requests rehearing of the Third Compliance Order. ODEC argues that the Commission's finding in the Third Compliance Order was incorrect as PJM did not comply with the directives of the Second Compliance Order. ODEC argues PJM did not properly explain the process by which transmission owners incorporate into their local transmission plans any comments from the Subregional RTEP Committees on the criteria, assumptions, and models used in the local planning process prior to finishing the plans nor did PJM explain how PJM or the transmission owners will communicate to stakeholders any modifications made to the local transmission plans in response to the comments received.¹⁶ ODEC further argues the Third Compliance Order is inconsistent with the Commission's findings in PJM's Order No. 890 compliance and other Operating Agreement Provisions. Under the revised Operating Agreement, ODEC argues the stakeholder process on Supplemental Projects may be more limited in both time and scope than under the superseded provisions of the Operating Agreement. ODEC contends the Commission departs from its previous rulings by accepting provisions that afford less process for Supplemental Projects than the Commission found was required to comply with Order No. 890.¹⁷ ODEC also contends that the Commission sidestepped ODEC's concerns in the Third Compliance Order and maintains that the existing rules remain deficient.¹⁸

3. Commission Determination

16. In response to ODEC's request, we provide certain clarifications, as discussed below. We clarify that the acceptance of the revisions PJM proposed to comply with Order No. 1000 concerning the local transmission planning process do not change stakeholders' existing rights to receive, review, and comment on the criteria, assumptions, and models individual PJM transmission owners use in planning Supplemental Projects and on proposed Supplemental Projects prior to finalizing the

models used in local planning activities prior to finalizing the Local Plan.”).

¹⁵ *Id.* at 18-20.

¹⁶ *Id.* at 24.

¹⁷ *Id.* at 26.

¹⁸ *Id.* at 28.

Local Plan. Among other things, Order No. 890 required all public utility transmission providers to have coordinated, open, and transparent local transmission planning processes.¹⁹ The coordination principle requires public utility transmission providers to provide customers and other stakeholders with the opportunity to participate fully in the transmission planning process. The purpose of this requirement is to eliminate the potential for undue discrimination in transmission planning by opening appropriate lines of communication between public utility transmission providers, their transmission-providing neighbors, affected state authorities, customers, and other stakeholders. The transmission planning process must provide for the timely and meaningful input and participation of customers and other stakeholders regarding the development of transmission plans. Customers must be included at the early stages of the development of the transmission plan and not merely given an opportunity to comment on transmission plans that were developed in the first instance without their input.²⁰ The Commission previously found that Supplemental Projects are part of the PJM transmission planning process that the Commission found complies with Order No. 890.²¹ Thus, ODEC will have the same opportunity to participate fully in the planning of Supplemental Projects that they had prior to PJM's implementation of changes to comply with Order No. 1000. Because we find that the stakeholder process for Supplemental Projects is not more limited in either time or scope under PJM's Order No. 1000-compliant transmission planning process than under the prior provisions of the Operating Agreement, we deny ODEC's request for rehearing on this issue. In addition, to the extent ODEC is arguing that the existing (pre-Order No. 1000) rights stakeholders have to provide input regarding the planning of Supplemental Projects are not sufficient to comply with Order No. 890, we dismiss those arguments as a collateral attack on the prior Commission orders finding that PJM complied with Order No. 890. Further, to the extent that ODEC argues that PJM is not following the transmission planning process for Supplemental Projects in its OATT and Operating Agreement that the Commission found complies with Order No. 890,²² that issue is outside the scope of this Order No. 1000 compliance proceeding.²³

¹⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 435.

²⁰ *Id.* P 454.

²¹ Third Compliance Order, 150 FERC ¶ 61,038 at P 39.

²² ODEC Request at 9 n.37.

²³ Complaints must be made in separate pleadings, and not included in, *e.g.*, interventions/protests or requests for rehearing. *La. Power & Light Co.*, 50 FERC ¶ 61,040, at 61,062-63 & n.3 (1990); *Entergy Servs., Inc.*, 52 FERC ¶ 61,317, at 62,270 (1990); *Mo. Basin Mun. Power Agency v. Midwest Energy Co.*, 55 FERC ¶ 61,464, at 62,533 (1991); *Yankee Atomic Elec. Co.*, 60 FERC ¶ 61,316, at 62,096-97 n.19 (1992).

