

170 FERC ¶ 61,196  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Appalachian Power Company  
PJM Interconnection, L.L.C.

Docket No. ER20-841-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued March 17, 2020)

1. On January 17, 2020, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> and Part 35 of the Commission’s regulations,<sup>2</sup> Appalachian Power Co. and PJM Interconnection, L.L.C. (PJM) filed,<sup>3</sup> on behalf of the PJM Transmission Owners, a proposed Attachment M-4 to the PJM Open Access Transmission Tariff (Tariff), setting forth the planning procedures that the PJM Transmission Owners propose to apply to a limited subset of Supplemental Projects<sup>4</sup> designed to mitigate the risk associated with critical transmission stations and substations identified pursuant to North American Electric Reliability Corporation (NERC) reliability standard CIP-014-2 — Physical Security (Reliability Standard CIP-014-2). In this order, we accept the PJM Transmission Owners’ proposed Tariff revisions, effective March 17, 2020, as requested.

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<sup>1</sup> 16 U.S.C. § 824d (2018).

<sup>2</sup> 18 C.F.R. pt. 35 (2019).

<sup>3</sup> Pursuant to Order No. 714 and the Consolidated Transmission Owners Agreement (Transmission Owners Agreement), PJM filed the proposed revisions on behalf of the PJM Transmission Owners. *See Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008); PJM Interconnection, L.L.C., Consolidated Transmission Owners Agreement, Rate Schedule FERC No. 42 (June 19, 2008).

<sup>4</sup> Operating Agreement, Section 1, Definitions S-T (defining a “Supplemental Project” as “a transmission expansion or enhancement that is not required for compliance with the following PJM criteria: system reliability, operational performance or economic criteria, pursuant to a determination by the Office of the Interconnection and is not a state public policy project pursuant to Operating Agreement, Schedule 6, section 1.5.9(a)(ii)”).

## I. Background

2. In Order No. 802, the Commission approved Reliability Standard CIP-014-2 “to enhance physical security measures for the most critical Bulk-Power System facilities and thereby lessen the overall vulnerability of the Bulk-Power System against physical attacks.”<sup>5</sup> Reliability Standard CIP-014-2 established a mechanism to identify and remedy transmission facilities that “if rendered inoperable or damaged as a result of a physical attack could result in instability, uncontrolled separation, or Cascading within an Interconnection.”<sup>6</sup> Reliability Standard CIP-014-2 requires, consistent with the Commission’s directive,<sup>7</sup> that each transmission owner implement procedures “for protecting sensitive or confidential information made available to the unaffiliated third party verifier and to protect or exempt sensitive or confidential information developed pursuant to this Reliability Standard from public disclosure.”<sup>8</sup> The standard also requires that “[t]o protect the confidentiality and sensitive nature of the evidence for demonstrating compliance with this standard, all evidence will be retained at the Transmission Owner’s and Transmission Operator’s facilities.”<sup>9</sup>

3. In PJM, there are distinct processes for planning new transmission infrastructure at the regional level, i.e., PJM’s Regional Transmission Expansion Planning (RTEP) process, and at the local level, i.e., individual transmission owners’ processes for planning Supplemental Projects, as defined in Schedule 6 of the PJM Operating

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<sup>5</sup> *Physical Sec. Reliability Standard*, Order No. 802, 149 FERC ¶ 61,140 (2014), *reh’g denied*, 151 FERC ¶ 61,066 (2015) (approving Reliability Standard CIP-014-1); *N. Am. Elec. Reliability Corp.*, Docket No. RD15-4-000 (July 14, 2015) (delegated letter order) (approving Reliability Standard CIP-014-2, which removed the term “widespread” from the text of the standard in compliance with Order No. 802).

<sup>6</sup> Reliability Standard CIP-014-2—Physical Security, Introduction, A.3.

<sup>7</sup> Order No. 802, 149 FERC ¶ 61,140 at P 6 (“NERC should include in the Reliability Standards a procedure that will ensure confidential treatment of sensitive or confidential information but still allow for the Commission, NERC and the Regional Entities to review and inspect any information that is needed to ensure compliance with the Reliability Standards.”).

<sup>8</sup> Reliability Standard CIP-014-2, Requirements and Measures, R2.4, R6.4. PJM is currently the third-party verifier for each of the PJM Transmission Owners. PJM Transmission Owners Filing, Attachment B, *Proposed Attachment M-4*, a.

<sup>9</sup> *Id.* at Compliance, 1.4.

Agreement. The PJM Transmission Owners plan Supplemental Projects in accordance with the planning procedures set forth in Attachment M-3 of the PJM Tariff.

## II. PJM Transmission Owners' Filing

4. The PJM Transmission Owners<sup>10</sup> state that pursuant to Section 9.1 of the PJM Tariff and Article 7 of the Transmission Owners Agreement, they have exclusive authority to submit filings under section 205 of the FPA that address, among other things, planning for certain transmission facilities—i.e., those facilities for which the PJM Transmission Owners did not transfer centralized planning authority to PJM under the RTEP, such as Supplemental Projects.<sup>11</sup> The PJM Transmission Owners state that this filing was authorized pursuant to the individual and weighted voting requirements in section 8.5 of the Transmission Owners Agreement. Further, the PJM Transmission Owners state that in accordance with Section 9.1(b) of the Tariff, they consulted with PJM and with the members of the PJM Members Committee and other stakeholders by providing notice of the Tariff revisions proposed in the instant filing.<sup>12</sup>

5. The PJM Transmission Owners state that proposed Attachment M-4 sets forth the planning procedures that the PJM Transmission Owners would apply to a limited subset of Supplemental Projects that are designed to mitigate the risk associated with critical transmission stations and substations identified pursuant to Reliability Standard CIP-014-2 (CIP-014 Mitigation Projects).<sup>13</sup> The PJM Transmission Owners explain that they are currently in compliance with all the requirements of Reliability Standard CIP-014-2;<sup>14</sup> however, they assert that the physical security requirements of CIP-014-2

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<sup>10</sup> PJM Transmission Owner is defined as a member that owns or leases with rights equivalent to ownership transmission facilities and is a signatory to the PJM Transmission Owners Agreement. Taking transmission service is not sufficient to qualify a member as a Transmission Owner. *See* Operating Agreement, § 1 (defining “Transmission Owner”).

<sup>11</sup> PJM Transmission Owners Filing at 3.

<sup>12</sup> *Id.* at 1 n.3.

<sup>13</sup> *Id.* at 1-2.

<sup>14</sup> To comply with Reliability Standard CIP-014-2, a transmission owner must complete a risk assessment, identify critical facilities, create a physical security plan for each critical facility, and implement the physical security plans. Further, transmission owners must periodically review their physical security plans and maintain adequate physical security for their critical facilities. *See generally* Reliability Standard CIP-014-2.

do not fully mitigate the risks associated with the loss of an identified critical transmission facility.<sup>15</sup> Therefore, the PJM Transmission Owners seek a means to plan CIP-014 Mitigation Projects that would eliminate the “criticality” of the stations and substations identified pursuant to Reliability Standard CIP-014-2, which they assert would more effectively mitigate the risks associated with those critical facilities than physical security measures alone.<sup>16</sup>

6. The PJM Transmission Owners state that CIP-014 Mitigation Projects are Supplemental Projects, as defined in Schedule 6 of the Operating Agreement, because they are “not required for system reliability, operational performance, economic criteria or individual state public policy purposes,”<sup>17</sup> and thus would need to be planned by the PJM Transmission Owners in accordance with the open and transparent planning procedures currently set forth in Attachment M-3 to the PJM Tariff.<sup>18</sup> The PJM Transmission Owners explain that Attachment M-3, in compliance with Order No. 890,<sup>19</sup> requires a series of public stakeholder meetings with public review and comment on the underlying assumptions, models, plans, and criteria violations driving the project—a process that is “inherently incompatible with the security concerns surrounding CIP-014-2 facilities and plans to mitigate the risks associated with those facilities.”<sup>20</sup>

7. The PJM Transmission Owners state that proceeding pursuant to Attachment M-3 for CIP-014 Mitigation Projects would require public disclosure of information about the CIP-014-2 critical stations and substations driving the need for such projects, which conflicts with the confidentiality requirements of Reliability Standard CIP-014-2 and the need to protect this highly sensitive information.<sup>21</sup> The PJM Transmission Owners

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<sup>15</sup> PJM Transmission Owners Filing at 10.

<sup>16</sup> *Id.* at 2, 10.

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

<sup>18</sup> *Id.* at 2, 3-4, 10.

<sup>19</sup> *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119, *order on reh’g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>20</sup> PJM Transmission Owners Filing at 4-6 (citing PJM Tariff, Attachment M-3, §§ 2-4).

<sup>21</sup> *Id.* at 6.

explain that currently the identity of the CIP-014-2 facilities is only known by the individual transmission owner and the unaffiliated third-party verifier (i.e., PJM), and argue that such heightened levels of confidentiality are essential given the potential consequences of a loss of these critical facilities.<sup>22</sup> Thus, the PJM Transmission Owners propose a new planning procedure, Attachment M-4, which applies only to the limited subset of Supplemental Projects designed to mitigate the risk associated with CIP-014-2 facilities.

