

170 FERC ¶ 61,049
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER20-45-000

ORDER ACCEPTING COMPLIANCE FILING

(Issued January 23, 2020)

1. On August 30, 2019, the Commission established a proceeding pursuant to section 206 of the Federal Power Act (FPA),¹ to require PJM Interconnection, L.L.C. (PJM) to revise the PJM Amended and Restated Operating Agreement (Operating Agreement) to eliminate the exemption from the competitive proposal window process for transmission projects included in the PJM Regional Transmission Expansion Plan (RTEP) to address transmission needs driven solely by individual transmission owner Form No. 715 local planning criteria, or to show cause why such changes are not necessary.² On October 7, 2019, PJM submitted revisions to the Operating Agreement in compliance with directives of the Show Cause Order in Docket No. EL19-61-000 (Compliance Filing). In addition, PJM seeks guidance on issues related to PJM's transmission planning processes and an individual PJM transmission owner's Form No. 715 local planning criteria.

2. In this order, we accept PJM's Compliance Filing, to become effective as of the date of this order. Also, as discussed below, we find that PJM's request for guidance is beyond the scope of what the Commission directed in the Show Cause Order.

I. Background

3. PJM files cost responsibility assignments for transmission projects that the PJM Board of Managers (PJM Board) approves as part of PJM's RTEP in accordance with Schedule 12 of PJM's Open Access Transmission Tariff (Tariff) and Schedule 6 of the

¹ 16 U.S.C. § 824e (2018).

² *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,132 (2019) (Show Cause Order) (Docket No. EL19-61-000).

Operating Agreement.³ Schedule 12 of the Tariff establishes Transmission Enhancement Charges and allows that “[o]ne or more of the Transmission Owners may be designated to construct and own and/or finance Required Transmission Enhancements by (1) the [PJM RTEP] periodically 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.”⁴

4. In developing the RTEP, PJM identifies transmission projects to address different criteria,⁵ including PJM planning procedures, North American Electric Reliability

³ In accordance with the Tariff and the Operating Agreement, PJM “shall file with FERC a report identifying the expansion or enhancement, its estimated cost, the entity or entities that will be responsible for constructing and owning or financing the project, and the market participants designated under Section 1.5.6(l) above to bear responsibility for the costs of the project.” See PJM Operating Agreement, Schedule 6, section 1.6 (b). “Within thirty (30) days of the approval of each Regional Transmission Expansion Plan or an addition to such plan by the PJM Board pursuant to Section 1.6 of Schedule 6 of the PJM Operating Agreement, the Transmission Provider shall designate in the Schedule 12-Appendix A and in a report filed with the FERC the customers using Point-to-Point Transmission Service and/or Network Integration Transmission Service and Merchant Transmission Facility owners that will be subject to each such Transmission Enhancement Charge “Responsible Customers” based on the cost responsibility assignments determined pursuant to this Schedule 12.” PJM Tariff, Schedule 12, section (b)(viii).

⁴ 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 Tariff, OATT Definitions - R - S, 18.2.0. Transmission Enhancement Charges are established to recover the revenue requirement with respect to a Required Transmission Enhancement. See PJM Tariff, Schedule 12, § (a)(i).

⁵ PJM identifies reliability transmission needs and economic constraints that result from the incorporation of public policy requirements into its sensitivity analyses and allocates the costs of the solutions to such transmission needs in accordance with the type of benefits that they provide. See *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 441; see also PJM Tariff, Schedule 12, § (b)(v) (Economic Projects) (assigning cost responsibility for Economic Projects that are either accelerations or modifications of

Corporation (NERC) Reliability Standards, Regional Entity reliability principles and standards,⁶ and individual transmission owner Form No. 715 local planning criteria. Form No. 715 is the Annual Transmission Planning and Evaluation Report that any transmitting utility that operates integrated transmission facilities at or above 100 kV must file with the Commission on or before April 1 of each year.⁷ As relevant here, Form No. 715 requires submission of transmission planning reliability criteria that the transmission owner uses to assess and test the strength and limits of its transmission system.

