169 FERC ¶ 61,054
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc.	Docket Nos. EL19-90-000
PJM Interconnection, L.L.C.	EL19-91-000
Southwest Power Pool, Inc.	EL19-92-000

ORDER INSTITUTING SECTION 206 PROCEEDINGS

(Issued October 17, 2019)

1. In this order, pursuant to section 206 of the Federal Power Act (FPA)[1] and Rule 209(a) of the Commission's Rules of Practice and Procedure,[2] we institute proceedings to consider how the exemption for immediate need reliability projects that the Commission permitted to Order No. 1000's[3] requirement to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission developer with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation is being implemented. Based on initial analysis, we are concerned that ISO New England Inc. (ISO-NE), PJM Interconnection, L.L.C. (PJM), and Southwest Power Pool, Inc. (SPP) (collectively, Responding RTOs) may be implementing the exemption in a manner that is inconsistent with what the Commission directed, and therefore may be unjust and unreasonable, unduly preferential and discriminatory. We therefore direct each Responding RTO to respond to the questions we outline below 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

[1] 16 U.S.C. § 824e (2018).

[2] 18 C.F.R. § 385.209(a) (2019).

[3] *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).

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.

I. Background

2. In Order No. 1000, 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 refusal[[4]] for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation"[5]; (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";[6] 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."[7]

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[4] 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.

[5] "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.

[6] *Id.* P 336.

[7] *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.*

3. In their Order No. 1000 compliance filings, each of the Responding RTOs 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). The Commission partially accepted these proposals,[8] explaining that, to avoid delays in the development of projects needed to resolve a time-sensitive reliability criteria violation, it was just and reasonable for the Responding RTOs to create a class of transmission projects that are exempt from competition.[9] The Commission also stated that "such an exception should only be used in certain limited circumstances."[10] To that end, the Commission established five criteria for the exemption, which it believed would place reasonable bounds on the Responding RTOs' 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.[11] Those five criteria are:

i. The project must be needed in three years or less to solve reliability criteria violations;[12]

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[8] *ISO New England Inc.*, 143 FERC ¶ 61,150, at PP 235-239 (2013) (ISO-NE First Compliance Order), *order on reh'g and compliance*, 150 FERC ¶ 61,209, at PP 221-226 (ISO-NE Second Compliance Order); *order on reh'g and compliance*, 153 FERC ¶ 61,012 (2015); *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 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); *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,059, at PP 195-198 (2013) (SPP First Compliance Order), *order on reh'g and compliance*, 149 FERC ¶ 61,048, at P 166 (2014) (SPP Second Compliance Order), *order on reh'g and compliance*, 151 FERC ¶ 61,045 (2015).

[9] ISO-NE First Compliance Order, 143 FERC ¶ 61,150 at P 236; PJM First Compliance Order, 142 FERC ¶ 61,214 at P 247; SPP First Compliance Order, 144 FERC ¶ 61,059 at P 195.

[10] ISO-NE First Compliance Order, 143 FERC ¶ 61,150 at P 236; PJM First Compliance Order, 142 FERC ¶ 61,214 at P 248. *See also* SPP First Compliance Order, 144 FERC ¶ 61,059 at P 195 (finding the exception is acceptable "in limited circumstances").

[11] ISO-NE First Compliance Order, 143 FERC ¶ 61,150 at P 236; PJM First Compliance Order, 142 FERC ¶ 61,214 at P 248; SPP First Compliance Order, 144 FERC ¶ 61,059 at PP 195-196.

[12] The Commission has stated that it is proper to use the date a reliability need

ii. The Responding 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;

iii. The Responding 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;

iv. Stakeholders must be permitted time to provide comments in response to the project description, and such comments must be made publicly available; and

v. The Responding 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 Responding 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.

4. The Commission balanced several considerations in concluding that an exemption for immediate need reliability projects could be just and reasonable when the application of that exemption is limited by the above-noted criteria.[13] On one side of the balance, the Commission identified Order No. 1000's removal of certain barriers to entry that discourage nonincumbent transmission developers from proposing in the regional transmission planning process alternative solutions that may be more efficient or cost-effective transmission solutions and its basic recognition that it is not in the economic self-interest of public utility transmission providers to expand the transmission system to

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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).