8. The PJM Transmission Owners explain that proposed Attachment M-4 is limited in applicability to critical facilities identified pursuant to Reliability Standard CIP-014-2 as of September 30, 2018, which the PJM Transmission Owners assert are no more than 20 in number. Additionally, the PJM Transmission Owners state that proposed Attachment M-4 sunsets five years after Commission approval.<sup>23</sup>

9. The PJM Transmission Owners explain that the Attachment M-4 planning procedures allow for consultation with PJM and the affected state commissions regarding CIP-014 Mitigation Projects, while protecting the highly sensitive information about the CIP-014-2 critical facilities. The PJM Transmission Owners explain that pursuant to Attachment M-4, PJM reviews a PJM Transmission Owner's potential and preferred solutions for eliminating facilities from the CIP-014-2 critical facilities list and reports to the Transmission Owner, in writing, whether its preferred solution is the most efficient or cost-effective; any suggested modifications to the potential or preferred solutions; and whether a CIP-014 Mitigation Project should not be pursued.<sup>24</sup> The PJM Transmission Owners also state that PJM will verify, *inter alia*, that a Transmission Owner's proposed CIP-014 Mitigation Project does not provide a solution to address a reliability, operational performance, market efficiency or public policy need that would otherwise be addressed through the RTEP process, and does not result in a reliability or operational performance criteria violation under the RTEP process.<sup>25</sup> The PJM Transmission Owners explain that Attachment M-4 also provides for consultation with the state commissions, including discussion of siting issues and the estimated costs of a project, subject to appropriate confidentiality safeguards.<sup>26</sup>

10. The PJM Transmission Owners further explain that pursuant to proposed

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<sup>22</sup> *Id.* at 4, 8-9.

<sup>23</sup> *Id.* at 14.

<sup>24</sup> *Id.* at 14-15.

<sup>25</sup> *Id.* at 15-16.

<sup>26</sup> *Id.* at 16.

Attachment M-4, a Transmission Owner will not be able to recover costs associated with a CIP-014 Mitigation Project until the project is made public (i.e., upon completion of the project and removal of the facility from the CIP-014-2 critical facilities list).

Subsequently, the PJM Transmission Owners explain, Attachment M-4 provides that the Transmission Owner can seek to recover its costs in the same manner as it recovers costs for other Supplemental Projects. Further, the PJM Transmission Owners state that Attachment M-4 provides that if at any time the need for confidentiality is eliminated as to a CIP-014 Mitigation Project, the required confidentiality will be lifted.<sup>27</sup>

11. The PJM Transmission Owners state that proposed Attachment M-4 is the result of extensive stakeholder outreach, including formal meetings with individual state commissions, meetings and teleconferences with the Organization of PJM States, Inc. (OPSI), briefings with NERC, and meetings with the PJM Planning Committee, Markets and Reliability Committee, and Members Committee, as well as a stakeholder webinar. The PJM Transmission Owners state that they made changes to proposed Attachment M-4 in response to stakeholder input.<sup>28</sup> The PJM Transmission Owners argue that proposed Attachment M-4 is just and reasonable, balancing the competing needs to protect highly sensitive information about CIP-014-2 critical facilities and the Commission's policy of providing transparency in the transmission planning process.<sup>29</sup> The PJM Transmission Owners state that proposed Attachment M-4 will support transmission system reliability and resilience by providing a means of reducing the severity of the consequences of a physical attack on critical transmission stations or substations to the benefit of load.<sup>30</sup>

12. The PJM Transmission Owners request expedited action, and an effective date of March 17, 2020 for proposed Attachment M-4.<sup>31</sup>

### **III. Notice and Responsive Pleadings**

13. Notice of the PJM Transmission Owners' January 17, 2020 filing was published in the *Federal Register*, 85 Fed. Reg. 4316 (Jan. 24, 2020), with interventions and protests due on or before February 7, 2020. Timely motions to intervene were filed by American Electric Power Service Corp., Exelon Corp., OPSI, Public Service Electric and Gas Co.,

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<sup>27</sup> *Id.* at 17.

<sup>28</sup> *Id.* at 11-13.

<sup>29</sup> *Id.* at 17-18.

<sup>30</sup> *Id.* at 18.

<sup>31</sup> *Id.* at 22.

American Municipal Power, Inc. (AMP), New Jersey Board of Public Utilities (NJBPU), PPL Electric Utilities Corp., East Kentucky Power Cooperative, Inc., The FirstEnergy Transmission Companies, GridLiance East LLC, PJM Industrial Customer Coalition (PJMICC), Duke Energy Corp., Dominion Energy Services, Inc., LSP Transmission Holdings II, LLC and Central Transmission, LLC (together, LS Power), ITC Interconnection LLC, New Jersey Division of Rate Counsel, Calpine Corp., Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (Market Monitor), Delaware Division of the Public Advocate, Indiana Office of Utility Consumer Counselor, Office of the People's Counsel for the District of Columbia, PJM, NextEra Energy Transmission, LLC, WIRES LLC (WIRES), Maryland Office of People's Counsel, Old Dominion Electric Cooperative (ODEC), Edison Electric Institute (EEI), and Pennsylvania Office of Consumer Advocate. Timely notices of intervention were filed by the Maryland Public Service Commission, Illinois Commerce Commission, and the Public Service Commission of the District of Columbia. The Citizens Utility Board of Illinois and the West Virginia Consumer Advocate Division late-filed motions to intervene on February 11, 2020 and February 13, 2020, respectively.

14. On February 5, 2020, PJM filed comments in support of the PJM Transmission Owners' filing. On February 7, 2020, WIRES and EEI filed comments in support of the PJM Transmission Owners' filing. On February 7, 2020, OPSI, PJMICC, LS Power, AMP, NJBPU, ODEC, SAFE, and the Joint Consumer Advocates<sup>32</sup> filed timely protests. On March 13, 2020, the U.S. Department of Energy (DOE) late-filed comments in support of the PJM Transmission Owners' filing.

15. The PJM Transmission Owners and the Market Monitor filed motions for leave to answer and answers on February 24, 2020 and February 28, 2020, respectively. On March 5, 2020, the Joint Stakeholders<sup>33</sup> filed a motion for leave to file and informational filing. On March 9, 2020, the PJM Transmission Owners filed a motion for leave to answer and answer to the Market Monitor's February 28, 2020 answer. On March 10,

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<sup>32</sup> The Joint Consumer Advocates include the New Jersey Division of Rate Counsel, Office of the People's Counsel for the District of Columbia, Delaware Division of the Public Advocate, West Virginia Consumer Advocate Division, Maryland Office of People's Counsel, Pennsylvania Office of Consumer Advocate, Citizens Utility Board, and the Indiana Office of Utility Consumer Counselor.

<sup>33</sup> The Joint Stakeholders include AMP, Citizens Utility Board of Illinois, Delaware Division of the Public Advocate, Indiana Office of Utility Consumer Counselor, LS Power, Maryland Office of People's Counsel, NJBPU, New Jersey Division of Rate Counsel, Office of the People's Counsel for the District of Columbia, ODEC, Pennsylvania Office of Consumer Advocate, PJMICC, and West Virginia Consumer Advocate Division.

2020, AMP and ODEC filed motions for leave to answer and answers. On March 11, 2020, OPSI filed a motion for leave to answer and answer.

**A. Comments in Support**

16. PJM, WIRES, EEI, and DOE filed comments in support of the PJM Transmission Owners' filing. PJM argues that the PJM Transmission Owners' proposal is a pragmatic approach to "de-criticalizing" a limited number of CIP-014-2 critical facilities as soon as possible that is limited in scope and which allows PJM an explicit oversight role consistent with its role as third party verifier pursuant to Reliability Standard CIP-014-2.<sup>34</sup> PJM states that these CIP-014 Mitigation Projects are in the public interest, as they mitigate the risk of extended, significant loss of load events resulting from loss of one of the subject CIP-014-2 critical facilities.<sup>35</sup>

17. EEI and WIRES state that Reliability Standard CIP-014-2 was developed with the stated purpose of protecting critical transmission stations and substations, and as such required protection of information about these critical facilities from public disclosure, including requiring that all evidence of compliance with the Reliability Standard be retained on-site at the transmission owner's facility.<sup>36</sup> WIRES states that new Attachment M-4 appropriately balances these information protection concerns with the Commission's goal of fostering open and transparent transmission planning.<sup>37</sup> DOE stresses the importance of ensuring the resilience, reliability, and security of the nation's critical electric infrastructure, at a time when the risk to such infrastructure is growing.<sup>38</sup>

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<sup>34</sup> PJM Comments at 1-2, 4-5.

<sup>35</sup> *Id.* at 1-2, 9.

<sup>36</sup> EEI Comments at 3-4; WIRES Comments at 3.

<sup>37</sup> WIRES Comments at 5-6 (noting that a Transmission Owner must provide public notice of a CIP-014 Mitigation Project before it can recover its costs associated with that project).

<sup>38</sup> DOE Comments at 1-3.



## **B. Protests**

### **1. Planning and Cost Allocation**

18. Protestors argue that the proposed Attachment M-4 planning process would not determine the more efficient or cost-effective solution; rather, regional planning establishes the more efficient or cost-effective solution.<sup>39</sup>

19. The Joint Consumer Advocates disagree with the evaluation, as described in step 3 of the Attachment M-4 planning process, to determine the customer impact that would result from the loss of the transmission station or substation. The Joint Consumer Advocates argue that this evaluation is not the appropriate review to determine costs in a cost-benefit analysis because the transmission station or substation is already protected up to CIP-014-2 standards. The Joint Consumer Advocates instead contend that the true cost of a CIP-014 Mitigation Project is the alleged decrease in risk that the station or substation would provide to load—that is the likelihood that such a catastrophic loss will occur with the current protections in place and the proposed CIP-014- Mitigation Project not completed.<sup>40</sup> The Joint Consumer Advocates argue such a loss is, by definition, a “black swan” event, and it is not possible to protect against every conceivable threat no matter the loss. The Joint Consumer Advocates argue that if PJM is going to provide oversight for these projects, its review must be qualitative as well as quantitative. That is, the Joint Consumer Advocates argue it is not enough for PJM to say that the Transmission Owner’s proposed project does no harm or removes a facility from the CIP-014-2 critical facilities list; rather, PJM must be prepared and able to say that the solution offered is the solution that best takes into account a variety of factors, including, but not limited to, costs, reliability, regional transmission planning needs, and Order No. 1000<sup>41</sup> requirements.<sup>42</sup>

20. LS Power argues that given that the physical security measures required for CIP-014 Mitigation Projects are geared to address threats and vulnerabilities with

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<sup>39</sup> See, e.g., LS Power Protest at 23-25; PJMICC Protest at 15-17; Joint Consumer Advocates at 8-9.