5. Types of Reliability Projects⁸ identified in the RTEP include Regional Facilities,⁹ Necessary Lower Voltage Facilities,¹⁰ and Lower Voltage Facilities.¹¹ PJM assigns the costs of reliability projects that are selected in the RTEP for purposes of cost allocation

Reliability Projects, or new enhancements or expansions that relieve one or more economic constraints); PJM Operating Agreement, Schedule 6, § 1.5.7(b)(iii).

⁶ As established by Reliability First Corporation, Southeastern Electric Reliability Council, and other applicable Regional Entities. See PJM Operating Agreement, Schedule 6, §§ 1.2(b) and 1.2(d) (Conformity with NERC and Other Applicable Reliability Criteria) (2.0.0).

⁷ See 18 C.F.R. § 141.300 (2019).

⁸ Reliability Projects are Required Transmission Enhancements that are included in the RTEP to address one or more reliability violations or to address operational adequacy and performance issues. PJM Tariff, Schedule 12, § (b)(i)(A)(2)(a).

⁹ Regional Facilities are defined as Required Transmission Enhancements included in the RTEP that are transmission facilities that: (a) are AC facilities that operate at or above 500 kV; (b) are double-circuit AC facilities that operate at or above 345 kV; (c) are AC or DC shunt reactive resources connected to a facility from (a) or (b); or (d) are DC facilities that meet the necessary criteria as described in section (b)(i)(D). PJM Tariff, Schedule 12, § (b)(i) (Regional Facilities and Necessary Lower Voltage Facilities).

¹⁰ Necessary Lower Voltage Facilities are defined as Required Transmission Enhancements included in the RTEP that are lower voltage facilities that must be constructed or reinforced to support new Regional Facilities. PJM Tariff, Schedule 12, § (b)(i) (Regional Facilities and Necessary Lower Voltage Facilities).

¹¹ Lower Voltage Facilities are defined as Required Transmission Enhancements that: (a) are not Regional Facilities; and (b) are not “Necessary Lower Voltage Facilities.” PJM Tariff, Schedule 12, § (b)(ii) (Lower Voltage Facilities).

pursuant to the cost allocation method that the Commission accepted in compliance with Order No. 1000.¹² Specifically, in the case of Regional Facilities and Necessary Lower Voltage Facilities that address a reliability need, costs are allocated pursuant to a hybrid cost allocation method in which 50 percent of the costs of those facilities are allocated on a load-ratio share basis and the other 50 percent are allocated to the transmission owner zones based on the solution-based distribution factor (DFAX) method.¹³ Pursuant to the cost allocation method that the Commission accepted in compliance with Order No. 1000, all of the costs of Lower Voltage Facilities were allocated using the solution-based DFAX method.

6. On February 12, 2016, the Commission accepted PJM Transmission Owners' proposed Tariff revision (2015 PJM Transmission Owner Tariff Revision) to allocate 100 percent of the costs for Required Transmission Enhancements that are included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria to the zone of the individual transmission owner whose Form No. 715 local planning criteria underlie each project.¹⁴

7. On August 3, 2018, the U.S. Court of Appeals for the District of Columbia Circuit (Court) reversed the Commission's acceptance of the 2015 PJM Transmission Owner Tariff Revision.¹⁵ The Court found that the Commission acted arbitrarily and capriciously in approving the 2015 PJM Transmission Owner Tariff Revision and applying it to the high-voltage projects, granted the petition for review, set aside the

¹² See *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. 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 & 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); see also *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013), *order on reh'g & compliance*, 147 FERC ¶ 61,128 (2014), *order on reh'g & compliance*, 150 FERC ¶ 61,038, *order on reh'g & compliance*, 151 FERC ¶ 61,250 (2015).

¹³ "The Solution-Based DFAX method evaluates the projected relative use on the new Reliability Project by the load in each zone and withdrawals by merchant transmission facilities, and through this power flow analysis, identifies projected benefits for individual entities in relation to power flows." *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 416.

