

168 FERC ¶ 61,132  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur and Richard Glick.

PJM Interconnection, L.L.C.

Docket No. EL19-61-000

ORDER INSTITUTING SECTION 206 PROCEEDING

(Issued August 30, 2019)

1. On January 18, 2018, pursuant to section 206 of the Federal Power Act (FPA),<sup>1</sup> the Commission issued an order requiring PJM Interconnection, L.L.C. (PJM) to revise its Amended and Restated Operating Agreement (PJM Operating Agreement) to specify that transmission needs driven solely by individual transmission owner Form No. 715 local planning criteria are not subject to PJM's competitive proposal window process.<sup>2</sup> The Commission required that revision because it had accepted the PJM Transmission Owners' proposed revision to the PJM Open Access Transmission Tariff (PJM Tariff) to allocate 100 percent of costs for projects that are included in the PJM Regional Transmission Expansion Plan (RTEP) solely to address individual transmission owner Form No. 715 local planning criteria to the transmission zone of the transmission owner whose Form No. 715 local planning criteria underlie each project (2015 PJM Transmission Owner Tariff Revision).<sup>3</sup> Because the 2015 PJM Transmission Owner Tariff Revision allocated 100 percent of the costs of such projects to the zone of the individual transmission owner and the PJM Operating Agreement provided for the transmission owner to construct projects allocated 100 percent to its zone, the

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<sup>1</sup> 16 U.S.C. § 824e (2012).

<sup>2</sup> *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,033 (2018) (January 2018 Order).

<sup>3</sup> *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,096 (February 2016 Order), *reh'g denied*, 157 FERC ¶ 61,192 (2016), *rev'd sub nom. Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254 (ODEC), *reh'g denied*, 905 F.3d 671 (D.C. Cir. 2018).

Commission determined such projects should not be subject to PJM's competitive proposal window process.<sup>4</sup>

2. 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.<sup>5</sup> In an order issued concurrently with this order, on remand, we reject the 2015 PJM Transmission Owner Tariff Revision.<sup>6</sup> Because 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, we are instituting a proceeding pursuant to section 206 of the FPA to require 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. As discussed below, we require PJM to respond within 30 days of the date of publication of notice of the Commission's initiation of Docket No. EL19-61-000.

## **I. Background**

### **A. PJM Tariff**

3. PJM's RTEP planning criteria includes PJM planning procedures, North American Electric Reliability Corporation (NERC) Reliability Standards, Regional Entity reliability principles and standards, and individual transmission owner planning criteria as filed with the Commission in FERC Form No. 715.<sup>7</sup> Form No. 715 is the Annual Transmission Planning and Evaluation Report that any transmitting utility that operates integrated transmission facilities at or above 100 kilovolts must file with the Commission on or before April 1 of each year.<sup>8</sup> 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.

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<sup>4</sup> January 2018 Order, 162 FERC ¶ 61,033 at P 23.

<sup>5</sup> *ODEC*, 898 F.3d at 1263-64.

<sup>6</sup> *See PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,133 (2019) (Order on Remand).

<sup>7</sup> February 2016 Order, 154 FERC ¶ 61,096 at P 2 & n.2 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.2(e) (2.0.0)).

<sup>8</sup> *See* 18 C.F.R. § 141.300 (2018).

4. On February 12, 2016, the Commission accepted the 2015 PJM Transmission Owner Tariff Revision, which allocates 100 percent of costs for projects that are included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria to the transmission zone of the transmission owner whose Form No. 715 local planning criteria underlie each project.<sup>9</sup> Prior to the 2015 PJM Transmission Owner Tariff Revision, PJM assigned the costs of reliability projects that are selected in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria pursuant to the PJM cost allocation method accepted by the Commission as in compliance with Order No. 1000.<sup>10</sup> Specifically, in the case of Regional Facilities and Necessary Lower Voltage Facilities<sup>11</sup> 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)

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<sup>9</sup> February 2016 Order, 154 FERC ¶ 61,096 at P 1.

<sup>10</sup> See *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); see also *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013), *order on reh'g and compliance*, 147 FERC ¶ 61,128 (2014), *order on reh'g and compliance*, 150 FERC ¶ 61,038, *order on reh'g and compliance*, 151 FERC ¶ 61,250 (2015).

<sup>11</sup> 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, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(i) (12.0.0). Necessary Lower Voltage Facilities are defined as Required Transmission Enhancements included in the RTEP that are AC transmission facilities or enhancements that operate below 500 kV (or 345 kV in the case of a Regional Facility described in (b) above) or new DC transmission facilities that must be constructed or reinforced to support new Regional Facilities. *Id.*

method.<sup>12</sup> All of the costs of Lower Voltage Facilities<sup>13</sup> are allocated using the solution-based DFAX method.