[13] *See* PJM First Compliance Order, 142 FERC ¶ 61,214 at PP 247-255; PJM Second Compliance Order, 147 FERC ¶ 61,128 at PP 164-167, 194-199; PJM Third Compliance Order, 150 FERC ¶ 61,038 at P 74; PJM Fourth Compliance Order, 151 FERC ¶ 61,250 at P 25. *See also* SPP First Compliance Order, 144 FERC ¶ 61,059 at PP 195-199; SPP Second Compliance Order, 149 FERC ¶ 61,048 at P 166. *See also* ISO-NE First Compliance Order, 143 FERC ¶ 61,150 at PP 235-241; ISO-NE Second Compliance Order, 150 FERC ¶ 61,209 at PP 221-226, 235.

permit access to competing sources of supply.[14] The Commission found that the more transmission projects that an exemption covers, the longer barriers are maintained against potential competitive transmission solutions proposed by nonincumbent transmission developers.[15] On the other side of the balance, the Commission found that the potential for delays in the development of a transmission project could adversely affect the ability of the incumbent transmission owner and the Responding RTO to meet their reliability transmission needs.[16]

5. Based on this balancing, the Commission approved the Responding RTOs' requests for a limited exemption for immediate need reliability projects from Order No. 1000's requirement to eliminate federal rights of first refusal created by provisions in Commission-jurisdictional tariffs or agreements for incumbent transmission owners with respect to transmission facilities selected in the regional transmission plan for purposes of cost allocation. Incumbent transmission owners are therefore eligible to use the Responding RTOs' Order No. 1000 regional cost allocation method or methods for immediate need reliability projects.[17] As the Commission outlined in Order No. 1000, only transmission facilities selected in the regional transmission plan for purposes of cost allocation are eligible to use a Responding RTO's Order No. 1000regional cost allocation method or methods.[18] This implicitly means that, even though an immediate need reliability project is not subject to competition, a Responding RTO must still select the immediate need reliability project pursuant to its regional transmission planning process in its regional transmission plan for purposes of cost allocation as the more efficient or cost-effective solution to the applicable reliability criteria violation. The evaluation of the more efficient or cost-effective solution that a Responding RTO must perform for an immediate need reliability project is based on a comparison to those transmission or non-transmission solutions[19] to regional transmission needs that the Responding RTO

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[14] ISO-NE First Compliance Order, 143 FERC ¶ 61,150 at P 238; PJM First Compliance Order, 142 FERC ¶ 61,214 at P 249; SPP First Compliance Order, 144 FERC ¶ 61,059 at P 197.

[15] *Id.*

[16] ISO-NE First Compliance Order, 143 FERC ¶ 61,150 at P 239; PJM First Compliance Order, 142 FERC ¶ 61,214 at P 250; SPP First Compliance Order, 144 FERC ¶ 61,059 at P 198.

[17] *See* PJM Second Compliance Order, 147 FERC ¶ 61,128 at P 165.

[18] *See, e.g.,* Order No. 1000, 136 FERC ¶ 61,051 at PP 335, 539, 563.

[19] In Order No. 1000, the Commission required that "transmission and non-transmission alternatives must be comparably considered in the regional transmission

identifies and that the incumbent transmission owner can complete in the short time frame to address the reliability criteria violation.

II. Informational Filings Requirement

6. As noted above, under criterion five, the Commission required that each Responding RTO submit an informational filing in January of each calendar year with a list of the 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 transmission project. The list must include the transmission project's need-by date and the date the incumbent transmission owner actually energized the project. The Responding RTOs' informational filings indicate that, between 2015 and 2018, ISO-NE designated 29 immediate need reliability projects,[20] PJM designated 241 immediate need reliability projects,[21] and SPP designated five immediate need reliability projects.[22]

III. Discussion

7. As explained above, the Commission accepted an exemption for immediate need reliability projects, as proposed by the Responding RTOs, and in doing so, established five criteria intended to place reasonable bounds on the Responding RTOs' discretion and, as a result, ensure that the immediate need reliability project exemption will be used only in limited circumstances.[23] Based on our review of the annual informational filings

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planning process. When evaluating the merits of alternative transmission solutions, proposed non-transmission alternatives must be considered on a comparable basis." *Id.* P 148. The Commission clarified that "the issue of cost recovery associated with non-transmission alternatives is beyond the scope of Order No. 1000, which addresses the allocation of the costs of transmission facilities." *Id.* P 779. *See also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 738.