<sup>40</sup> Joint Consumer Advocates Protest at 8-9.

<sup>41</sup> *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, 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).

<sup>42</sup> Joint Consumer Advocates Protest at 9.

regional ramifications, it may be inferred that CIP-014-002 Mitigation Projects will mitigate those regional risks more effectively than physical security measures and should accordingly be regionally cost allocated.<sup>43</sup> LS Power argues that to the extent the costs of CIP-014 Mitigation Projects are regionally cost allocated, for any amount, the planning provisions must be under the Operating Agreement and would also be subject to the requirements of Order No. 1000 as implemented through Schedule 6 of the Operating Agreement.<sup>44</sup>

21. LS Power argues that proposed Attachment M-4 has none of the hallmarks of determining a more-efficient or cost-effective solution or just and reasonable rates for those solutions. Similarly, AMP argues that under Order No. 1000, “[t]he cost of transmission facilities must be allocated to those within the transmission region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits.”<sup>45</sup>

22. PJMICC argues that to produce just and reasonable rates, costs must be allocated in a manner that is at least roughly commensurate with the distribution benefits.<sup>46</sup> Specifically, PJMICC argues, the cost of transmission facilities must be allocated to customers within the transmission planning region that receive benefits from the facilities.<sup>47</sup> PJMICC states that the Commission incorporated this foundational legal requirement as Regional Cost Allocation Principle 1 in Order No. 1000.<sup>48</sup>

23. The Joint Consumer Advocates observe that the PJM Operating Agreement defines Supplemental Projects as “a transmission expansion or enhancement that is *not* required for compliance with the following PJM criteria: *system reliability, operational performance . . .*”<sup>49</sup> However, the Joint Consumer Advocates contend that because these projects are listed as CIP-014-2 critical facilities, the impact of their loss, by

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<sup>43</sup> LS Power Protest at 19 (citing *Del. Pub. Serv. Comm’n v. PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,035 (2018), *order on reh’g*, 166 FERC ¶ 61,161 (2019)).

<sup>44</sup> LS Power Protest at 19-20.

<sup>45</sup> AMP Protest at 15-16 (quoting Order No. 1000, 136 FERC ¶ 61,051 at P 622).

<sup>46</sup> PJMICC Protest at 15 (citations omitted).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* (citations omitted).

<sup>49</sup> Joint Consumer Advocates Protest at 5 (quoting Operating Agreement, Section 1, S-T (emphasis added)).

definition, goes well beyond the “local transmission owner planning processes” that the Commission has accepted for Supplemental Projects.<sup>50</sup> Similarly, LS Power argues that planning to remove the facilities from the regional CIP-014-2 critical facility list should not be an insular, locally focused, voluntary endeavor as the PJM Transmission Owners propose.<sup>51</sup> AMP contends that facilities on the CIP-014-2 list are not “local” transmission facilities, but rather are facilities that provide regional and possibly inter-regional benefits.<sup>52</sup>

24. Protestors contend that CIP-014 Mitigation Projects are likely high-voltage projects and the cost for these projects should be regionally allocated consistent with the *ODEC*<sup>53</sup> ruling regardless of how the Attachment M-4 planning criteria were developed.<sup>54</sup> Specifically, ODEC argues that the PJM Transmission Owners’ proposal to seek cost recovery from transmission customers in their zone is contrary to the principles of cost causation recently affirmed in *ODEC*, which remanded the Commission’s order approving zonal cost allocation for high-voltage projects under FERC Form 715.<sup>55</sup> ODEC states that the Court held: “application of the cost-causation principle is simple here, because this critical point is undisputed: high-voltage power lines produce significant regional benefits in the PJM network.”<sup>56</sup> ODEC further argues that the fact that these high-voltage Supplemental Projects will be undertaken at the Transmission Owners’ option does not justify zonal, as opposed to regional, cost allocation. ODEC highlights the Court’s holding that, “the cost-causation principle focuses on project benefits, not on how particular planning criteria were developed.”<sup>57</sup> ODEC, PJMICC and LS Power contend that the cost-causation principle prevents regionally beneficial projects

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<sup>50</sup> *Id.* (quoting *Monongahela Power Co.*, 162 FERC ¶ 61,129 (2018))

<sup>51</sup> LS Power Protest at 9.

<sup>52</sup> AMP Protest at 10.

<sup>53</sup> *Old Dominion Elec. Coop. v. FERC (ODEC)*, 898 F.3d 1254 (D.C. Cir. 2018) *reh’g denied*, 905 F.3d 671 (D.C. Cir. 2018).

<sup>54</sup> *See, e.g.*, ODEC Protest at 8; PJMICC at 16.

<sup>55</sup> ODEC Protest at 8 (citing *ODEC*, 898 F.3d 1254).

<sup>56</sup> *Id.* (quoting *ODEC*, 898 F.3d at 1260).

<sup>57</sup> *Id.* (quoting *ODEC*, 898 F.3d at 1262).

from being arbitrarily excluded from cost-sharing—a necessary corollary to ensuring that the costs of such projects are allocated commensurate with their benefits.<sup>58</sup>

25. PJMICC argues that mitigation of critical transmission facilities through the implementation of CIP-014 Mitigation Projects may yield regional benefits. PJMICC argues that the PJM Transmission Owners have not demonstrated that the allocation of costs of CIP-014 Mitigation Projects would be roughly commensurate with the benefits brought by those CIP-014 Mitigation Projects, especially given the strong potential for regional benefits that impact multiple states and multiple transmission pricing zones in PJM.<sup>59</sup>

26. LS Power argues that because the CIP-014 Mitigation Projects are likely primarily high voltage facilities and the regional benefits of CIP-014 Mitigation Projects are obvious, proposed Attachment M-4 represents “a wholesale departure from the cost-causation principle, which would ‘shift a grossly disproportionate share of [the] costs’ of these high-voltage projects into a single zone.”<sup>60</sup>

## 2. Requirements of Order No. 890

27. Protestors argue that the Commission should reject Attachment M-4 as unjust and unreasonable because it fails to balance the Transmission Owners’ interest in confidentiality with the public interest in transparency.<sup>61</sup> In this vein, protestors argue that proposed Attachment M-4 fails to satisfy the requirements of Order No. 890, including the requirements that transmission planning be open and transparent.<sup>62</sup> Protestors explain that in Order No. 890, the Commission required transmission providers to open their transmission planning processes to customers, coordinate with customers regarding future system plans, and share necessary planning information with customers. Protestors assert that proposed Attachment M-4 fails to meet these requirements.

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<sup>58</sup> ODEC Protest at 8 (citing *ODEC*, 89 F.3d 1254); PJMICC Protest at 16 (same); LS Power Protest at 18 (same).

<sup>59</sup> PJMICC Protest at 16.

<sup>60</sup> LS Power Protest at 18 (quoting *ODEC*, 89 F.3d at 1261).

<sup>61</sup> *See, e.g.*, OPSI Protest at 3; NJBPU Protest at 5-6.

<sup>62</sup> *See, e.g.*, Joint Consumer Advocates Protest at 6-8; LS Power Protest at 15-16; AMP Protest at 9; ODEC Protest at 6; NJBPU Protest at 5-7; *see also* OPSI Protest at 7-11.

28. LS Power contends that how and when transmission facilities are added to the RTEP impacts a variety of matters, including projects already in the plan, open windows to address identified needs, generator interconnection requests, capacity market clearing prices, Financial Transmission Rights, and other matters.<sup>63</sup> LS Power states that in its order addressing whether the PJM Transmission Owners and PJM were complying with their obligations under Order No. 890, the Commission found that a lack of transparency in the planning of Supplemental Projects meant that the Transmission Owners were “implementing the PJM Operating Agreement in a manner that is inconsistent with Order No. 890.”<sup>64</sup> ODEC argues that the Commission already determined that the PJM Transmission Owners’ planning for Supplemental Projects did not comply with the Order No. 890 requirement for open, coordinated and transparent transmission planning.<sup>65</sup> Thus, ODEC argues that the PJM Transmission Owners have only recently undertaken Supplemental Project planning pursuant to Attachment M-3. As a result, ODEC contends it is too soon to confirm that their planning for Supplemental Projects meets the Commission’s requirements.<sup>66</sup>

29. PJMICC argues that the PJM Transmission Owners acknowledge that the Attachment M-4 process will not be as transparent as the Attachment M-3 process for Supplemental Projects and will not adhere to the open and transparent planning processes in Order No. 890.<sup>67</sup> PJMICC further argues that in Order No. 890 the Commission found that a lack of transparency undermines confidence in open access and limits opportunities for stakeholders to detect undue discrimination.<sup>68</sup> PJMICC argues that without sufficient transparency, parties may seek unjust enrichment or engage in other self-dealing behavior.<sup>69</sup>

30. OPSI states that the PJM Transmission Owners imply that their proposed Attachment M-4 planning process satisfies Order No 890’s stakeholder visibility requirements because the “affected state commission” will have an opportunity for consultations regarding the planning process for CIP-014 Mitigation Projects. OPSI

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<sup>63</sup> LS Power Protest at 15-16.

