

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

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

Southern California Edison Company

Docket No. ER18-370-002

ORDER DENYING REHEARING

(Issued September 19, 2019)

1. The California Public Utilities Commission (CPUC), the Northern California Power Agency (NCPA), the City and County of San Francisco, the State Water Contractors, and the Transmission Agency of Northern California (TANC) (collectively, the Rehearing Parties) filed on October 1, 2018 a request for rehearing of the Commission's August 31, 2018 order accepting Southern California Edison Company's (SoCal Edison) Transmission Owner Tariff (TO Tariff) amendment implementing an annual Transmission Maintenance and Compliance Review (TMCR) process proposal, effective September 1, 2018, and directing SoCal Edison to submit a compliance filing to revise its TO Tariff amendment in accordance with revisions SoCal Edison proposed.¹ In this order, we deny rehearing.

I. Background

2. The TMCR is an annual process in which SoCal Edison will share and review certain information regarding transmission-related compliance and maintenance activities

¹ *Southern California Edison Co.*, 164 FERC ¶ 61,160 (2018) (TMCR Order). The Rehearing Parties also filed on October 1, 2018, a request for rehearing of the Commission's August 31, 2018 order denying a complaint filed against Pacific Gas and Electric Company (PG&E) in Docket No. EL17-45-000. *Cal. Pub. Utils. Comm'n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161 (2018) (Order on Complaint). The rehearing request in Docket No. EL17-45-001 advances substantively the same arguments that the Rehearing Parties make in their rehearing request in this proceeding. The Commission is issuing concurrently with this order an order denying the request for rehearing in Docket No. EL17-45-001. *Cal. Pub. Utils. Comm'n v. Pac. Gas & Elec. Co.*, 168 FERC ¶ 61,171 (2019).

with interested stakeholders. SoCal Edison explained that its transmission system consists of thousands of components that must be periodically replaced due to wear, or upgraded because of obsolescence. SoCal Edison also explained that it is subject to various regulatory and compliance requirements to ensure that its transmission facilities operate safely and reliably. SoCal Edison stated that although these types of transmission projects do not expand the capacity of the California Independent System Operator Corporation's (CAISO) grid and are not explicitly reviewed through CAISO's Transmission Planning Process (TPP), they help to ensure the continued safe and reliable operation of the existing grid.² SoCal Edison also indicated that it recognized the value of sharing information with its stakeholders to promote better understanding of its transmission-related maintenance and compliance activities, and it thus proposed the TMCR process to achieve this end.³

3. Protesters, which included some of the Rehearing Parties,⁴ argued that SoCal Edison's TMCR process does not comply with the Commission's Order No. 890⁵ transmission planning principles and must be significantly revised. They argued that the transmission-related maintenance and compliance activities included in SoCal Edison's rate base as capital additions or investments should be subject to an Order No. 890-compliant transmission planning process. SoCal Edison answered that the activities that it proposed to include in the TMCR are not within the scope of Order No. 890 because they are not pertinent to the Commission's purpose in Order No. 890 to ensure that transmission providers expand the grid in a non-discriminatory manner.⁶

4. However, in response to protesters' concerns, SoCal Edison offered to revise its TMCR process to provide increased transparency. Specifically, SoCal Edison offered to: (1) expand the scope of projects that will be subject to information sharing through its TMCR process; (2) provide for a longer period for initial stakeholder comments, as well

² TMCR Order, 164 FERC ¶ 61,160 at P 6.

³ *Id.* P 7.

⁴ CPUC, TANC, and NCPA were among the parties that submitted protests.

⁵ *Preventing Undue Discrimination and Preference in Transmission Service*, 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).