[20] ISO-NE Informational Filings, Docket No. ER13-193-000 (filed Jan. 30, 2018, Jan. 31, 2019).

[21] PJM Informational Filings, Docket No. ER13-198-000 (filed Jan. 29, 2016, Jan. 31, 2017, Jan. 30, 2018, Jan. 31, 2019).

[22] SPP Informational Filings, Docket No. ER13-366-000 (filed Jan. 28, 2016, Jan. 31, 2017, Jan. 24, 2018, Jan. 24, 2019).

[23] *See* ISO-NE First Compliance Order, 143 FERC ¶ 61,150 at PP 235-241; ISO-NE Second Compliance Order, 150 FERC ¶ 61,209 at PP 221-226, 235; PJM First Compliance Order, 142 FERC ¶ 61,214 at PP 247-255; PJM Second Compliance Order,

and materials provided in stakeholder processes as posted on the Responding RTOs' websites, we are concerned that the Responding RTOs may be implementing the exemption in a manner that is inconsistent with or more expansive than what the Commission directed, and therefore may be unjust and unreasonable, unduly preferential and discriminatory.

8. With regard to the first implementation criterion, it is unclear how each Responding RTO determines whether an immediate need reliability project is needed in three years or less. Certain approved immediate need reliability projects have need-by dates prior to or in the year that the Responding RTO designated them as immediate need transmission projects. For example, PJM designated 19 immediate need reliability projects between 2017 and 2018 with need-by dates prior to or in the year it was designated.[24] Similarly, the majority of ISO-NE's immediate need reliability projects have need-by dates occurring prior to ISO-NE's designation of these projects as immediate need reliability projects in the regional transmission plan, with 24 of 29 designated projects having need-by dates prior to or in 2016.[25]

9. In addition, in some instances where an immediate need reliability project's need-by date is after the year it was designated by the Responding RTO as an immediate need reliability project the date the project is projected to be in service is after the need-by date. For example, of the projects designated in 2014, PJM reported 10 percent in the engineering and procurement phase and 18 percent in the construction phase. Combined, 28 percent of PJM's 2014 projects have in-service dates well beyond their need-by dates.[26]

10. It also is unclear how to interpret the fact that some of the Responding RTOs' annual informational filings list immediate need reliability projects that have not gone into, or are not scheduled to go into, service by either their need-by dates or expected

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147 FERC ¶ 61,128 at PP 164-167, 194-199; PJM Third Compliance Order, 150 FERC ¶ 61,038 at P 74; PJM Fourth Compliance Order, 151 FERC ¶ 61,250 at P 25; SPP First Compliance Order, 144 FERC ¶ 61,059 at PP 195-199; SPP Second Compliance Order, 149 FERC ¶ 61,048, at P 166 (together, Order No. 1000 Compliance Orders).

[24] PJM Informational Filings, Docket No. ER13-198-000 (filed Jan. 30, 2018, Jan. 31, 2019).

[25] ISO-NE Informational Filings, Docket No. ER13-193-000 (filed Jan. 30, 2018, Jan. 31, 2019).

[26] PJM Informational Filings, Docket No. ER13-198-000 (filed Jan. 29, 2016, Jan. 31, 2017, Jan. 30, 2018, Jan. 31, 2019).

in-service dates. For example, ISO-NE has reported that only two of its 29 approved immediate need reliability projects have gone into service.[27] PJM has reported that 72 percent of immediate need reliability projects designated in 2014 have gone into service, with all 28 of the 39 projects going into service within three years of their approval dates.[28] The balance of projects PJM designated in 2014 are either in the engineering and procurement phase or under construction. Similarly, SPP designated an immediate need reliability project in December 2018 that is needed by June 1, 2020 but has an expected in-service date of June 30, 2023.[29] Based on information on the SPP website, it appears that none of SPP's immediate need reliability projects have gone into service, even those that have need-by dates past the present date.