17. With respect to the timing of stakeholder input regarding the planning of Supplemental Projects, we provide the following clarifications. We note that the Operating Agreement states, “The Subregional RTEP Committees will be provided sufficient opportunity to review and provide written comments on the criteria, assumptions, and models *used in local planning activities* prior to finalizing the Local Plan.”²⁴ Local planning activities include planning for Supplemental Projects and, therefore, consistent with the coordination planning principle, we understand this sentence to mean that stakeholders will have an opportunity at the early stages of each individual PJM transmission owner’s planning of Supplemental Projects (i.e., before each transmission owner actually identifies any potential Supplemental Project) to review the criteria, assumptions, and models each individual transmission owner uses to plan Supplemental Projects.

18. In addition, the Operating Agreement states that Subregional RTEP Committees will be responsible for the timely review of, among other things, “proposed solutions prior to finalizing the Local Plan.”²⁵ The Operating Agreement also states that “the Subregional RTEP Committees will provide sufficient opportunity to review and provide written comments to the Transmission Owners on any Supplemental Projects included in the Local Plan.”²⁶ Thus, stakeholders have an opportunity, through the Subregional RTEP Committees, to review and provide written comments to transmission owners on Supplemental Projects that individual transmission owners propose to include in their Local Plans, before those Local Plans are finalized.

19. We reject as outside the scope of compliance with Order No. 1000 ODEC’s requests for the Commission to require that each transmission owner explain in the Subregional RTEP Committee process how they incorporated any modifications into their planning for Supplemental Projects in response to stakeholder comments, or provide the reason why they did not. ODEC does not point to any requirement of Order No. 1000 that necessitates this change, and we find that there is no such requirement in Order No. 1000. However, the Operating Agreement states that Subregional RTEP Committees will be responsible for “addressing any stakeholder issues unresolved in the Local Plan process.”²⁷ Thus, a stakeholder can raise any unresolved concerns it may have about an individual transmission owner’s process for planning Supplemental Projects as part of the Subregional RTEP Committees process, all prior to the Local Plan being finalized.

²⁴ PJM OATT, Operating Agreement, Schedule 6, §1.3(d) (emphasis added).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

B. Compliance**1. Consideration of Local Transmission Needs Driven By Public Policy Requirements****a. Third Compliance Order**

20. In the Third Compliance Order, the Commission directed PJM to remove the phrase “by the Transmission Owner” from section 1.3(f) of Schedule 6 of the Operating Agreement.²⁸ The Commission also directed PJM to revise Schedule 6 of the Operating Agreement to provide for a posting of transmission needs driven by public policy requirements that will be evaluated in the local planning process prior to the evaluation stage of the local planning process (i.e., before the Subregional RTEP Committees finalize the Local Plans and incorporate them into the RTEP).²⁹

b. Summary of PJM’s Compliance Filing

21. PJM proposes to revise section 1.3(f) to remove the phrase “used by the Transmission Owner.”³⁰ PJM also proposes to revise both sections 1.5.6(b) and 1.5.8(b) of Schedule 6 of the Operating Agreement to state that the Office of the Interconnection shall publicly post all transmission need information to support the role of the Subregional RTEP Committees in the development of the Local Plans and support the role of the Transmission Expansion Advisory Committee in the development of the Regional Transmission Expansion Plan prior to evaluating potential enhancements and expansions to the transmission system.³¹

c. Commission Determination

22. We find that PJM’s proposed revisions comply with the directives in the Third Compliance Order. PJM has removed the phrase “used by the Transmission Owner” from section 1.3(f) of Schedule 6 of the Operating Agreement, as directed. In addition, PJM has revised Schedule 6 to provide for the posting of transmission needs driven by public policy requirements prior to the evaluation of potential transmission enhancements and expansions in the local transmission planning process.

²⁸ Third Compliance Order, 150 FERC ¶ 61,038 at P 38.

²⁹ *Id.* PP 43-44.

³⁰ PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(f).

³¹ *Id.* §§ 1.5.6(b), 1.5.8(b).