⁶ TMCR Order, 164 FERC ¶ 61,160 at P 8.

as a second round for comments; (3) include information about cyber and physical security projects in aggregate format; and (4) include a dispute resolution process.⁷

5. On March 23, 2018, the Commission accepted SoCal Edison's TO Tariff amendment for filing and suspended it for five months, to be effective September 1, 2018, subject to refund. The Commission stated that SoCal Edison's proposed amendment had not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.⁸ The Commission found that it could not determine from the record whether SoCal Edison should be submitting transmission-related maintenance and compliance activities through CAISO's TPP or the extent to which CAISO needed to review SoCal Edison's actions to maintain, repair, and replace its transmission facilities.⁹

6. In addition, in response to issues raised in this proceeding, as well as in connection with the complaint filed in Docket No. EL17-45-000,¹⁰ the Commission directed its staff to hold a technical conference in new Docket No. AD18-12-000, as well as in Docket Nos. EL17-45-000 and ER18-370-000.¹¹ The technical conference was held on May 1, 2018. Following the technical conference, a supplemental notice was issued that included additional questions for participants and provided a process for the submission of comments and reply comments.¹² Among other things, protesters argued following the technical conference that participating transmission owners' (PTOs) self-approved projects should go through an Order No. 890-compliant process. In making this argument, protesters relied upon the Commission's findings in a February 15, 2008 order,¹³ in which the Commission ruled that PJM Supplemental Projects must go through

⁷ *Id.* P 9.

⁸ *S. Cal. Edison Co.*, 162 FERC ¶ 61,264, at P 20 (2018).

⁹ *Id.* P 24.

¹⁰ *See supra* note 1.

¹¹ Notice of Technical Conference in Docket Nos. AD18-12-000, EL17-45-000, and ER18-370-000 (Mar. 23, 2018).

¹² TMCR Order, 164 FERC ¶ 61,160 at P 12.

¹³ *Monongahela Power Co.*, 162 FERC ¶ 61,129 (2018) (February 15 PJM Order).

an Order No. 890-compliant process. Protesters argued that the Commission should make the same determination here.¹⁴

7. The Commission found in the TMCR Order that the SoCal Edison projects and activities in question, which it referred to as “asset management projects,”¹⁵ are not subject to Order No. 890’s transmission planning requirements. The Commission found that the TMCR, with the revisions that SoCal Edison proposed, will provide stakeholders with an open, coordinated, and transparent process for consideration of SoCal Edison’s asset management projects and activities that informs the development of SoCal Edison’s annual transmission rates. The Commission thus found that the TMCR process, with the revisions that SoCal Edison offered in response to protesters, is just and reasonable and not unduly discriminatory or preferential. The Commission accepted the TMCR subject to a compliance filing that would include in SoCal Edison’s TO Tariff additional revisions to the TMCR process that SoCal Edison proposed in its response to protesters.¹⁶

8. The Commission disagreed with assertions that SoCal Edison’s TO Tariff violates the transmission planning requirements of Order No. 890. The Commission found that the Order No. 890 transmission planning reforms were intended to address concerns regarding undue discrimination in grid expansion, and to the extent that SoCal Edison asset management projects do not expand the grid, they do not fall within the scope of those reforms.¹⁷ The Commission found that the specific asset management projects and activities at issue in this proceeding do not, as a general matter, expand the CAISO grid. Instead, the management projects include maintenance, repair, and replacement work, as well as infrastructure security, system reliability, and automation projects that SoCal Edison undertakes to maintain its existing electric transmission system and to meet regulatory compliance requirements.¹⁸ However, the Commission acknowledged that to the extent that an asset management project will result in a non-incidental, or incremental, increase in transmission capacity, the incremental portion of the asset

¹⁴ TMCR Order, 164 FERC ¶ 61,160 at P 22.

¹⁵ Asset management refers to the activities necessary to maintain a safe, reliable, and compliant grid, based on existing grid topology. These activities include operations and maintenance and capital expenditure activities as part of the PTOs’ compliance with the Transmission Control Agreement between CAISO and each PTO. *Id.* P 14.

¹⁶ *Id.* PP 30, 40.

¹⁷ *Id.* P 31.