¹⁴ See *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,096, *order on reh'g*, 157 FERC ¶ 61,192 (2016).

¹⁵ *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254 (D.C. Cir. 2018) (*ODEC*).

Commission orders, and remanded the case to the Commission for further proceedings consistent with the Court's opinion.¹⁶

8. On August 30, 2019, the Commission issued an order on remand rejecting the 2015 PJM Transmission Owner Tariff Revision.¹⁷

II. Show Cause Order

9. In the Show Cause Order, the Commission noted that the Court reversed the Commission's acceptance of the 2015 PJM Transmission Owner Tariff Revision, and in an order issued concurrently with the Show Cause Order, rejected the 2015 PJM Transmission Owner Tariff Revision (August 2019 Orders).¹⁸ Noting that the costs of projects needed solely to address individual transmission owner Form No. 715 local planning criteria will no longer be allocated 100 percent to the transmission zone of the transmission owner whose Form No. 715 local planning criteria underlie each project, the Commission established a proceeding pursuant to section 206 of the FPA directing PJM to revise the PJM Operating Agreement to no longer exempt from the competitive proposal window process such projects, or to show cause why such changes are not necessary.¹⁹

10. The Commission stated that it expected PJM to revise section 1.5.8(c), remove section 1.5.8(o) of Schedule 6 of the PJM Operating Agreement, and make any additional changes necessary to comply with the directives of the Show Cause Order.²⁰

III. PJM Compliance Filing

11. In its Compliance Filing, PJM proposes to delete section 1.5.8(o) (Transmission Owner Form 715 Planning Criteria) of Schedule 6 of the PJM Operating Agreement and

¹⁶ The Court set aside the orders under review to the extent they applied the 2015 PJM Transmission Owner Tariff Revision to the projects at issue. *ODEC*, 898 F.3d at 1264.

¹⁷ *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,133 (2019) (Order on Remand).

¹⁸ Show Cause Order, 168 FERC ¶ 61,132 at P 2.

¹⁹ *Id.*

²⁰ *Id.* P 14.

remove references to that section in section 1.5.8(c) (Project Proposal Windows), as directed in the Show Cause Order.²¹

12. While PJM states that it does not propose additional changes to the Operating Agreement that go beyond the Commission's compliance directive, PJM does seek additional Commission guidance on issues related to PJM's transmission planning processes and individual PJM transmission owner Form No. 715 local planning criteria. Specifically, PJM asserts that there is an inherent inconsistency between the August 2019 Orders and the Commission's decisions in the California Orders.²² PJM states that, in the California Orders, the Commission found that Order No. 890's transmission planning requirements do not apply to a transmission owner's "asset management projects," even if these projects result in an "incidental increase in transmission capacity."²³ PJM states that some PJM transmission owners include planning criteria addressing "asset management projects"²⁴ in Form No. 715 while other PJM transmission owners address such planning criteria under their Attachment M-3 process as Supplemental Projects. PJM states that the August 2019 Orders do not address how requiring PJM to plan and regionally allocate costs for transmission projects addressing planning criteria included in an individual transmission owner's Form No. 715, including asset management criteria, align with the Commission's ruling in the California Orders.

13. PJM argues that, as a result of the August 2019 Orders, the cost responsibility for similar projects will be allocated differently. Specifically, PJM states that asset management projects planned under Attachment M-3 as Supplemental Projects will have their costs allocated 100 percent to the transmission owner's zone while other asset management projects will be included in the RTEP via the individual transmission

²¹ PJM Compliance Filing at 5-8.

²² *Id.* at 8-9 (citing *S. California Edison Co.*, 164 FERC ¶ 61,160 (2018), *order on reh'g*, 168 FERC ¶ 61,170 (2019) (*SoCal Edison*); *California Pub. Util. Comm'n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161 (2018), *order on reh'g*, 168 FERC ¶ 61,171 (2019) (*CPUC v. PG&E*) (collectively, California Orders).