2. Nonincumbent Transmission Developer Reforms

a. Third Compliance Order

23. In the Third Compliance Order, the Commission directed PJM to make clear that for instances when PJM does not intend to open a proposal window, PJM will post for review and comment by the Transmission Expansion Advisory Committee and other stakeholders the reliability violations and system conditions that PJM identifies that need to be addressed by an Immediate-need Reliability Project before it posts the Immediate-need Reliability Project for review and comment.³²

b. Summary of PJM's Compliance Filing

24. PJM proposes to revise section 1.5.8(m)(1) of Schedule 6 of the Operating Agreement to state that “[f]or those immediate reliability needs for which PJM determines a proposal window may not be feasible, PJM shall identify and post such immediate need reliability criteria violations and system conditions for review and comment by the Transmission Expansion Advisory Committee and other stakeholders.”³³ PJM also proposes to revise section 1.5.8(m)(1) of Schedule 6 of the Operating Agreement to further provide that the Office of the Interconnection shall develop Immediate-need Reliability Projects for which a proposal window is infeasible following this review and comment.³⁴

c. Commission Determination

25. We find that PJM complies with the directives in the Third Compliance Order, as PJM has revised Schedule 6 of the Operating Agreement to make clear that it will post in advance for review and comment the reliability violations and system conditions that need to be addressed by an Immediate-need Reliability Project for which PJM does not intend to open a proposal window.

³² Third Compliance Order, 150 FERC ¶ 61,038 at P 74.

³³ PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1).

³⁴ *Id.*

3. Cost Allocation for Transmission Facilities Selected in the Regional Transmission Plan for Purposes of Cost Allocation

a. Third Compliance Order

26. In the Third Compliance Order, the Commission directed PJM to (1) include the phrase “or Designated Entity” in sections 1.6(a) and 1.7(a) of Schedule 6 of the Operating Agreement and (2) revise Schedule 6 of the Operating Agreement to state that nothing in Schedule 6 of the Operating Agreement shall prevent an entity that undertakes to construct and own and/or finance a Required Transmission Enhancement pursuant to a designation in the Regional Plan to construct and own and/or finance such Required Transmission Enhancement from recovering the costs of such Required Transmission Enhancement through Schedule 12 of the PJM OATT.³⁵

b. Summary of PJM’s Compliance Filing

27. To comply with the first directive, PJM proposes to add the term “Designated Entity” to sections 1.6(b) and 1.7(a),³⁶ stating that adding the term “Designated Entity” to section 1.6(b) is more appropriate than adding it to section 1.6(a).³⁷ To comply with the second directive, PJM proposes to add the term “Designated Entity” to section 1.7(c) as follows:

The Office of the Interconnection shall be obligated to collect on behalf of the Transmission Owner(s) or Designated Entity(ies) all charges established under Schedule 12 of the PJM Tariff in connection with facilities which the Office of the Interconnection designates one or more Transmission Owner(s) or Designated Entity(ies) to build pursuant to this Regional Transmission Expansion Planning Protocol. Such charges shall compensate the Transmission Owner(s) or Designated Entity(ies) for all costs related to such RTEP facilities under a FERC-approved rate and will include any FERC-approved incentives.³⁸

³⁵ Third Compliance Order, 150 FERC ¶ 61,038 at P 79.

³⁶ PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§ 1.6(b), 1.7(a).

³⁷ PJM Compliance Filing at 7.

³⁸ PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.7(c).

c. Commission Determination

28. We find that PJM complies with the directives of the Third Compliance Order. We find that PJM's proposed edits to sections 1.6(b) and 1.7(a) are consistent with the Commission's directive to include the term "Designated Entity" in Schedule 6 of the Operating Agreement. In addition, we find that PJM's proposed revisions to section 1.7(c) comply with the Third Compliance Order's directive to make clear that nothing in Schedule 6 prevents a Designated Entity from recovering costs under Schedule 12 by clarifying that the Office of the Interconnection shall be obligated to collect all charges established under Schedule 12 of the PJM OATT on behalf of Designated Entities, as well as transmission owners.

The Commission orders:

(A) The request for clarification is hereby granted in part, and denied in part, and the alternative request for rehearing is denied, as discussed in the body of this order.

(B) PJM's compliance filing is hereby accepted, effective January 1, 2014, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.