¹⁸ *Id.* P 32.

management project would be subject to the transmission planning requirements of Order No. 890 and would have to be submitted for consideration in CAISO's TPP.¹⁹

9. With regard to transmission planning practices in other Regional Transmission Organizations (RTO) or Independent System Operators (ISO), the Commission found that the February 15 PJM Order was not apposite to this proceeding. The Commission stated that the question whether asset management projects that do not increase the capacity of the grid must go through an Order No. 890-compliant transmission planning process was not at issue in the February 15 PJM Order. Instead, the February 15 PJM Order examined the PJM Transmission Owners' implementation of the process for planning Supplemental Projects, a process set forth in the PJM Operating Agreement and Tariff. The Commission also stated that it was not persuaded that other transmission planning regions consider asset management projects through their regional transmission planning processes. The Commission noted that whether or not other transmission planning regions are considering asset management projects through their regional transmission planning process does not, in and of itself, determine whether Order No. 890 requires them to do so.²⁰

10. The Commission also found that NCPA failed to provide evidentiary support for its claim that SoCal Edison and the other PTOs use asset management projects to discriminate against wholesale customers, but, to the extent NCPA or its members had concerns, they could be raised in a separate proceeding under Federal Power Act (FPA) section 206.²¹

II. Rehearing Request

11. The Rehearing Parties argue that the Commission erred in the TMCR Order by narrowly construing Order No. 890 to find that projects that do not expand the transmission grid are not subject to the Order No. 890 transmission planning requirements.²² To support this argument, the Rehearing Parties assert that the Commission made six specific errors in the TMCR Order that justify a grant of rehearing.

12. First, Rehearing Parties maintain that the Commission erred in finding that the February 15 PJM Order does not apply here. According to the Rehearing Parties, the

¹⁹ *Id.* P 34.

²⁰ *Id.* P 37.

²¹ *Id.* P 38 (citing 16 U.S.C. § 824e (2018)).

²² Rehearing Request at 17.

Commission incorrectly found that the February 15 PJM Order did not address whether asset management projects that do not increase the capacity of the grid must go through an Order No. 890-compliant transmission planning process.²³ The Rehearing Parties maintain that this issue was before the Commission because “activities that do not increase the capacity of the grid are at the heart of the definition of Supplemental Projects,” and PJM transmission owners confirmed that point during that proceeding.²⁴ According to the Rehearing Parties, PJM Supplemental Projects are identical to the asset management projects at issue in this proceeding, and because the Commission found in the February 15 PJM Order that Supplemental Projects are subject to an Order No. 890-compliant transmission planning process, the Commission erred in finding in this proceeding that SoCal Edison’s asset management projects are not likewise subject to that process.²⁵

13. Second, the Rehearing Parties maintain that the Commission erred in finding that only projects that expand the transmission grid are subject to the Order No. 890 transmission planning requirements.²⁶ They argue that this finding is inconsistent with the requirement, set forth in the Energy Policy Act of 2005²⁷ (EPAct 2005), that the Commission encourage deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities and improve the operation of those facilities, as well as the statute’s requirement that the Commission encourage deployment of advanced transmission technologies for both new and existing transmission facilities.²⁸ The Rehearing Parties also state that the Commission found in Order No. 890-A that “[t]he planning-related reforms adopted in Order No. 890 will ensure that a process exists to jointly plan *all transmission facilities*, including new facilities developed by customers.”²⁹ According to the Rehearing Parties, this reference to “all transmission facilities” means that the Order No. 890 transmission planning requirements apply to facilities that do not expand the transmission grid as well as those

²³ *Id.* at 19 (citing TMCRC Order, 164 FERC ¶ 61,160 at P 37).

²⁴ *Id.* at 19-20.

²⁵ *Id.* at 15, 20-21.

²⁶ *Id.* at 15-16.

²⁷ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

²⁸ Rehearing Request at 24-26.

²⁹ *Id.* at 26 (quoting Order No. 890-A, 121 FERC ¶ 61,297 at 354 (emphasis supplied by the Rehearing Parties)).

that do.³⁰ Finally, the Rehearing Parties note that Order No. 890 stated that the then-existing *pro forma* open access transmission tariff (OATT) contains a general obligation requiring transmission providers “to plan for the needs of their network customers.”³¹ According to the Rehearing Parties, planning for customer needs may or may not include grid expansion, and the Order No. 890 transmission planning process is meant to mitigate the adverse effects that transmission owner self-interest could have on such planning by opening up the transmission planning process and to prevent undue-discrimination based on self-interested behavior.³²