11. In addition, upon review of each of the Responding RTOs' websites, it is not always clear whether and where the Responding RTO has provided to stakeholders all of the required information outlined in the second through fourth criteria for each individual immediate need reliability project that the Responding RTO listed in its annual informational filings. In some instances, it is difficult to locate where the Responding RTO separately identifies and posts an explanation, in advance, of reliability violations and system conditions for which there is a time-sensitive need, and, therefore, it is not clear whether the information provides sufficient detail of the need and time sensitivity, as required. Where information is provided, it appears that the Responding RTO discloses the reliability need and the transmission project proposed to meet that need to stakeholders at the same time, rather than posting the time-sensitive reliability need in advance. Furthermore, when the Responding RTO posts an immediate need reliability project, the information about the project is in some cases very limited, with little or no explanation of the circumstances that generated the immediate reliability need, what other transmission and non-transmission alternatives the Responding RTO considered to meet the reliability need, and why the need was not identified earlier.[30] It is also not readily apparent in some cases where the Responding RTO publicly posts all comments provided by stakeholders in response to each immediate need reliability project description.

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[27] ISO-NE Informational Filings, Docket No. ER13-193-000 (filed Jan. 30, 2018, Jan. 31, 2019).

[28] PJM Informational Filings, Docket No. ER13-198-000 (filed Jan. 29, 2016, Jan. 31, 2017, Jan. 30, 2018, Jan. 31, 2019).

[29] SPP Informational Filing, Docket No. ER13-366-000 (filed Jan. 24, 2019).

[30] ISO-NE First Compliance Order, 143 FERC ¶ 61,150 at P 236; PJM First Compliance Order, 142 FERC ¶ 61,214 at P 248; SPP First Compliance Order, 144 FERC ¶ 61,059 at P 196.

12. For example, PJM's Transmission Expansion Advisory Committee (TEAC) provides a forum for proposal and discussion of immediate need reliability projects. Though PJM posts TEAC meeting notes on its website, it appears that PJM only provides minimal explanations of immediate need reliability project issues and solutions discussed and does not describe in any detail alternative solutions it considered or provide a defined comment period for stakeholders.[31] Along the same lines, we are concerned about PJM's approval of the Flint Run 500-138 kV substation project as a 2018 immediate need reliability project. PJM reported that load growth in the Marcellus Shale region drove the immediate reliability need;[32] however, the size of this particular project raises questions about why PJM did not identify this need earlier, how PJM determined that this project qualifies as an immediate need reliability project, and whether PJM should have opened an abbreviated competitive proposal window for the project.

13. Similarly, in review of the Responding RTOs' annual informational filings, it is unclear whether each Responding RTO properly maintains and posts 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. As explained above, the fifth of the five criteria, which the Commission imposed when accepting the exemption for immediate need reliability projects, requires that the list include the project's need-by date and the date the incumbent transmission owner energized the project.[33] For example, it is unclear whether and where SPP maintains a list of all approved immediate need reliability projects with the need-by date and the energization date for each project.[34]

14. In light of this preliminary evidence, we are concerned that the Responding RTOs may not be complying with the five criteria established in their respective Order No. 1000 Compliance Orders for those Responding RTOs. We are also concerned that, as implemented, the Responding RTOs' exemptions for immediate need reliability projects may no longer be just and reasonable.

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[31] PJM First Compliance Order, 142 FERC ¶ 61,214 at P 248.

[32] PJM, *TEAC Reliability Analysis Update* (May 3, 2018), https://www.pjm.com/-/media/committees-groups/committees/teac/20180503/20180503-teac-reliability-analysis-update.ashx.

[33] *See supra* P 3.

[34] SPP Informational Filings, Docket No. ER13-366-000 (filed Jan. 28, 2016, Jan. 31, 2017, Jan. 24, 2018, Jan. 24, 2019).

15. Additionally, we are concerned that the exemption is not being used in limited circumstances, as intended. Our preliminary review suggests that the majority of ISO-NE's immediate need reliability projects tie to the 2016 Southeast Massachusetts and Rhode Island Needs Assessment Study, which identified numerous thermal violations in the Southern Massachusetts and Rhode Island area for study year 2016.[35] Since ISO-NE does not conduct an annual transmission planning process, and instead relies upon Needs Assessment Studies to identify reliability needs, coupled with ISO-NE's typical approach to wait for a market solution to address a reliability need, it appears that all reliability needs in ISO-NE may be classified as immediate need reliability projects.

16. Accordingly, pursuant to FPA section 206 and Rule 209(a) of the Commission's Rules of Practice and Procedure, we institute proceedings in Docket Nos. EL19-90-000 (ISO-NE), EL19-91-000 (PJM), and EL19-92-000 (SPP), respectively, and direct each Responding RTO to respond to the following questions 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 are necessary to ensure that application of the exemption is limited to appropriately balance the above-noted interests with respect to promoting competition for transmission development and avoiding delays that could endanger reliability.