5. The Commission stated that any transmission project included in the RTEP not only to address an individual transmission owner Form No. 715 local planning criteria, *but also* to address PJM regional criteria or NERC Reliability Standards, would continue to be selected for purposes of cost allocation, making it eligible to use the regional cost allocation method.<sup>14</sup> The Commission stated that, under section 1.5.8(l) of the PJM Operating Agreement,<sup>15</sup> if a transmission project is located solely within a transmission owner's zone and the project's costs are allocated solely to that zone, the transmission owner in whose zone the project is located will be the designated entity to construct the project.<sup>16</sup> The Commission further stated that, to the extent that PJM finds that a project is needed to meet not only transmission owner Form No. 715 local planning criteria but also regional needs, costs may be allocated outside of the zone of the transmission owner whose Form No. 715 local planning criteria underlie the project. In this situation, section 1.5.8(l) of the PJM Operating Agreement would not apply, and a nonincumbent transmission developer could be designated to construct the project if it were selected in the RTEP for purposes of cost allocation.<sup>17</sup>

## **B. PJM Operating Agreement**

6. On July 11, 2016, the Commission instituted a proceeding pursuant to FPA section 206 to address an apparent inconsistency within the PJM Operating Agreement

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<sup>12</sup> “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.

<sup>13</sup> Lower Voltage Facilities are defined as Required Transmission Enhancements that: (a) are not Regional Facilities; and (b) are not Necessary Lower Voltage Facilities. PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(ii) (12.0.0).

<sup>14</sup> February 2016 Order, 154 FERC ¶ 61,096 at PP 13-14.

<sup>15</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(l) (6.2.0).

<sup>16</sup> February 2016 Order, 154 FERC ¶ 61,096 at P 14.

<sup>17</sup> *Id.*

related to the need for a competitive proposal window.<sup>18</sup> Specifically, the Commission noted that section 1.5.8(l) of Schedule 6 of the PJM Operating Agreement requires the transmission owner to be the designated entity to construct a project when 100 percent of the costs of the project are allocated to the transmission owner's zone, as was the case for projects that were included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria with the 2015 PJM Transmission Owner Tariff Revision.<sup>19</sup> However, the Commission noted that section 1.5.8(c) of Schedule 6 of the PJM Operating Agreement did not exempt transmission needs driven solely by individual transmission owner Form No. 715 local planning criteria from the competitive proposal window process.<sup>20</sup>

7. To resolve the apparent inconsistency in the PJM Operating Agreement provisions, and consistent with the cost allocation provisions of the PJM Tariff established by the 2015 PJM Transmission Owner Tariff Revision,<sup>21</sup> the Commission required PJM to revise section 1.5.8(c) of Schedule 6 of the PJM Operating Agreement to specify that transmission needs driven solely by individual transmission owner Form No. 715 local planning criteria are not subject to PJM's competitive proposal window process, or show cause why such changes were not necessary.<sup>22</sup>

8. In response, PJM proposed to add to the PJM Operating Agreement and PJM Tariff a new definition for the term "Form No. 715 Planning Criteria": "individual Transmission Owner FERC-filed planning criteria as described in Schedule 6, Section 1.2(e) and filed with FERC Form No. 715 and posted on the PJM website." PJM also proposed corresponding changes to make clear that transmission needs driven solely by individual

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<sup>18</sup> See *PJM Interconnection, L.L.C.*, 156 FERC ¶ 61,030, at PP 20-21, 24 (July 2016 Order), *order on reh'g*, 157 FERC ¶ 61,193 (2016) (December 2016 Rehearing Order).

<sup>19</sup> *Id.* P 20 (referencing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(l)).

<sup>20</sup> *Id.* (referencing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(c)).

<sup>21</sup> See PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(xv) (12.0.0) (allocating 100 percent of the costs for projects that are included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria to the transmission zone of the transmission owner whose Form No. 715 local planning criteria underlie each project).

<sup>22</sup> July 2016 Order, 156 FERC ¶ 61,030 at P 21.

transmission owner Form No. 715 local planning criteria are among the needs not subject to PJM's competitive proposal window process.<sup>23</sup>

9. In the January 2018 Order, the Commission found the inconsistencies in PJM's existing Operating Agreement to be unjust and unreasonable for the reasons discussed in the July 2016 Order.<sup>24</sup> Further, the Commission found PJM's proposed revisions, which addressed the inconsistencies identified in the July 2016 Order, to be consistent with the Commission's proposed revisions therein and just and reasonable.<sup>25</sup>

### C. Remand

10. Dominion Energy Resources, Inc. (Dominion) and Old Dominion Electric Cooperative (ODEC) sought judicial review of the Commission orders (1) accepting the 2015 PJM Transmission Owner Tariff Revision, and (2) applying the revision to specific projects.