²³ PJM Compliance Filing at 8-9 (citing *SoCal Edison*, 164 FERC ¶ 61,160 at P 33, n.55; *CPUC v. PG&E*, 164 FERC ¶ 61,161 at P 68, n.119).

²⁴ PJM states, "Asset management planning includes drivers that address degraded equipment performance, material condition, obsolescence, equipment failure, employee/public safety and environmental impact. In other cases, the driver may involve local load or specific customer needs—such as providing service to new customers, upgrading service to existing customers, or addressing localized customer performance issues." Asset management is not yet defined in the PJM Tariff. PJM Compliance Filing at 11.

owner's Form No. 715 local planning criteria and, therefore, may be subject to regional cost allocation pursuant to Tariff, Schedule 12.²⁵ In an attempt to eliminate inconsistencies relative to Form No. 715 local planning criteria and other provisions of PJM's transmission planning process, PJM requests that the Commission determine whether: (1) asset management criteria, such as end of life criteria, are appropriately included in a PJM transmission owner's Form No. 715;²⁶ and (2) criteria addressing asset management decision activities (such as end of life criteria) that result in building replacement facilities that expand the transmission system by more than an incidental amount are appropriately included in a PJM transmission owner's Form No. 715 and planned through PJM's RTEP process.²⁷

IV. Notice

14. Notice of PJM's filing was published in the *Federal Register*, 84 Fed. Reg. 55,308 (2019), with interventions and protests due on or before October 28, 2019. Notice of intervention was filed by the New Jersey Board of Public Utilities, American Electric Power Service Corporation, Office of the People's Counsel for the District of Columbia, Exelon Corporation, FirstEnergy Service Company, Delaware Division of the Public Advocate, Duke Energy Corporation, Federal Energy Advocate of the Public Utilities Commission of Ohio, Rockland Electric Company, Independent Market Monitor for PJM, Delaware Municipal Electric Corporation, Inc., East Kentucky Power Cooperative, Dominion Energy Services, Inc., Old Dominion Electric Cooperative (ODEC), The Dayton Power and Light Company, American Municipal Power, Inc. (AMP), PPL Electric Utilities Corporation, Duquesne Light Company, New York Transmission Owners, et. al., LSP Transmission Holdings II, LLC, Public Service Electric and Gas Company, Southern Maryland Electric Cooperative, Inc., The Public Power Association of New Jersey, Calpine Corporation, New York Power Authority, Kentucky Office of the Attorney General, and Consolidated Edison Company of New York, Inc. (Con Edison) filed timely motions to intervene. Illinois Commerce Commission (ICC). and North Carolina Electric Membership Corporation (North Carolina EMC) filed motions to intervene out of time.

²⁵ *Id.* at 9.

²⁶ *Id.* at 12. PJM states that where a facility is replaced with a facility that more than incidentally expands transmission capacity due to criteria regarding the engineering of the replacement facility or other local planning criteria, that criteria may be included in the Form No. 715.

²⁷ *Id.* 10-11.

15. Comments were filed by Indicated PJM Transmission Owners (Indicated TOs),²⁸ LSP Transmission Holdings II, LLC (LS Power), Dominion Energy Services, Inc., on behalf of Virginia Electric and Power Company (Dominion), and Federal Energy Advocate of the Public Utilities Commission of Ohio (PUCO). Protests were filed by the PJM Industrial Customer Coalition (PJMICC)/AMP/ODEC, and Con Edison. Joint Consumer Advocates (JCA)²⁹ filed an answer and comments.

16. On November 12, 2019, PJM filed a motion for leave to answer and answer. Indicated PJM Transmission Owners filed an answer. On November 27, 2019, PJMICC/AMP/ODEC filed a motion for leave to answer and answer, and on December 12, 2019, the Indicated TOs filed an answer to the answer of PJMICC/AMP/ODEC. On December 18, 2019, PJM filed an additional answer.