A. Compliance with Immediate Need Reliability Project Criteria

17. A Responding RTO should first provide responses to the following questions regarding its compliance with the five immediate need reliability project criteria.[36]

1. Provide a consolidated list 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 and cite to where each project was reported to the Commission in an informational filing. For each project, provide the date the project was designated as an immediate need reliability project, the project's need-by date, the initial expected in-service date, and the date the incumbent transmission owner energized the project.

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[35] ISO-NE Informational Filings, Docket No. ER13-193-000 (filed Jan. 30, 2018, Jan. 31, 2019).

[36] *See supra* P 3.

2. Explain how the Responding RTO identifies an immediate need reliability project, including how it determines whether a transmission project is needed in three years or less to solve reliability criteria violations. Describe the information and criteria the Responding RTO uses to make that determination, including cites to the relevant tariff provisions, transmission owner agreements, and business practice manuals. Describe and list the criteria (e.g., generation retirement, fuel deliverability) the Responding RTO used to evaluate immediate need reliability projects.

3. For each identified immediate need reliability project, provide individual links to the locations on the Responding RTO's website where the Responding RTO provided in advance the information and explanations of the reliability violations and system conditions for which there was a time-sensitive need.

4. For each identified immediate need reliability project, provide individual links to the locations on the Responding RTO's website for the full and supported written descriptions explaining: (1) why that project was designated to the incumbent transmission owner as the entity responsible for construction and ownership of the project, including an explanation of alternate solutions to the immediate need reliability project that were considered; and (2) the circumstances that generated the immediate reliability need and why the immediate reliability need was not identified earlier.

5. For each identified immediate need reliability project, describe how the Responding RTO permitted stakeholders to provide comments and provide individual links to the location(s) on the Responding RTO's website where stakeholder comments on specific immediate need reliability projects are made publicly available.

6. Provide any additional information that may be necessary to demonstrate that the Responding RTO met the five criteria for each identified immediate need reliability project.

B. Implementation of Immediate Need Reliability Project Exemption

18. To further demonstrate a Responding RTO's implementation of the immediate need reliability project exemption is consistent with the Commission's expectation that the exemption be used only in limited circumstances and that the existing provisions continue to be just and reasonable, the Responding RTO should respond to the following questions:

7. Explain how the Responding RTO distinguishes an immediate need reliability project's need-by date from the expected in-service date. Explain how an immediate need reliability project can have a need-by date prior to or in the year the project was designated as an immediate need reliability project. Cite to the provisions of the tariff, transmission owner agreements, or business practice manuals that define the terms "need-by date" and "expected in-service date".

8. For each immediate need reliability project with a need-by date prior to the project being designated, explain why the relevant time-sensitive reliability criteria violation was not identified in prior planning cycles.

9. For each immediate need reliability project with a need-by date earlier than its projected in-service date, explain how the time-sensitive reliability criteria violation is being addressed before the project is placed in service.

10. If construction of an immediate need reliability project has not begun prior to its need-by date, explain what, if any, process the Responding RTO has to confirm that the previously identified immediate need reliability project is still needed in three years or less.

11. Provide a detailed status report for each immediate need reliability project that has not gone or is not projected to go into service by its need-by date, including a description of factors preventing the project from going into service. For each project, also provide the reliability criteria violation it resolves, if any. Please explain how the time-sensitive reliability criteria violation is being addressed before the project is placed in service.

12. For immediate need reliability projects that have not gone into service or are not scheduled to go into service by their need-by date:

    a. Explain whether the Responding RTO reevaluates alternatives to address the reliability need, and if so, how the reliability need was reevaluated consistent with the Order No. 1000's requirements for reevaluation. Cite to the provisions of the tariff, transmission owner agreements, reliability criteria, and business process manuals governing such reevaluation.
    b. If reevaluation is conducted, state the frequency with which reevaluation is conducted and the entity or entities conducting the reevaluation, and explain how this frequency is consistent with the Commission's regional transmission system planning rules, such as 18 C.F.R. 35.34.

13. If an existing immediate need reliability project is re-evaluated for immediate need and is determined to still meet that requirement, is the three-year time frame extended based on the time of the reevaluation?

14. For all transmission projects that the Responding RTO has selected in its regional transmission plan for purposes of cost allocation since 2016, provide the number and percentage of transmission projects to address reliability criteria violations that did not qualify as immediate need reliability projects.