<sup>64</sup> *Id.* at 16 (quoting *Monongahela Power Co.*, 162 FERC ¶ 61,129).

<sup>65</sup> ODEC Protest at 6 (citing *Monongahela Power Co.*, 162 FERC ¶ 61,129).

<sup>66</sup> *Id.* at 6.

<sup>67</sup> PJMICC Protest at 11 (citing PJM Transmission Owners Filing at 17, 20)).

<sup>68</sup> *Id.* (citations omitted).

<sup>69</sup> *Id.*

argues that, as filed, the proposed Attachment M-4 would allow consultations between a PJM Transmission Owner and PJM and the affected state commission at the *sole discretion* of the PJM Transmission Owner. OPSI argues that affected state commissions would only receive consultation from the PJM Transmission Owner or PJM ““if and to the extent that the PJM Transmission Owner can ensure that such consultations and information will be subject to such appropriate confidential safeguards.””<sup>70</sup> OPSI argues that the PJM Transmission Owners’ filing is deficient in demonstrating how the PJM Transmission Owners would rely on the inclusivity of state commissions in their quest for balance in the CIP-014 Mitigation Project planning process, yet have the ability to unilaterally determine if a state commission should be informed or consulted.<sup>71</sup>

31. The Joint Consumer Advocates argue that both PJM and the PJM Transmission Owners claim that confidentiality precludes the use of the Attachment M-3 planning process, but they provide no reason why certain aspects of that process could not be employed to address CIP-014 Mitigation Projects.<sup>72</sup> For example, the Joint Consumer Advocates argue, an assumptions meeting could still be conducted while preserving facility-specific confidentiality.<sup>73</sup>

32. Protestors argue that the PJM Transmission Owners could develop another process to make confidential information available for third party review provided that confidential information is not publicly disclosed.<sup>74</sup>

33. LS Power argues that the PJM Transmission Owners’ filing fails to address the fact that the Commission has previously rejected assertions that the CIP standards require transmission owners to bar access to facilities covered by CIP standards to any other transmission developer.<sup>75</sup> LS Power explains that the Commission’s planning rules regarding transparency existed before the approval of Reliability Standard CIP-014-2, yet

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<sup>70</sup> OPSI Protest at 9 (citing PJM Transmission Owners Filing, Attachment B, Step 5).

<sup>71</sup> *Id.* at 9.

<sup>72</sup> Joint Consumer Advocates Protest at 7-8.

<sup>73</sup> *Id.* at 8.

<sup>74</sup> *See, e.g.*, SAFE Protest at 6-9; LS Power Protest at 20-21; AMP Protest at 10, 18; OPSI Protest at 9-11.

<sup>75</sup> LS Power Protest at 21 (citing *Reform of Generator Interconnection Procedures & Agreements*, Order 845-A, 166 FERC ¶ 61,137, at PP 41, 47 (2019)).

the Commission did not address restrictions for ongoing grid-wide transmission planning when it established Reliability Standard CIP-014-2. Instead, LS Power argues, the Commission established rules directed to the physical security plans themselves.<sup>76</sup> LS Power explains that the Commission declined to be prescriptive, stating, “we decline to address in this final rule issues of preemption or the specific mechanism for treating confidential or sensitive information.”<sup>77</sup>

34. SAFE disagrees with the PJM Transmission Owners’ claim that they cannot implement the removal of CIP-014-2 critical facilities without divulging highly sensitive information regarding the need for and location of the proposed CIP-014 Mitigation Projects through applicable public processes, because information about these critical substations warrants information protection beyond Critical Energy Infrastructure Information (CEII).<sup>78</sup> For example, SAFE contends that the highly-sensitive information referring to the methodology and analyses pertaining to how a critical facility is identified and verified rests solely with a utility or Transmission Owner; however, the issue here pertains to the outcome, i.e., the construction of a new transmission line, for which CEII procedures should be sufficient.<sup>79</sup>

35. SAFE and LS Power argue that the PJM Transmission Owners could develop a planning process for CIP-014 Mitigation Projects without divulging highly sensitive information.<sup>80</sup> SAFE argues that for any CIP-014 Mitigation Project, parties could be required to meet CEII requirements and would be required to keep requisite information confidential.<sup>81</sup> SAFE further argues that the U.S. Department of Defense has procedures for seeking competitive bids on projects, and for selecting competitively-bid development and production solutions, without divulging similarly confidential or sensitive types of information.<sup>82</sup> LS Power states that PJM has shown an ability to protect sensitive information in conducting PJM’s competitive open proposal window process (i.e. solicitations for competitive solutions to identified planning needs). Additionally, LS Power believes PJM has the flexibility under Order No. 1000 to have different

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<sup>76</sup> *Id.* at 20 (citing Order No. 802, 149 FERC ¶ 61,140 at P 107).

<sup>77</sup> *Id.* at 20-21 (quoting Order No. 802, 149 FERC ¶ 61,140 at P 108).

<sup>78</sup> SAFE Protest at 5.

<sup>79</sup> *Id.*

<sup>80</sup> *See, e.g.*, SAFE Protest at 6-9; LS Power Protest at 22-23.

<sup>81</sup> SAFE Protest at 8.

<sup>82</sup> *Id.*

qualification criteria and competitive constructs for differing project categories.<sup>83</sup> Further, SAFE believes that PJM could implement additional qualification processes for developers bidding on these sensitive regionally planned projects.<sup>84</sup>

36. AMP argues that while ensuring the confidentiality of the critical transmission facilities is important, there are ways to address the confidential nature of the matter without planning the projects entirely in secret.<sup>85</sup> AMP argues that the planning process outlined in the Attachment M-4 proposal deprives nearly all stakeholders of the ability to verify that the best solution was selected. AMP contends that the Transmission Owners offer no reasonable explanation for their belief that the existing CEII process is infirm.<sup>86</sup> AMP further contends that if PJM was performing the planning, stakeholders with appropriate CEII clearance would have the ability, through the normal course already in place, to become comfortable with the proposed solutions.<sup>87</sup>

37. OPSI argues that state commissions are routinely responsible for protecting sensitive and confidential information and applying the necessary safeguards.<sup>88</sup> OPSI argues that under no circumstance would it be appropriate, just or reasonable to allow a Transmission Owner to be the judge of a state commission's capability to protect confidential material, particularly material affecting that state's regulated utilities or ratepayers. OPSI objects to any attempt to do so.<sup>89</sup> OPSI argues that, given the lack of transparency associated with the CIP-014 Mitigation Project planning under proposed Attachment M-4, and absence of stakeholder opportunities to provide input into the planning, the state commissions' role in representing the public interest is particularly critical. OPSI contends it would be manifestly unjust and unreasonable to permit a Transmission Owner to preclude an affected state commission from receiving consultation on a CIP-014 Mitigation Project within its jurisdiction.<sup>90</sup> As a result, OPSI recommends modifications that would remedy the Transmission Owners' proposal to

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<sup>83</sup> LS Power Protest at 22.

<sup>84</sup> SAFE Protest at 8.

<sup>85</sup> AMP Protest at 10.

<sup>86</sup> *Id.* at 18.

<sup>87</sup> *Id.*

<sup>88</sup> OPSI Comments at 9.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 9-10.



wield sole discretion regarding consultations under Steps 5 and 6, while respecting the state commissions' ability to protect sensitive and confidential information.<sup>91</sup>

### 3. Cost Recovery

38. Protestors argue that, contrary to the PJM Transmission Owners' assertion that cost recovery for Attachment M-4 CIP-014 Mitigation Projects is "similar to the cost recovery process the Commission follows for other Supplemental Projects," it is not, because the Attachment M-4 process lacks sufficient transparency for early stakeholder input and feedback regarding a project's cost and is therefore unjust and unreasonable.<sup>92</sup>

39. OPSI argues that the Commission's role in reviewing CIP-014 Mitigation Project cost recovery must be enhanced, with the Commission confirming through a benefit-cost test that the risk reduction resulting from the project was commensurate with the costs customers are required to pay.<sup>93</sup> OPSI also recommends that Attachment M-4 be modified to require a public hearing if any party files a challenge to a Transmission Owner's cost recovery for a CIP-014 Mitigation Project.<sup>94</sup> ODEC, the Joint Consumer Advocates, and AMP argue that CIP-014 Mitigation Projects are not like other Supplemental Projects, because there is no process for stakeholders to challenge in advance of construction, and therefore cost recovery for CIP-014 Mitigation Projects should be different.<sup>95</sup> ODEC and the Joint Consumer Advocates argue that for other Supplemental Projects, Attachment M-3 provides for an open, coordinated and transparent planning process so that by the time a project shows up for cost recovery in a Transmission Owner's Attachment H, customers would have had an opportunity to provide input on the criteria, assumptions and need, as well as to provide input into possible alternative solutions.<sup>96</sup> AMP argues that removing costs for a completed

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<sup>91</sup> *Id.* at 11.

<sup>92</sup> *See, e.g.*, OPSI Protest at 13; ODEC Protest at 7; Joint Consumer Advocates Protest at 11; AMP Protest at 15-17.

<sup>93</sup> OPSI Protest at 13-14 (arguing that the Commission's review of costs pursuant to Attachment M-4 should be more rigorous than it is pursuant to Attachment M-3, given the limited openness, transparency, and opportunity for stakeholder input throughout the Attachment M-4 planning process).

<sup>94</sup> *Id.* at 14-15.

<sup>95</sup> AMP Protest at 16-17; ODEC Protest at 7; Joint Consumer Advocates Protest at 11.

<sup>96</sup> ODEC Protest at 7; Joint Consumer Advocates Protest at 11.