11. On August 3, 2018, the Court found that the Commission "did not adequately justify its approval of the [2015 PJM Transmission Owner Tariff Revision] at issue here, which prohibited cost sharing for a category of high-voltage projects conceded to have significant regional benefits,[<sup>26</sup>] and did so only because those projects reflected the planning criteria of the individual utilities."<sup>27</sup> 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

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<sup>23</sup> PJM, Tariff Filing, Docket No. ER16-2401-000 (filed Aug. 10, 2016).

<sup>24</sup> January 2018 Order, 162 FERC ¶ 61,033 at P 21.

<sup>25</sup> *Id.* On May 9, 2018, the Commission accepted PJM's compliance filing to reflect the effective date of the previously approved revisions. *PJM Interconnection, L.L.C.*, Docket No. ER16-2401-001 (May 9, 2018) (delegated letter order).

<sup>26</sup> The Court referenced transmission facilities that are the subject of the remand as "high-voltage facilities," which refers to the categories of Regional Facilities and Necessary Lower Voltage Facilities in the PJM Tariff. *See supra* n.11 (defining Regional Facilities and Necessary Lower Voltage Facilities).

<sup>27</sup> *ODEC*, 898 F.3d at 1263-64.

aside the Commission orders, and remanded the case to the Commission for further proceedings consistent with the Court's opinion.<sup>28</sup>

12. As noted earlier, in a concurrent order, on remand, we reject the 2015 PJM Transmission Owner Tariff Revision, and direct PJM to refile Schedule 12 of the PJM Tariff without the 2015 PJM Transmission Owner Tariff Revision.<sup>29</sup>

## II. Discussion

13. We are instituting a proceeding, pursuant to section 206 of the FPA, to require PJM to revise the PJM Operating Agreement to no longer exempt from the competitive proposal window process projects needed solely to address individual transmission owner Form No. 715 local planning criteria. We require PJM to revise the PJM Operating Agreement, consistent with the discussion below, within 30 days of the date of publication of notice of the Commission's initiation of Docket No. EL19-61-000, or to show cause why such changes are not necessary.

14. Our concurrent rejection of the 2015 PJM Transmission Owner Tariff Revision eliminates the apparent inconsistency first identified in the July 2016 Order in the PJM Operating Agreement, namely, that transmission needs driven solely by individual transmission owner Form No. 715 local planning criteria were not exempt from PJM's competitive proposal window process even though the transmission owner would be the designated entity to construct a project to address such needs because 100 percent of the costs would be allocated to the transmission owner's zone.<sup>30</sup> Accordingly, we are instituting this proceeding to require PJM to revise the PJM Operating Agreement to no longer exempt from the competitive proposal window process projects needed solely to address individual transmission owner Form No. 715 local planning criteria, or to show cause why such changes are not necessary. In particular, we expect PJM to revise section 1.5.8(c) and 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 contained herein.

15. In cases where, as here, the Commission institutes a proceeding under section 206(b) of the FPA, the Commission must establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of its proceeding in the *Federal Register* and no later than five months subsequent to that date. The Commission establishes a refund effective date to be the earliest date possible in order to provide

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<sup>28</sup> The Court set aside the orders under review to the extent they applied the 2015 PJM Transmission Owner Proposed Revision to the projects at issue. *Id.* at 1264.

<sup>29</sup> Order on Remand, 168 FERC ¶ 61,133 at P 2.

<sup>30</sup> July 2016 Order, 156 FERC ¶ 61,030 at P 20.

maximum protection to customers, i.e., the date that notice of initiation of the section 206 proceeding in Docket No. EL19-61-000 is published in the *Federal Register*. The Commission is also required by FPA section 206 to indicate when it expects to issue a final order. The Commission expects to issue a final order in this FPA section 206 proceeding within 180 days from the initiation of this proceeding.

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 a proceeding in Docket No. EL19-61-000, as discussed in the body of this order.

(B) PJM is hereby directed to submit a filing, within 30 days of the date of publication of notice of the Commission's initiation of Docket No. EL19-61-000, either to (1) submit the proposed revisions to the PJM Operating Agreement, as discussed in the body of this order; or (2) show cause why such changes are not necessary.

(C) Any interested person desiring to be heard in Docket No. EL19-61-000 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 (2018)) within 21 days of the date of this order.

(D) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding ordered in Ordering Paragraph (A) above, under section 206 of the FPA.

(E) The refund effective date established in Docket No. EL19-61-000 pursuant to section 206(b) of the FPA will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (D) above.

By the Commission. Commissioner McNamee is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.