C. Additional Conditions or Restrictions

19. A Responding RTO should respond to the following questions regarding additional conditions or restrictions that the Commission may consider imposing on the immediate need reliability project exemption contained in its tariff to help 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.[37]

15. Explain how implementing each or a combination of the following potential changes to the current requirements for immediate need reliability projects would help maintain the balance between reliability and competition and ensure that immediate need reliability projects remain a limited exception:

    a. Shorten the current three-year time frame for immediate need reliability projects.
    b. Require use of anticipated in-service date instead of need-by date to determine immediate need reliability project eligibility.
    c. Require each relevant incumbent transmission owner to provide the Responding RTO and stakeholders periodic, detailed status reports on each immediate need reliability project.
    d. Require the Responding RTO to reevaluate each immediate need reliability project that does not go into service by its need-by date.
    e. Prohibit projects with specific characteristics from qualifying as immediate need reliability projects (e.g., those that exceed a certain voltage level, line miles, or capital cost thresholds).

[37] ISO-NE First Compliance Order, 143 FERC ¶ 61,150 at P 236; PJM First Compliance Order, 142 FERC ¶ 61,214 at P 248; SPP First Compliance Order, 144 FERC ¶ 61,059 at P 195.

f. Create an abbreviated competitive process for immediate need reliability projects.

16. Propose and explain any additional conditions or restrictions on the immediate need reliability project exemption contained in the Responding RTO's tariff to help maintain the balance referenced in paragraph 19.

D. Institution of Section 206 Proceedings

20. Consistent with the above discussion, we institute proceedings in Docket Nos. EL19-90-000 (ISO-NE), EL19-91-000 (PJM), and EL19-92-000 (SPP), respectively, pursuant to FPA section 206 and Rule 209(a) of the Commission's Rules of Practice and Procedure, to determine whether the exemptions for immediate need reliability projects remain just and reasonable.

21. We require each Responding RTO to submit its response no later than 60 days after the publication of notice in the *Federal Register* of the Commission's initiation of FPA section 206 proceedings in Docket Nos. EL19-90-000, EL19-91-000, and EL19-92-000. Parties may file comments in response to the Responding RTO's response within 30 days after the due date of the Responding RTO's response.

22. In cases where, as here, the Commission institutes a proceeding under FPA section 206(b), the Commission must establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of the proceedings in the *Federal Register*, and no later than five months subsequent to that date.[38] Consistent with Commission precedent,[39] we will establish a refund effective date at the earliest date allowed, i.e., the date the notice of the initiation of the proceedings in Docket Nos. EL19-90-000, EL19-91-000, and EL19-92-000 is published in the *Federal Register*.

23. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. We expect to issue a final order in these proceedings within six months of receiving the Responding RTOs' responses to this order.

24. Any entity desiring to participate in the proceeding for a particular Responding RTO must file a notice of intervention or a motion to intervene, as appropriate, in the

[38] 16 U.S.C. § 824e(b) (2018).

[39] *See, e.g.*, *PJM Interconnection, L.L.C.*, 90 FERC ¶ 61,137 (2000); *Cambridge Elec. Light Co.*, 75 FERC ¶ 61,177, *clarified*, 76 FERC ¶ 61,020 (1996); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

docket number identified in the caption of this order in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), within 21 days of publication of notice in the *Federal Register* of the Commission's initiation of the section 206 proceedings.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes proceedings in Docket Nos. EL19-90-000, EL19-91-000, and EL19-92-000, as discussed in the body of this order.

(B) No later than 60 days after the publication of notice in the *Federal Register* of the Commission's initiation of the section 206 proceedings in Docket Nos. EL19-90-000, EL19-91-000, and EL19-92-000, each Responding RTO is required to respond to the questions set forth in the body of this 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. Parties may file comments in response to the Responding RTO's response within 30 days after the due date of the Responding RTO's response.

(C) Any interested person desiring to be heard in Docket Nos. EL19-90-000, EL19-91-000, or EL19-92-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), within 21 days of the date of issuance of this order.

(D) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation under FPA section 206 of the proceedings in Docket Nos. EL19-90-000, EL19-91-000, and EL19-92-000.

(E) The refund effective date in Docket Nos. EL19-90-000, EL19-91-000, and EL19-92-000 established pursuant to section 206 of the FPA shall be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (D) above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.