CIP-014 Mitigation Project from a Transmission Owner's revenue requirement through the normal formula rate challenge procedures will be difficult and inadequate, as these challenge procedures are meant to work in tandem with the requirements of Order No. 890.<sup>97</sup> AMP and ODEC also argue that Attachment M-4 will result in duplicative charges for customers who have already paid for the physical security necessary to comply with Reliability Standard CIP-014, and who now must pay for CIP-014 Mitigation Projects that are not required by the reliability standard.<sup>98</sup>

#### 4. Stakeholder Process

40. PJMICC, ODEC, LS Power, NJBPU, SAFE, and the Joint Consumer Advocates argue that given the Members Committee Resolution<sup>99</sup> and stakeholder opposition to the Attachment M-4 proposal, the Commission should reject the filing as premature and allow stakeholders time to complete their work through the stakeholder process, initiated in December 2019, to address the issues raised by the Attachment M-4 proposal.<sup>100</sup> Further, PJMICC and NJBPU argue that proposed Attachment M-4 does not adequately incorporate stakeholder input, contrary to the PJM Transmission Owners' assertions.<sup>101</sup>

41. The Joint Stakeholders explain that stakeholders are continuing to work together in a collaborative, good-faith effort to develop solutions to address CIP-014 Mitigation Projects.<sup>102</sup> The Joint Stakeholders note they are keenly aware of the security implications of CIP-14-2 critical facilities and the importance of appropriately addressing vulnerabilities sooner rather than later. The Joint Stakeholders state they remain committed to completing the stakeholder process by early summer but would be able to adjust their schedule to meet any Commission requirements. Based on the progress

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<sup>97</sup> AMP Protest at 17.

<sup>98</sup> *Id.* at 17-18; ODEC Protest at 4-5.

<sup>99</sup> On January 23, 2020, the PJM Members Committee passed a Members Committee Resolution stating that it does not endorse the PJM Transmission Owners' Attachment M-4 proposal. PJMICC Protest at 5-6; LS Power Protest at 12-13.

<sup>100</sup> *Id.* (arguing that the PJM Transmission Owners have not demonstrated why waiting six months to fully address issues in the stakeholder process would be impractical); ODEC Protest at 9-12; LS Power Protest at 11-14; NJBPU Protest at 1, 5; SAFE Protest at 7; Joint Consumer Advocates Protest at 14-17.

<sup>101</sup> PJMICC Protest at 6-7; NJBPU Protest at 4.

<sup>102</sup> The Joint Stakeholders Informational Filing at 7.

made, the Joint Stakeholders ask that the Commission permit this important work to continue.

## 5. Other Concerns

42. OPSI argues that PJM's role pursuant to Attachment M-4 should be expanded, such that in addition to assessing the Transmission Owner's potential and preferred solutions for the CIP-014 Mitigation Project, PJM also has the authority to identify and propose other solutions.<sup>103</sup> Additionally, OPSI argues that Attachment M-4 must be modified to provide that it is not at a Transmission Owner's sole discretion whether to meet with an affected state commission and that the state commission retains its full authority under state law.<sup>104</sup> Finally OPSI argues that the "Modifications" section of Attachment M-4 is redundant with the Transmission Owners Agreement and FPA, is therefore unnecessary, and should be deleted.<sup>105</sup>

43. Protestors argue that proposed Attachment M-4 should be incorporated in the Operating Agreement rather than the Tariff. LS Power argues that the need for transparency is precisely why coordination is mandated by section 11.3.2 of the Operating Agreement, which provides that "each Member shall cooperate with the other Members in the coordinated planning and operation of the facilities of its System within the PJM Region so as to obtain the greatest practicable degree of reliability, compatible economy and other advantages from such coordinated planning and operation."<sup>106</sup> LS Power further argues that because the Attachment M-4 proposal conflicts with the provisions of the Operating Agreement, it must be rejected.<sup>107</sup> AMP contends that implementation of proposed Attachment M-4 would require modifications not only to the PJM Tariff, but also to the Operating Agreement, and neither PJM nor the Transmission Owners have taken steps to address the conflict between Attachment M-4 implementation and the existing terms of the Operating Agreement.<sup>108</sup>

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<sup>103</sup> OPSI Protest at 6-7.

<sup>104</sup> *Id.* at 7-11.

<sup>105</sup> *Id.* at 15.

<sup>106</sup> LS Power Protest at 16.

<sup>107</sup> *Id.* at 17.

<sup>108</sup> AMP Protest at 8.

### C. Answers

44. The PJM Transmission Owners argue in response that approval of Attachment M-4 is crucial to allow them to plan a small set of Supplemental Projects (less than 20) that they cannot currently implement because the process approved by the Commission for Supplemental Projects, Attachment M-3, does not provide the protections against disclosure of CIP-014-2 critical facilities that Reliability Standard CIP-014-2 requires.<sup>109</sup>

45. The PJM Transmission Owners assert that many of the arguments raised by protestors are inappropriate collateral attacks on the Commission-approved procedures for planning Supplemental Projects. For example, the PJM Transmission Owners explain that Attachment M-4 requires that PJM verify that a CIP-014 Mitigation Project does not fall inside the scope of the RTEP process.<sup>110</sup> Further, the PJM Transmission Owners state that the Commission has already affirmed that planning authority for Supplemental Projects remained with the Transmission Owners when they ceded other specific planning functions to PJM upon joining the Regional Transmission Organization (RTO).<sup>111</sup> The PJM Transmission Owners assert that Attachment M-4 is merely an extension of Attachment M-3, is properly included in the Tariff, and any inconsistencies in the Operating Agreement can and should be made by PJM to accommodate Attachment M-4.<sup>112</sup>

46. The PJM Transmission Owners further contend that because CIP-014 Mitigation Projects are Supplemental Projects within the planning purview of the PJM Transmission Owners, they are not part of the regional planning process for cost allocation purposes. The PJM Transmission Owners state that nothing in proposed Attachment M-4 changes the existing allocation of the cost of Supplemental Projects to the host Transmission Owner's zone, and in fact proposed Attachment M-4 explicitly states that cost recovery

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<sup>109</sup> PJM Transmission Owners Answer at 2-3 (arguing that prompt resolution of CIP-014 Mitigations Projects is in the public interest because these projects reduce the potential consequences of an attack on the grid).

<sup>110</sup> *Id.* at 4, 7, 13-15.

<sup>111</sup> *Id.* at 4, 6-15 (citing Operating Agreement, § 1.4 (describing scope of the RTEP); CTOA, §§ 4.1.4, 4.5, 5.2, 5.6); *Monongahela Power Co.*, 162 FERC ¶ 61,129 at P 97, *order on reh'g and compliance*, 164 FERC ¶ 61,217 (2018)).

<sup>112</sup> *Id.* at 12-13 (citing *Monongahela Power Co.*, 164 FERC ¶ 61,217 at PP 54-59; *see also Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656, 664 (D.C. Cir. 2017)).

for CIP-014 Mitigation Projects follows the process for other Supplemental Projects.<sup>113</sup> The PJM Transmission Owners argue that protests regarding the proposed cost allocation in Attachment M-4 are collateral attacks on the established procedures for all Supplemental Projects, and are beyond the scope of this proceeding which does nothing to change Supplemental Project cost allocation.<sup>114</sup> Further, the PJM Transmission Owners contend that the cost-causation principles affirmed by the D.C. Circuit in *ODEC v. FERC* apply to facilities planned as part of PJM's regional planning process, not to Supplemental Projects of the type at issue in Attachment M-4.<sup>115</sup>

47. The PJM Transmission Owners contend that proposed Attachment M-4 appropriately balances the specific obligations to maintain confidentiality set forth in Reliability Standard CIP-014-2 with the desire to provide opportunities for input in the planning process for CIP-014 Mitigation Projects.<sup>116</sup> The PJM Transmission Owners state that the open and transparent planning procedures set forth in Attachment M-3 are appropriate for planning the vast majority of Supplemental Projects in PJM, but offer insufficient protection for the highly sensitive information associated with CIP-014 Mitigation Projects.<sup>117</sup> Contrary to protestors' claims, the PJM Transmission Owners contend that the regulations for CEII do not provide sufficient confidentiality protections, because the CEII process does not allow the PJM Transmission Owners to manage the protections necessary to prevent disclosure of information about CIP-014-2 facilities as mandated by the Reliability Standard.<sup>118</sup> Further, the PJM Transmission Owners argue the suggestions by LS Power and SAFE that PJM should implement competitive bidding procedures for CIP-014 Mitigation Projects similar to those used by the Department of Defense for highly classified projects are "absurd". The PJM Transmission Owners explain that "the private defense industry has procedures by which they respond to such

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<sup>113</sup> *Id.* at 15.

<sup>114</sup> *Id.* at 15-16.

<sup>115</sup> *Id.* at 16.

<sup>116</sup> *Id.* at 17-18.

<sup>117</sup> *Id.* at 19-20 (arguing that protestors fail to explain how the PJM Transmission Owners could meet their obligations under Reliability Standard CIP-014-2 during *public* meetings or through postings on a *public* website, as required by Attachment M-3).