V. Pleadings

A. Tariff Revisions

17. Con Edison opposes PJM's proposed Operating Agreement revisions. Con Edison reiterates its argument on rehearing of the Order on Remand that low voltage transmission projects driven by Form No. 715 local planning criteria should not be allocated using the solution-based DFAX method because, unlike high voltage

²⁸ Indicated TOs are: American Electric Power Service Corporation (on behalf of its affiliates Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, AEP Indiana Michigan Transmission Company, AEP Kentucky Transmission Company, AEP Ohio Transmission Company, and AEP West Virginia Transmission Company); The Dayton Power and Light Company, Duke Energy Corporation on behalf of its affiliates Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., and Duke Energy Business Services LLC; Duquesne Light Company, Exelon Corporation; Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, and American Transmission Systems, Incorporated (collectively, the FirstEnergy Companies); PPL Electric Utilities Corporation, Public Service Electric and Gas Company, and UGI Corporation.

²⁹ Joint Consumer Advocates consist of The Office of the People's Counsel for the District of Columbia, Kentucky Office of the Attorney General, Delaware Division of the Public Advocate, Citizens Utility Board, Maryland Office of the People's Counsel, New Jersey Division of Rate Counsel, Pennsylvania Office of Consumer Advocate, and the West Virginia Consumer Advocate Division.

transmission projects, low voltage transmission projects do not have regional benefits.³⁰ Con Edison argues that PJM's Compliance Filing should be rejected and PJM should be required to modify its Tariff so that the 2015 PJM Transmission Owner Tariff Revision is still used to allocate the costs of low voltage projects.³¹

18. LS Power, PJMICC, AMP, and ODEC state their support for Operating Agreement revisions in the PJM Compliance Filing.³²

B. Request for Guidance

19. JCA, LS Power, and PJMICC/AMP/ODEC protest PJM's request for guidance because they believe it exceeds the limited scope of this proceeding. JCA asserts that PJM is not merely seeking guidance, but is seeking the Commission's approval of various positions on several fundamental transmission issues.³³ LS Power argues that PJM's request for guidance has not identified Tariff or Operating Agreement violations that will occur as a result of the tariff revisions mandated in the Order on Remand, and represents an improper request for an advisory Commission opinion.³⁴ JCA and LS Power state that these issues are only appropriately considered either through the ongoing PJM stakeholder process or a separate FERC proceeding where they can be fully vetted.³⁵

20. Indicated TOs and Dominion support the Commission granting PJM's request for guidance, disagreeing that the issues should be considered in the PJM stakeholder process. Indicated TOs assert that because the issues implicate interpretation of parties' contractual rights and obligations in PJM governing agreements on file with the Commission, it is appropriate for the Commission to address these issues.³⁶

³⁰ Con Edison Protest at 2.

³¹ *Id.* at 3.

³² LS Power Comments at 2-3. PJMICC/AMP/ODEC Protest at 2.

³³ *Id.* at 5-6.

³⁴ LS Power Comments at 5.

³⁵ JCA Comments at 2-3 and LS Power Comments at 4.

³⁶ Indicated TOs Comments at 11.

21. Dominion and Indicated TOs state that the Commission does not need to provide further guidance on or alter the reporting requirements for Form No. 715.³⁷ Dominion asserts that asset management criteria, including end-of-life criteria, are appropriately included in Form No. 715 and included in the RTEP process because those criteria can be used to identify regionally beneficial transmission projects. Dominion states that PJM does not need to be involved in asset management for transmission projects that do not have regional benefits and only benefit the transmission owner and its customers, and that the categorization of the projects can be addressed on a case-by-case basis.³⁸ Indicated TOs request that the Commission confirm that PJM is not required to plan, through the RTEP, a transmission project required for compliance with asset management criteria that a PJM transmission owner may include in Form No. 715 if the project does not address a need for a nonincidental expansion or enhancement of the transmission system.³⁹ Indicated TOs state that the PJM Consolidated Transmission Owners Agreement (CTOA) transfers to PJM the responsibility to prepare the RTEP, and retains for each transmission owner the responsibility to “physically operate and maintain all Transmission facilities it owns,”⁴⁰ and the right to “build, finance, own [and] retire ... all or any part of its assets, including Transmission facilities.”⁴¹