14. Third, the Rehearing Parties argue that the Commission erred in finding that asset management projects do not involve transmission planning that is subject to Order No. 890 transmission planning requirements because this finding violates longstanding Commission policy regarding the need for coordinated and transparent transmission planning, and it perpetuates undue discrimination that Order No. 890 sought to eradicate. The Rehearing Parties state that the Commission found in the February 15 PJM Order that PJM’s failure to subject Supplemental Projects to Order No. 890 transmission planning requirements meant that stakeholders could not advocate for other solutions, which amounted to undue discrimination. The Rehearing Parties maintain that the amended TMCR process does not allow for the full flow of information and ideas between SoCal Edison and stakeholders and otherwise limits stakeholders’ opportunity to comment and to participate in problem solving. The Rehearing Parties argue that this violates Order No. 890’s transmission planning principles and will result in undue discrimination in SoCal Edison’s grid expansion efforts.³³

15. Fourth, the Rehearing Parties argue that failure to require that asset management projects be subject to an Order No. 890-compliant transmission planning process results in undue discrimination. The Rehearing Parties maintain that the Commission violated its duty to remedy undue discrimination by finding that there was no evidence that California PTOs, and SoCal Edison in particular, had engaged in undue discrimination in connection with asset management projects.³⁴

³⁰ *Id.*

³¹ *Id.* at 27 (quoting Order No. 890, 121 FERC ¶ 61,297 at P 454).

³² *Id.* at 27-28.

³³ *Id.* at 16, 29-31.

³⁴ *Id.* at 16, 32.

16. Fifth, the Rehearing Parties argue that the Commission's failure to require that asset management projects be subject to the coordination and transparency requirements of Order No. 890 results in unjust and unreasonable rates. The Rehearing Parties state that the Commission has an obligation under FPA sections 205³⁵ and 206 to ensure just and reasonable rates, and Order No. 890 specifies that ensuring such rates is one of the purposes of its transmission planning requirements. The Rehearing Parties argue that as a result, the Order No. 890 transmission planning requirements must apply to asset management projects.³⁶

17. Sixth, the Rehearing Parties argue that the Commission erred by failing to consider the fact that asset management projects require transmission planning and consequently must be included in an Order No. 890-compliant transmission planning process.³⁷

18. On October 16, 2018, PG&E, SoCal Edison, and San Diego Gas and Electric Company (SDG&E) filed a motion for leave to answer and answer to the Rehearing Parties' rehearing request.

Discussion

A. Procedural Matters

19. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2019), prohibits an answer to a request for rehearing. Accordingly, we deny PG&E, SoCal Edison, and SDG&E's motion to answer and reject their answer to the Rehearing Parties' rehearing request.

B. Substantive Matters

20. We deny rehearing. The Rehearing Parties have not shown that the Commission erred in finding that SoCal Edison's asset management projects and activities do not fall within the scope of Order No. 890's transmission planning reforms. In addition, we do not agree with the Rehearing Parties' arguments that failing to include these projects and activities within the Order No. 890 transmission planning reforms results in undue discrimination, violates EPCA 2005 requirements, or is inconsistent with Commission precedent.

³⁵ 16 U.S.C. § 824d (2018).

³⁶ Rehearing Request at 16-17, 32-33.

³⁷ *Id.* at 4, 17.

1. Scope of Order No. 890 Planning Reforms

21. The Commission explained in the Order No. 890 rulemaking proceeding that the transmission planning requirements proposed and adopted there were intended to promote the central policy goal of Order No. 888.³⁸ This goal is to prohibit public utilities from using their monopoly power over transmission to discriminate unduly in the provision of transmission access. To achieve this goal, the Commission required every public utility that owns, controls, or operates transmission facilities to file an open access non-discriminatory transmission tariff containing minimum terms and conditions of nondiscriminatory service. The Commission also required those public utilities to take transmission service for their own new wholesale sales and purchases of electric energy under that tariff.³⁹

22. The Commission explained in its Order No. 890 Notice of Proposed Rulemaking (NOPR) that Order No. 888 included a general planning obligation, which required transmission providers to plan to serve network loads. It also required transmission providers to construct new facilities, as necessary, to respond to requests for firm service from point-to-point customers and to do so on a basis comparable to their planning for their own needs.⁴⁰ But the Commission also noted that there were no clear transmission planning guidelines, and this had led to significant disputes over whether transmission planning was being done on a nondiscriminatory basis or being done in favor of service to transmission providers' loads.⁴¹

³⁸ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (cross reference at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross reference at 78 FERC ¶ 61,220), Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

³⁹ *Preventing Undue Discrimination and Preference in Transmission Service*, Notice of Proposed Rulemaking, 115 FERC ¶ 61,211, at P 10 (2006).