<sup>118</sup> *Id.* at 20 (arguing that most non-disclosure agreements for CEII do not impose any specific safeguards on the information disclosed—they merely shift liability for disclosure to the signing party, and Reliability Standard CIP-014-2 does not allow the PJM Transmission Owners to shift their responsibilities to maintain confidentiality re these critical facilities).

bids – and implement solutions – without divulging sensitive, business confidential, or proprietary information or intellectual property,” but such safeguards do not exist in FERC’s transmission planning process and imposing them would be impracticable, particularly for a process that is limited to mitigation projects *for less* than 20 facilities.<sup>119</sup>

48. The PJM Transmission Owners argue that PJM, the state commissions, and stakeholders all get sufficient input into the planning process for CIP-014 Mitigation Projects pursuant to Attachment M-4. The PJM Transmission Owners explain that although the PJM Transmission Owners are responsible for planning CIP-014 Mitigation Projects, PJM plays a vital role in all steps of the planning process, including through assessing and verifying the proposed CIP-014 Mitigation Project and providing a written report.<sup>120</sup> The PJM Transmission Owners argue that OPSI’s requested modifications to Steps 5, 6, and 7 of proposed Amendment M-4 should be rejected, because the modifications would require a Transmission Owner to exchange confidential information even if it cannot ensure that such consultations and information will be subject to appropriate confidential safeguards, in violation of Reliability Standard CIP-014-2.<sup>121</sup> The PJM Transmission Owners argue that OPSI’s requests would require a modification to Reliability Standard CIP-014-2, which is beyond the scope of this proceeding. The PJM Transmission Owners contend that, as proposed, Attachment M-4 appropriately places the confidentiality requirement on the Transmission Owner – the entity with the Reliability Standard CIP-014-2 obligation – while avoiding language that would explicitly bind state commissions to follow certain procedures to ensure confidentiality.<sup>122</sup>

49. The PJM Transmission Owners argue that the concerns expressed by some protestors that customers will be stuck with paying for projects that are not cost-effective is unfounded.<sup>123</sup> The PJM Transmission Owners explain that after construction of a CIP-014 Mitigation Project is complete, public notice of the existence of the CIP-014 Mitigation Project will be provided “[a]s a *precondition* to any Transmission Owner being eligible for recovery of costs.”<sup>124</sup> Further, the PJM Transmission Owners state that

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<sup>119</sup> *Id.* at 34.

<sup>120</sup> *Id.* at 23-29 (arguing that the Commission should reject OPSI’s request to expand the role of PJM in Attachment M-4).

<sup>121</sup> *Id.* at 30-31.

<sup>122</sup> *Id.* at 31.

<sup>123</sup> *Id.* at 32.

<sup>124</sup> *Id.* (emphasis in original).

proposed Attachment M-4 makes no provision for the recovery of any costs for specific CIP-014 Mitigation Projects and leaves intact all stakeholder rights under the FPA and the Transmission Owner formula rate protocols, including discovery rights, with regard to subsequent cost recovery filings. The PJM Transmission Owners state that under each Transmission Owner's formula rate, the Transmission Owner bears the burden of demonstrating that any costs incurred are just and reasonable.<sup>125</sup> The PJM Transmission Owners contend that this risk incentivizes them to pursue cost-effective CIP-014 Mitigation Projects. The PJM Transmission Owners explain that if a Transmission Owner does not consider a PJM request to alter or not pursue a CIP-014 Mitigation Project, the Transmission Owner would need to justify the prudence of pursuing that project despite PJM's assessment and would potentially face a disallowance for the cost of that project.<sup>126</sup> Finally, the PJM Transmission Owners argue that OPSI's request that Attachment M-4 require a cost-recovery hearing is unnecessary and beyond the scope of Attachment M-4, because the Commission is free to consider whether a hearing is necessary based on the facts and circumstances presented, consistent with its standard practice, and nothing in proposed Attachment M-4 changes that.<sup>127</sup>

50. The PJM Transmission Owners argue that there is no need for an additional stakeholder process, because Attachment M-4, as proposed was already the subject of a lengthy stakeholder process that exceeded the requirements of the PJM Tariff and which resulted in significant revisions based on stakeholder input.<sup>128</sup>

51. The PJM Transmission Owners argue that, contrary to protestors' arguments, Attachment M-4 is sufficiently limited in application, because it applies only to less than 20 existing CIP-014-2 critical facilities and it sunsets after five years. Further, the PJM Transmission Owners note that there is currently a stakeholder process underway to develop planning criteria to protect against the creation of CIP-014-2 critical facilities in the future.<sup>129</sup>

52. In its answer, the Market Monitor asserts that the protestors are correct that the PJM Transmission Owners' filing is unauthorized and should be rejected as procedurally

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<sup>125</sup> *Id.* at 33.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 33-34.

<sup>128</sup> *Id.* at 5-6 (arguing that further delay of CIP-014 Mitigation Projects increases the potential consequences of an attack on critical facilities).

<sup>129</sup> *Id.* at 35.

deficient.<sup>130</sup> The Market Monitor states that the provisions of the Tariff that the PJM Transmission Owners rely on to authorize the filing of Attachment M-4 relate to cost recovery, not market design. The Market Monitor asserts that the PJM Transmission Owners' filing modifies the design of the PJM markets and the scope of projects subject to competition, and therefore should be rejected.<sup>131</sup> The Market Monitor asserts that, if the PJM Transmission Owners' filing is not rejected as procedurally deficient, it should be rejected as meritless, because all investments to comply with Reliability Standard CIP-014-2 have been made. Further, the Market Monitor argues that the PJM Transmission Owners have failed to explain why existing CEII rules are not sufficient to prevent harmful disclosures of confidential information in planning CIP-014 Mitigation Projects.<sup>132</sup>

53. In their March 9, 2020 answer, the PJM Transmission Owners argue that the Market Monitor's February 28, 2020 answer should be rejected as an out-of-time protest. In the alternative, the PJM Transmission Owners argue that the Market Monitor's answer should be rejected as meritless, because it is premised on a mischaracterization of proposed Attachment M-4 as removing projects from competition, when Attachment M-4 relates only to Supplemental Projects that are expressly excluded from competition and the RTEP process.<sup>133</sup>

54. In their answers, AMP, ODEC, and OPSI reiterate and explain more fully arguments already raised as to why proposed Attachment M-4 should be rejected, and clarify certain issues raised in the protests and the PJM Transmission Owners' answers. AMP argues that both PJM and the PJM Transmission Owners (through their FERC Form No. 715 criteria) have criteria to address Reliability Standard CIP-014-2. AMP further argues that PJM has the ability to add additional reliability criteria to more specifically address Reliability Standard CIP-014-2 if it determines that the already existing criteria are insufficient.<sup>134</sup> Additionally, ODEC contends that costs are presumed prudently incurred until those challenging them "raise serious doubt as to the prudence of the actions leading to the costs at issue."<sup>135</sup> OPSI contends that the Commission must address the deficiency in proposed Step 4B and preserve PJM's independence by not

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<sup>130</sup> Market Monitor Answer at 2.

<sup>131</sup> *Id.* at 2-3.

<sup>132</sup> *Id.* at 3-4.

<sup>133</sup> PJM Transmission Owners March 9 Answer at 1-5.

<sup>134</sup> AMP Answer at 5.

<sup>135</sup> ODEC Answer at 6.



permitting the PJM Transmission Owners to control the content and issuance of PJM's CIP-014 Mitigation Project report.<sup>136</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

55. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. 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 the Citizens Utility Board of Illinois and the West Virginia Consumer Advocate Division given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. We also accept DOE's late-filed comments given its interest in this proceeding and the absence of any undue prejudice or delay.

56. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest or comments unless otherwise ordered by the decisional authority. We accept the answers filed by the PJM Transmission Owners, the Market Monitor, AMP, ODEC, and OPSI, and the Joint Stakeholders' informational filing, because they have provided information that assisted us in our decision-making process.

##### **B. Substantive Matters**

57. As discussed below, we find the PJM Transmission Owners' proposed revisions to the PJM Tariff, as set forth in new Attachment M-4, are just and reasonable and accept the revisions effective March 17, 2020, as requested. The proposed revisions provide a just and reasonable approach to planning CIP-014 Mitigation Projects that appropriately balances the need to maintain strict confidentiality regarding the names, locations, and vulnerabilities of CIP-014-2 facilities with stakeholders' interests in transparency regarding the PJM Transmission Owners' planning of these projects. The Attachment M-4 planning procedures allow for consultation with PJM and the affected state commissions regarding CIP-014 Mitigation Projects, including discussion of siting issues and the estimated costs of a project, subject to appropriate confidentiality safeguards.

58. We agree with the PJM Transmission Owners that CIP-014 Mitigation Projects comprise a subset of Supplemental Projects and therefore are appropriately planned by the PJM Transmission Owners, rather than PJM. The PJM Operating Agreement defines

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<sup>136</sup> OPSI Answer at 12.

a Supplemental Project as a “transmission expansion or enhancement that is not required for compliance with the following PJM criteria: system reliability, operational performance or economic criteria, pursuant to a determination by the Office of the Interconnection and is not a state public policy project pursuant to Operating Agreement, Schedule 6, section 1.5.9(a)(ii).”<sup>137</sup> CIP-014 Mitigation Projects fall within this definition. In interpreting the Operating Agreement, the question is not, as protestors argue, whether a CIP-014 Mitigation Project offers a reliability benefit by removing a facility from the CIP-014-2 critical facility list, but rather whether the project is required by PJM planning criteria. PJM confirms, in its supporting comments, that there are no PJM planning criteria in the Operating Agreement that would allow PJM to plan CIP-014 Mitigation Projects through its RTEP process, and therefore CIP-014 Mitigation Projects can be developed only as Supplemental Projects.<sup>138</sup>

59. Because we find that CIP-014 Mitigation Projects are Supplemental Projects, we reject the Market Monitor’s argument that the PJM Transmission Owners’ filing of Attachment M-4 is unauthorized.<sup>139</sup> In *Monongahela Power Co.*,<sup>140</sup> the Commission made clear that the PJM Transmission Owners retain responsibility for planning Supplemental Projects, and therefore “retain the filing rights to make modifications to [the Supplemental Project planning] provisions” in the Tariff.<sup>141</sup> Specifically, the Commission stated:

Unlike the RTEP transmission projects, for which the PJM Transmission Owners have ceded planning to PJM as part of establishing an RTO, the PJM Transmission Owners remain responsible for planning Supplemental Projects, and we find that it is just and reasonable for the PJM Transmission Owners to establish the process for planning these transmission projects and to initiate under section 205 any proposed revisions.<sup>142</sup>

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<sup>137</sup> Operating Agreement, Section 1, Definitions S-T.