22. Regarding the inclusion of Form No. 715 local planning criteria in PJM’s RTEP, Dominion asserts it would be improper for the Commission to arbitrarily exclude projects from the RTEP based on the manner in which the need for them was identified.⁴² Indicated TOs request the Commission confirm that PJM should treat Form No. 715 projects that expand or enhance the grid in the same manner as all other baseline RTEP reliability projects.⁴³

³⁷ Dominion Comments at 5-6 and Indicated TOs Comments at 9.

³⁸ Dominion Comments at 1-2.

³⁹ Indicated TOs Comments at 13.

⁴⁰ *Id.* at 5-6 (citing CTOA § 4.5 (Operation and Maintenance)).

⁴¹ *Id.* at 6 (citing CTOA § 5.2 (Facility Rights)).

⁴² Dominion Comments at 3.

⁴³ Indicated TOs Comments at 10.

23. Commenters assert that PJM's request for guidance is unfounded because PJM ignores the Commission's repeated rejected requests to compare PJM's and California public utilities' planning processes.⁴⁴ PJMICC/AMP/ODEC also dispute PJM's claim that some PJM transmission owners include criteria that address asset management activities (as defined in the California Orders) in their Form No. 715, while other PJM transmission owners include such criteria under the Attachment M-3 process as Supplemental Projects. PJMICC/AMP/ODEC argue that this claim is incorrect because neither the Form No. 715 or Attachment M-3 process encompass asset management activities, as those criteria refer to transmission "expansions or enhancements."⁴⁵ PUCO argues that the competitive transmission solicitation process should be employed along with a rigorous review of the need for specific transmission projects regardless of whether that transmission project is proposed as a PJM RTEP, Form No. 715, or Supplemental Project.⁴⁶

24. In their answer, Indicated TOs reiterate that the stakeholder process cannot resolve PJM's request because the issues are governed by PJM governing documents filed with the Commission.⁴⁷ Indicated TOs also argue that the Commission should reject commenters' claims that the California Orders are irrelevant to PJM's transmission planning process. Indicated TOs state that the California Orders and this proceeding share a central issue – whether asset management projects are subject to the Order No. 890 transmission planning requirements.⁴⁸ Indicated TOs also state that in the California Orders, the Commission did not declare its findings inapplicable to PJM, only that the PJM Attachment M-3 Orders⁴⁹ raised different issues than the California proceedings.⁵⁰ Indicated TOs reject PJMICC/AMP/ODEC's assertion that PJM has erroneously conflated end of life activities and asset management activities, stating that in the

⁴⁴ JCA Comments at 6-8, LS Power Comments at 6-7 and PJMICC, AMPC, and ODEC Protest at 8-9.

⁴⁵ PJMICC/AMPC/ODEC Protest at 13-14.

⁴⁶ PUCO Comments at 3.

⁴⁷ Indicated TOs Answer at 5-6.

⁴⁸ *Id.* at 7-8.

⁴⁹ *Monongahela Power Co.*, 162 FERC ¶ 61,129 (2018) and *Monongahela Power Co.*, 164 FERC ¶61,217 (2018) (together, Attachment M-3 Orders).

⁵⁰ Indicated TOs Answer at 9.