⁴⁰ *Id.* P 25.

⁴¹ *Id.* PP 25, 52.

23. The Commission thus explained in the Order No. 890 NOPR that

[w]ithout adequate coordination and open participation, market participants have minimal input or insight into whether a particular transmission plan treats all loads and generators comparably. *To ensure that truly comparable transmission service is provided* by all public utility transmission providers, including RTOs and ISOs, we propose to amend the *pro forma* OATT to require coordinated, open, and transparent transmission planning on both a sub-regional and regional level.⁴²

24. This statement of purpose evidences an intent to tie the proposed transmission planning requirements directly to the goal of providing comparable, i.e., non-discriminatory, open-access transmission service established in Order No. 888. The specific problem that necessitated transmission planning reforms from this perspective was grid congestion and the associated need for grid expansion that would ensure non-discriminatory transmission access. The Commission noted in the Order No. 890 NOPR that “[t]he ability and incentive to discriminate increases as the transmission system becomes more congested,” and “[v]ertically integrated utilities do not have an incentive *to expand the grid* to accommodate new entry or to facilitate the dispatch of more efficient competitors.”⁴³ In light of the increasing need to solve this problem, the Commission concluded that it was necessary to “require reform of the *pro forma* OATT to ensure that transmission infrastructure is constructed on a nondiscriminatory basis and is otherwise sufficient to support reliable and economic service to all eligible customers.”⁴⁴

25. In Order No. 890, the Commission adopted the transmission planning reforms proposed in the NOPR. In doing so, the Commission again stated that undue discrimination in transmission access was the problem that the transmission planning reforms were intended to address. The Commission explained that “[a]lthough many transmission providers have an incentive *to expand the grid* to meet their state-imposed obligations to serve, they can have a disincentive to remedy transmission congestion when doing so reduces the value of their generation or otherwise stimulates new entry or greater competition in their area.”⁴⁵ The Commission concluded that it did “not believe

⁴² *Id.* P 52 (emphasis supplied).

⁴³ *Id.* P 31 (emphasis supplied).

⁴⁴ *Id.* P 36.

⁴⁵ Order No. 890, 118 FERC ¶ 61,119 at P 422 (emphasis supplied).

that the existing *pro forma* OATT is sufficient in an era of increasing transmission congestion and the need for significant new transmission investment,” and it could not “rely on the self-interest of transmission providers to *expand the grid* in a nondiscriminatory manner.”⁴⁶

26. In brief, the Commission developed the Order No. 890 transmission planning requirements to address the need for grid expansion in light of increasing grid congestion and the additional need to ensure that this expansion would occur in a way that was consistent with the non-discriminatory open-access transmission service required by Order No. 888. These developments form the basis of the Commission’s statement in the TMCRC Order that “the transmission planning reforms that the Commission adopted in Order No. 890 were intended to address concerns regarding undue discrimination in grid expansion.”⁴⁷

27. The Rehearing Parties begin their arguments on rehearing with a general claim that the Order No. 890 transmission planning requirements “were clearly intended to apply to *all* planned transmission investment,”⁴⁸ including investment in asset management projects, and not simply to activities that expand the transmission grid. The Rehearing Parties maintain that a “full and fair reading” of Order No. 890 supports this conclusion,⁴⁹ but they point to only one sentence in Order No. 890 that they identify as focusing on transmission investment generally. This is the Commission’s statement that it did not believe that “the existing *pro forma* OATT is sufficient in an era of increasing transmission congestion and the need for significant new transmission investment.”⁵⁰ However, in the very next sentence the Commission stated that “[w]e cannot rely on the self-interest of transmission providers to expand the grid in a nondiscriminatory manner.”⁵¹ In other words, the “significant new transmission investment” referred to in the first sentence is investment that will “expand the grid,” as described in the immediately following sentence, but that was unlikely to occur in a nondiscriminatory manner if the *pro forma* OATT was not modified as the Commission proposed. Thus, when read in context, the statement on which the Rehearing Parties rely does not support

⁴⁶ *Id.* (emphasis supplied).