<sup>138</sup> PJM Comments at 4 n.11.

<sup>139</sup> See Market Monitor Answer at 2-3.

<sup>140</sup> *Monongahela Power Co.*, 164 FERC ¶ 61,217.

<sup>141</sup> *Id.* at 13-14.

<sup>142</sup> *Id.* at 14 (internal citations omitted).

60. Similarly, we disagree with protestors' arguments that PJM should implement competitive bidding procedures for CIP-014 Mitigation Projects. Supplemental Projects are not part of the RTEP process and thus are not part of the competitive window process.

61. Because CIP-014 Mitigation Projects are Supplemental Projects, Attachment M-4 applies the currently effective cost allocation methodology outlined in the Tariff for all Supplemental Projects.<sup>143</sup> We find the protests challenging the cost allocation of projects planned pursuant to Attachment M-4 to be beyond the scope of this proceeding because the PJM Transmission Owners do not propose in Attachment M-4 to change the currently effective cost allocation methodology for Supplemental Projects. As such, any future changes to the cost allocation methodology for Supplemental Projects will apply equally to CIP-014 Mitigation Projects under Attachment M-4.

62. Although protestors raise concerns regarding the potential for double-recovery, unjustified project costs, and a lack of transparency regarding the prudence of costs incurred, we find that the currently effective cost recovery process provides sufficient safeguards against these concerns. Attachment M-4 provides that, as a precondition to any Transmission Owner being eligible for recovery of costs related to a CIP-014-2 Mitigation Project, the Transmission Owner must provide public notice of the existence of the CIP-014 Mitigation Project and the costs are subject to the normal prudence review before the Commission.<sup>144</sup>

63. We also are not persuaded by OPSI's argument that Attachment M-4 should require a Commission hearing for all cost recovery actions related to CIP-014 Mitigation Projects. We find that members of OPSI will receive sufficient information regarding the estimated costs related to CIP-014 Mitigation Projects. After submitting its preferred and potential solutions to for a project to PJM, the Transmission Owner will seek a meeting with the relevant state commission(s).<sup>145</sup> Upon completion of PJM's review and assessment of the CIP-014 Mitigation Project ultimately selected for construction, the Transmission Owner will again seek to meet with the relevant state commission(s) to discuss, *inter alia*, the efficiency and cost-effectiveness of any and all of PJM's recommendations. In addition, before construction is initiated, the Transmission Owner will again seek to meet with the relevant state commission(s). When public notice is provided regarding the existence of the CIP-014 Mitigation Project and cost recovery is

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<sup>143</sup> As a CIP-014 Mitigation Project is defined as a "Supplemental Project" in section (b)(1) of Attachment M-4, it is subject to the same cost allocation requirements as other Supplemental Projects under Schedule 12 of the PJM Tariff.

<sup>144</sup> PJM Transmission Owners Filing, Attachment B, *Proposed Attachment M-4*, b.10.

<sup>145</sup> *Id.* at Attachment B, *Proposed Attachment M-4*, b.5.

sought,<sup>146</sup> OPSI has the ability to submit a formal challenge regarding the prudence of costs associated with a CIP-014 Mitigation Project.<sup>147</sup> As the PJM Transmission Owners correctly state, the Commission remains free to consider whether a hearing is necessary in such a proceeding, based on the facts and circumstances presented, consistent with its standard practice.<sup>148</sup> Accordingly, we find that OPSI's requested modification to Attachment M-4 is unnecessary.

64. Numerous protestors argue that proposed Attachment M-4 fails to comply with the requirements of Order No. 890 because the proposed Attachment M-4 planning process is not sufficiently open or transparent. We disagree. In Order No. 890, the Commission required open, coordinated, and transparent transmission planning by both RTOs and the individual transmission owning members, with the objective of reducing after-the-fact litigation and opportunities for undue discrimination.<sup>149</sup> However, Order No. 890 allowed for flexibility in how the RTOs and transmission owning members meet these requirements for open, coordinated, and transparent planning.<sup>150</sup> As discussed below, we find that proposed Attachment M-4 is consistent with the requirements of Order No. 890.

65. CIP-014 Mitigation Projects present unique concerns related to openness and transparency. When requiring the implementation by NERC of Reliability Standard CIP-014-2, the Commission stressed the importance of maintaining confidentiality regarding the existence and location of CIP-014-2 critical facilities, given the highly sensitive nature of this information and the significant risks associated with its public disclosure.<sup>151</sup> Consistent with the Commission's directive in Order No. 802, pursuant to Reliability Standard CIP-014-2, the PJM Transmission Owners have the duty to protect sensitive or confidential CIP-014-2 information from public disclosure, and as a result, only transmission owner employees with a "need to know" have information about such facilities. Further, all evidence of compliance with Reliability Standard CIP-014-2 is maintained exclusively on-site at the Transmission Owner's facility.<sup>152</sup> Therefore, we agree with the PJM Transmission Owners that the standard non-disclosure agreements

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<sup>146</sup> *Id.* at Attachment B, *Proposed Attachment M-4*, b.10.

<sup>147</sup> *Id.* at Attachment B, *Proposed Attachment M-4*, b.11.

<sup>148</sup> *Id.* at 23-24.

<sup>149</sup> Order No. 890, 118 FERC ¶ 61,119 at P 440.

<sup>150</sup> *Id.* at 460, 582; Order No. 890-A 121 FERC ¶ 61,297 at P 194.

<sup>151</sup> Order No. 802, 146 FERC ¶ 61,166 at P 10.

<sup>152</sup> Reliability Standard CIP-014-2 at Requirements and Measures, R2.4, R6.4.

upon which PJM and the PJM Transmission Owners typically rely to protect confidential information in the transmission planning process are insufficient for CIP-014 Mitigation Projects.

66. Consistent with Order No. 890, Attachment M-4 specifies the projects to which it applies and the planning procedures for these projects.<sup>153</sup> Moreover, Attachment M-4 provides clear limitations on eligible projects: (i) projects must address a CIP-014-2 critical facility identified as of September 30, 2018, of which there are no more than 20 in number; (ii) the CIP-014 Mitigation Project must begin construction within five years after Commission acceptance of Attachment M-4, because Attachment M-4 has a five-year sunset provision; and (iii) PJM must verify that a CIP-014 Mitigation Project is a Supplemental Project (i.e., will not be resolved through the current RTEP), removes a CIP-014-2 critical facility from the list, does not remove a facility from the list that would otherwise be removed through the current RTEP process, does not create a new CIP-014-2 critical facility, and does not result in an RTEP criteria violation. These provisions significantly limit the use, and potential misuse, of Attachment M-4.

67. Moreover, consistent with Order No. 890, Attachment M-4 outlines how, and when parties may, participate in the planning process. While Attachment M-4 limits participation in the Attachment M-4 planning process to the PJM Transmission Owners, PJM and the affected state commissions, the procedures governing the process are publicly available and have been discussed in open meetings as part of PJM's interactive stakeholder process.<sup>154</sup> Further, Attachment M-4 provides that "[i]f at any step in the Attachment M-4-process, the level of needed confidentiality is eliminated with respect to elements of [the CIP-014 Mitigation Project] information, such confidentiality shall be reduced or lifted."<sup>155</sup> Finally, as noted above, as a precondition to any Transmission Owner being eligible to recover costs related to a CIP-014 Mitigation Project, the Transmission Owner must provide public notice of the existence of the project, and then

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<sup>153</sup> Order No. 890 recognized that it may be appropriate in certain circumstances to limit participation in a meeting to a subset of parties such as a particular meeting of a sub-regional group. Order No. 890, 118 FERC ¶ 61,119 at P 440. In addition, Order No. 890-A made clear that any circumstances under which participation in a planning meeting is limited should be clearly described in the transmission provider's planning process, as all affected parties must be able to understand how, and when, they are able to participate in planning activities. Order No. 890-A, 121 FERC ¶ 61,297 at P 194.

<sup>154</sup> PJM Transmission Owners Filing, Attachment B, *Proposed Attachment M-4*, b.4-b.6.

<sup>155</sup> *Id.* at Attachment B, *Proposed Attachment M-4*, b.10.

the costs are subject to the normal prudence review before the Commission.<sup>156</sup> Thus, although Attachment M-4 deviates from the planning process outlined in Attachment M-3 for all other Supplemental Projects, we find that the modified planning process proposed in Attachment M-4 is just and reasonable and complies with the requirements of Order No. 890.