California Orders, the Commission recognized end of life activities as a subset of asset management activities.⁵¹

25. In its answer, PJM reiterates the concerns raised in its request for guidance and, contrary to the protests, that such guidance is necessary to effectuate the Court's remand.⁵² PJM contends that while the Compliance Filing satisfies the directives of the Show Cause Order, the guidance it seeks is within the scope of the proceeding and that given the complicated legal and factual matters, such issues are more appropriately addressed by the Commission. As a result, PJM does not support resolution through a stakeholder process.⁵³

26. In their answer, PJMICC/AMP/ODEC reiterate that PJM and Indicated TOs do not merely request guidance or clarification on minor issues, but they request a binding legal determination from the Commission on complex and controversial issues that impact third parties and other market participants. PJMICC/AMP/ODEC reiterate earlier arguments, including support for a stakeholder process, and assert that PJM's request for guidance should be properly filed as a petition for a declaratory order pursuant to Rule 207,⁵⁴ or filed under either section 205 or section 206 filing under the FPA.⁵⁵ The Indicated TOs answer to state that there is no stakeholder endorsement of a definition of an end of life planning criteria.⁵⁶ PJM further answers that issues related to cost allocation for transmission projects included in the RTEP to address Form No. 715 planning criteria support its request for guidance.⁵⁷

⁵¹ *Id.* at 12.

⁵² PJM Answer at 3-4.

⁵³ *Id.* at 8.

⁵⁴ 18 C.F.R. § 385.207 (2019).

⁵⁵ PJMICC/AMP/ODEC Answer at 6-7 (citing 18 C.F.R. § 385.207).

⁵⁶ Indicated TOs December 12 Answer at 2-3.

⁵⁷ PJM December 18, 2019 Answer at 2.

VI. Determination

A. Procedural Matters

27. 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.

28. 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 ICC and North Carolina EMC given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

29. 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.

B. Substantive Matters

30. In the Show Cause Order, the Commission directed PJM to revise the PJM Operating Agreement to no longer exempt from the competitive proposal window process transmission projects needed solely to address individual transmission owner Form No. 715 local planning criteria, or to show cause why such changes are not necessary. PJM did not contest the Show Cause Order to revise the PJM Operating Agreement and instead submitted the instant Compliance Filing. As discussed below, we therefore find that the PJM Operating Agreement is unjust and unreasonable because it exempts from the competitive proposal window process transmission projects needed solely to address individual transmission owner Form No. 715 local planning criteria. We find PJM's Compliance Filing follows the Commission's directive in the Show Cause Order and thus establishes a just and reasonable rate, to become effective as of the date of this order.

31. Con Edison argues that the Compliance Filing should be rejected, arguing the resulting cost allocation method is unjust and unreasonable because it will allocate the costs of certain transmission projects through a solution-based DFAX method when these projects do not have regional benefits.⁵⁸ We reject Con Edison's arguments because

⁵⁸ Con Edison specifies low voltage transmission projects driven by Form No. 715 local planning criteria and transmission projects driven by non-flow-based reliability criteria.

the Compliance Filing addresses only whether the PJM Operating Agreement exemption from the competitive proposal window process for transmission projects needed solely to address individual transmission owner Form No. 715 local planning criteria is unjust and unreasonable, not the cost allocation of such projects. Moreover, Con Edison's arguments that the 2015 PJM Transmission Owner Tariff Revision should be used to allocate the costs of low voltage projects were raised and rejected in the Order on Remand.⁵⁹ Accordingly, we reject Con Edison's protest as both beyond the scope of the Compliance Filing and a collateral attack on the Order on Remand.

32. We find that PJM's request for guidance is beyond the scope of this proceeding, which addresses the PJM Operating Agreement exemption from the competitive proposal window process for transmission projects needed solely to address individual transmission owner Form No. 715 local planning criteria, and does not address the other aspects of its transmission planning process discussed in PJM's request for guidance. The Commission has found that compliance filings must be limited to addressing the specific directives ordered by the Commission, and routinely rejects items included in a compliance filing that exceed what is necessary to satisfy the Commission's directives.⁶⁰ The Commission has rejected requests for guidance made in the context of a compliance filing, finding that the concerns expressed in a request for guidance are beyond the scope of the compliance filing.⁶¹ Because we find that PJM's request for guidance is beyond

⁵⁹ Order on Remand, 168 FERC ¶ 61,133, at P 27.