68. We find unpersuasive protestors' argument that the PJM Transmission Owners have failed to show that the proposed Attachment M-4 planning process is just and reasonable because the Transmission Owners have not explained why the use of non-disclosure agreements would not sufficiently protect confidential information related to CIP-014 Mitigation Projects. Reliability Standard CIP-014-2 requires that the Transmission Owner "implement procedures, such as the use of non-disclosure agreements, for protecting sensitive or confidential information made available to the unaffiliated third party verifier and *to protect or exempt sensitive or confidential information developed pursuant to this Reliability Standard from public disclosure.*"<sup>157</sup> Protestors contemplate the use of non-disclosure agreements or CEII procedures to allow for *widespread public dissemination* to stakeholders of information about CIP-014-2 critical facilities. We find that such disclosure would be inappropriate, given the reliability standard. Reliability Standard CIP-014-2 states that within a Transmission Owner's own organization, only employees with a "need to know" should have information about the critical nature of the CIP-014 facility, and all evidence of compliance with the Reliability Standard should not be taken off-site (must remain at the Transmission Owner's facility and securely stored).<sup>158</sup> Similarly, we disagree with OPSI's argument that Attachment M-4 is unjust and unreasonable because it states that the Transmission Owners will only consult with the state commissions "if and to the extent that the Transmission Owner can ensure that such consultations and information will be subject to such appropriate confidential safeguards."<sup>159</sup> Reliability Standard CIP-014-2 places the burden of ensuring confidentiality regarding CIP-014-2 critical facilities on the Transmission Owners. We therefore find it appropriate that Attachment M-4 provides that consultations regarding CIP-014 Mitigation Projects will only take place once appropriate confidential safeguards are in place. Further, once a state commission has satisfied the necessary confidentiality requirement, the

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<sup>156</sup> *Id.* at Attachment B, *Proposed Attachment M-4*, b.10-b.11.

<sup>157</sup> Reliability Standard CIP-014-2, Requirements and Measures, R2.4, R6.4 (emphasis added).

<sup>158</sup> *Id.* at Guidelines and Technical Basis, Requirement R2 and Compliance, 1.4.

<sup>159</sup> OPSI Protest at 9 (quoting PJM Transmission Owners Filing, Attachment B, *Proposed Attachment M-4*, Step 5).

Transmission Owner must proceed with the consultations as outlined in Step 5 of Attachment M-4.

69. We also find unpersuasive protestors' argument that the PJM Transmission Owners have failed to show that the proposed Attachment M-4 planning process is just and reasonable because the Transmission Owners have not explained why CEII procedures would not sufficiently protect confidential information related to CIP-014 Mitigation Projects. Material regarding compliance with Reliability Standard CIP-014-2 is neither filed with nor created by the Commission, such that the Commission's regulations governing requests for release of CEII material are not applicable.

70. We recognize the potential benefit of ongoing stakeholder discussions pertaining to critical infrastructure. However, a stakeholder process does not supersede the PJM Transmission Owners' right to file this proposal pursuant to section 205, nor the ability of the Commission to find that the proposal is just and reasonable.

71. OPSI contends Attachment M-4 is not just and reasonable because it fails to state explicitly that state commissions "shall retain full authority over their jurisdictional facilities and retain the right to approve or deny whether a proposed project has met any applicable state laws with respect to the facilities at issue."<sup>160</sup> We do not find this concern to be persuasive. As OPSI acknowledges, the state commission(s) will retain the right to approve or deny whether a proposed CIP-014 Mitigation Project complies with any applicable state laws. In addition, under the Attachment M-4 provisions, prior to the initiation of construction of a CIP-014 Mitigation Project, a PJM Transmission Owner will seek to meet with the relevant state commission(s) to discuss, *inter alia*, potential siting issues, particularly those that could affect the estimated project cost.<sup>161</sup> Furthermore, Attachment M-4 requires that the PJM Transmission Owners comply with all applicable licensing, permitting, siting, or certification requirements, as well as all applicable proceedings for eminent domain authority, and in no way seeks to limit applicability of any other state laws.<sup>162</sup>

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<sup>160</sup> OPSI Protest at 11.

<sup>161</sup> PJM Transmission Owners Filing, Attachment B, *Proposed Attachment M-4*, b.5.C.

<sup>162</sup> *Id.* at Attachment B, *Proposed Attachment M-4*, b.7.B.

The Commission orders:

The PJM Transmission Owners' proposed Tariff revisions are hereby accepted, effective March 17, 2020, as discussed in the body of this order.

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

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.



UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Appalachian Power Company  
PJM Interconnection, L.L.C.

Docket No. ER20-841-000

(Issued March 17, 2020)

GLICK, Commissioner, *dissenting in part*:

1. I support the goal of mitigating the critical facilities identified pursuant to Reliability Standard CIP-014-2. As the Department of Energy explains in its comments in this proceeding, protecting against physical and cyber threats to critical infrastructure is a national priority, which the Commission itself has recognized in observing that “[p]hysical attacks to the Bulk-Power System can adversely impact the reliable operation of the Bulk-Power System, resulting in instability, uncontrolled separation, or cascading failures.”<sup>1</sup> CIP-014-2 critical transmission stations and substations are *the most* critical facilities on the Bulk-Power system.<sup>2</sup> As a result, mitigating the risk posed by those facilities can have significant regional benefits by protecting against widespread instability, uncontrolled separation, and the successive loss of system elements.<sup>3</sup>

2. But that is also why I dissent in part from today’s order. These projects, by their very nature, have the potential to benefit the region as a whole. That means that they should be planned by PJM—the entity that accounts for the region’s needs—and their costs should be allocated regionally to all entities that benefit. Unfortunately, because this filing wedges these projects into the Supplemental Projects category, they will neither be regionally planned nor will their costs be regionally allocated. Instead, the costs of these projects will be allocated only to customers in the zone in which each project is located, rather than in a manner roughly commensurate with their benefits. Accordingly, I do not believe that PJM and the Transmission Owners’ proposal is just and reasonable and not unduly discriminatory or preferential.

3. I have some sympathy for the pickle that PJM and the Transmission Owners find themselves in when trying to develop these projects in a manner that is consistent with the Commission’s rules and regulations governing transmission planning. For example,

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<sup>1</sup> Department of Energy Comments at 1-2 (citing Reliability Standards for Physical Security Measures, 146 FERC ¶ 61,166, at P 5 (2014)).

<sup>2</sup> PJM Transmission Owners Filing at 8.

<sup>3</sup> PJM Comments at 2.

the Commission has required that transmission planning processes be built on a foundation of openness, transparency, and coordination among interested parties.<sup>4</sup> But those values lose some of their luster when it comes to planning transmission projects to mitigate the risk posed by stations and substations that are so critical to the system that they have potential to cause cascading outages throughout the region. Information about—and, indeed, the identity of—those facilities must be kept non-public to avoid serious risks to the public interest. That makes the usual transmission planning processes a bad fit for these projects.

4. In addition, Order No. 1000 went to great lengths to ensure that the costs of projects that provide regional benefits are shared equitably by the beneficiaries throughout the region. But one of the consequences of a project being regionally planned and having its costs regionally allocated is that the project must generally be open to competition. Whatever you think of competition—and I recognize the widely differing views on that score—it seems a bad fit with projects designed to mitigate critical facilities, whose identity and location must be kept secret.

5. Presumably with those tensions in mind, the PJM Transmission Owners have proposed to develop these projects as Supplemental Projects, which are planned by an individual Transmission Owner, minimally reviewed by PJM, and allocated exclusively to that Transmission Owner's zone.<sup>5</sup> And while that may help to ensure that confidential information stays that way, it creates an irreconcilable tension with the cost-causation principle we must follow. The United States Court of Appeals for the District of Columbia Circuit has explained that “the Commission generally may not single out a party for the full cost of a project, or even most of it, when the benefits of the project are diffuse.”<sup>6</sup> And yet that seems to be the most likely outcome of today's order. Again,

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<sup>4</sup> See *Monongahela Power Co.*, 164 FERC ¶ 61,217, at P 5 (2018) (discussing *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119 (2007), *reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009) (Order No. 890)); *id.* P 23 (explaining that the reforms in *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *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) (Order No. 1000), were built on the foundation laid by Order No. 890).

<sup>5</sup> *Appalachian Power Co.*, 170 FERC ¶ 61,196, at PP 3-4, 6, 10 (2020).

<sup>6</sup> *BNP Paribas Energy Trading GP v. FERC*, 743 F.3d 264, 268 (D.C. Cir. 2014); *see id.* at 268-69 (“[T]he cost causation principle itself manifests a kind of equity. This is

these projects provide regional benefits by eliminating critical stations and substations that, if compromised, have the potential to cause cascading outages and other widespread reliability concerns on PJM's system.<sup>7</sup> As a result, their costs should be allocated regionally to entities that stand to benefit from the elimination of that threat. By making these projects Supplemental Projects, today's order ensures that will not be the case because the costs of each project will be allocated entirely to the zone in which it is located. Under those circumstances, we cannot find that the projects' "burden is matched with [their] benefit."<sup>8</sup>

6. In my view, the better course of action would have been for PJM to plan and allocate the costs of these projects regionally, but to create whatever procedural safeguards are appropriate in light of the need to keep these critical stations and substations confidential, possibly even including an exemption from competition. I recognize that the Commission has a history of taking a rather doctrinaire approach to Order No. 1000's requirements and that, as a result, PJM and/or the Transmission Owners may well have hesitated to seek an exemption from competition. But, in my view, it would be far better to apply our transmission planning rules more flexibly than to take an approach so strict that we elicit proposals that, at least on their face, seem to violate the cost-causation principle.

For these reasons, I respectfully dissent in part.

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Richard Glick  
Commissioner

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most obvious when we frame the principle (as we and the Commission often do) as a matter of making sure that burden is matched with benefit." (citing *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) and *Se. Michigan Gas Co. v. FERC*, 133 F.3d 34, 41 (D.C. Cir. 1998))).

<sup>7</sup> Cf. PJM Comments at 2 (contending that it "is in the public interest . . . to mitigate the risk associated with the extended loss of a significant amount of load in the event of a loss of the subject CIP-14 facilities").

<sup>8</sup> *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254, 1255 (D.C. Cir. 2018) (quoting *BNP Paribas*, 743 F.3d at 268).