⁶⁰ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,128, at P 12 (2019); *Cal. Indep. Sys. Operator, Inc.*, 134 FERC ¶ 61,070, at P 107 (2011) (finding that a request for additional clarification at this time goes beyond the scope of the compliance filing); *Cal. Indep. Sys. Operator, Inc.*, 120 FERC ¶ 61,147, at P 15 (2007) (rejecting certain protests to a compliance filing that should have been raised in a request for rehearing); *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,156, at P 57 n.51 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.* at 137 FERC ¶ 61,212, at P 37 (2011); *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,157, at PP 303-304 (2016) (finding market monitor's argument and request for clarification to be beyond the scope of the compliance filing); *Entergy Services, Inc.*, 117 FERC ¶ 61,055, at PP 22, 83 (rejecting certain proposed language as beyond the scope of the compliance filing).

⁶¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 128 FERC ¶ 61,280, at PP 13-14 (2009) (rejecting the request for Commission guidance and informing the party that its concerns are more appropriate through a petition for a declaratory order or a Section 206 complaint); see also *Tucson Elec. Power Co.*, 91 FERC ¶ 61,158, at ¶ 61,597 (2000) (rejecting request for guidance as beyond the scope of a compliance filing).

the scope of this compliance requirement, we do not address any comments or protests related to that request for guidance.

The Commission orders:

PJM's Compliance Filing is hereby accepted, to become effective as of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Glick is dissenting in part with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket No. ER20-45-000

(Issued January 23, 2020)

GLICK, Commissioner, *dissenting in part*:

1. I dissent in part because we should not duck PJM’s request for guidance. PJM raises a number of important issues that bear, rather directly, on whether the compliance directives in the August 30th Order—an order I supported—can be implemented in a manner that is just and reasonable and not unduly discriminatory or preferential. PJM contends that those directives will cause similarly situated transmission projects to be planned differently—and have their costs allocated differently—based solely on whether the relevant transmission owner conducts its asset management activities through Form No. 715 criteria or instead through Supplemental Projects.¹ That, in turn, has the potential to result in significant and inequitable cost shifts among PJM consumers and rampant cross-subsidization.² Those are serious concerns that deserve better than the back of the hand from the Commission. After all, it is not every day that a public utility urges the Commission to take a hard look at whether its tariff is just and reasonable.³

2. I would have convened a technical conference to examine these concerns and address how the Commission treats asset management transmission planning more generally. In particular, I would examine whether the potentially inconsistent treatment PJM describes in its request is or can be just and reasonable. I recognize that the issues on which PJM seeks guidance are not inherently straightforward and that, sitting here today, we may not know all the answers. But that is exactly why we should develop the record needed to give those issues the consideration they deserve and to ensure that the Commission is treating asset management activities in a manner that is coherent and reasonably consistent.

3. By contrast, simply dismissing those concerns as “beyond the scope of this proceeding” does nothing to advance the ball. Instead, we are just punting it back to

¹ PJM Compliance Filing at 9.

² *Id.*

³ And, notably, that request is supported by a number of the region’s transmission owners. *See* Indicated Transmission Owners Comments at 6, 11.

PJM, which has already told us that it needs guidance from the Commission.⁴ Doing so all but ensures that these issues will come back to the Commission before we have had a chance to consider the broader legal, technical, and policy concerns raised in PJM's request for guidance. It is also a recipe to put us back in the very position we find ourselves today with a transmission planner coming to the Commission and stating that it does not know how to implement purportedly conflicting directives in a just and reasonable manner.⁵ That is no way to run a railroad, much less the transmission system in the country's largest electricity market.

For these reasons, I respectfully dissent in part.

Richard Glick
Commissioner

⁴ PJM Compliance Filing at 12.

⁵ Today's order cites to a number of instances in which the Commission has previously rejected requests for guidance. *PJM Interconnection, L.L.C.*, 170 FERC ¶ 61,049, at P 32 (2020). Fine. My point is not that today's order is inconsistent with Commission precedent. Rather it is that PJM has identified an important issue that the Commission is choosing to ignore.