⁴⁷ TMCRC Order, 164 FERC ¶ 61,160 at P 31.

⁴⁸ Rehearing Request at 1-2 (emphasis in original), 16.

⁴⁹ *Id.* at 1.

⁵⁰ *Id.* at 29 (quoting Order No. 890, 118 FERC ¶ 61,119 at P 422).

⁵¹ Order No. 890, 118 FERC ¶ 61,119 at P 422.

their general theory that the Order No. 890 transmission planning requirements were intended to apply to all planned investment in transmission assets regardless of whether the investment led to expansion of the transmission grid.

28. The Rehearing Parties also note that in discussing the need for new transmission infrastructure in Order No. 890, the Commission cited an Edison Electric Institute study of U.S. electric transmission capacity, which states, in a passage not cited by the Commission, that “‘new transmission can be built for different purposes, including: . . . Replacement: Facilities that replace old, worn-out, and/or obsolete equipment.’”⁵² According to the Rehearing Parties, the Commission’s reliance on this study in Order No. 890 “confirms that transmission planning encompasses all transmission investments—both those for grid expansion, and those for repair and replacement.”⁵³ However, the Commission relied on the study in question as support for its concern about “the critical need for new transmission infrastructure in this Nation” due to the fact that “transmission capacity is being constructed at a much slower rate than the rate of increase in customer demand,” i.e., as grounds for its concern about the need for transmission expansion.⁵⁴ The fact that the report also observed that new transmission facilities can replace worn out equipment does not imply that the Commission found that investment involving only repair or replacement must be included in an Order No. 890-compliant transmission planning process.

29. In addition, the Rehearing Parties point to the Commission’s statement in Order No. 890-A that “[t]he planning-related reforms adopted in Order No. 890 will ensure that a process exists to jointly plan *all transmission facilities*, including new facilities developed by customers.”⁵⁵ According to the Rehearing Parties, this reference to “all transmission facilities” means that the Order No. 890 transmission planning requirements apply to SoCal Edison’s asset management projects.⁵⁶

⁵² Rehearing Request at 29 (quoting Eric Hirst, U.S. Transmission Capacity: Present Status and Future Prospects at v (Aug. 2004) (U.S. Transmission Capacity)).

⁵³ *Id.*

⁵⁴ Order No. 890, 118 FERC ¶ 61,119 at P 58 (citing U.S. Transmission Capacity at v).

⁵⁵ Rehearing Request at 24-25 (quoting Order No. 890-A, 121 FERC ¶ 61,297 at P 354 (emphasis supplied by the Rehearing Parties)).

⁵⁶ *Id.* at 26.

30. The Rehearing Parties read this statement out of context. The reference to “all transmission facilities” is found in the Commission’s discussion of a request for rehearing of its decision in Order No. 890 to sever the link in the *pro forma* OATT between joint planning and credits for new facilities owned by network customers—a technical issue that is not relevant to the instant proceeding.⁵⁷ Under the *pro forma* OATT adopted in Order No. 888, a network customer owning existing transmission facilities that are integrated with the transmission provider’s transmission system may be eligible to receive cost credits against its transmission service charges if the customer could show that its transmission facilities are both integrated with the transmission provider’s system and provided certain additional benefits that the transmission provider could rely on in operating the grid. The *pro forma* OATT also stated that new facilities were eligible for credits when they are jointly planned and installed in coordination with the transmission provider.⁵⁸ In Order No. 890, the Commission found that the link in the *pro forma* OATT adopted in Order No. 888 between joint planning and credits for new facilities owned by network customers should be severed because a transmission provider “has an incentive to deny coordinated planning in order to avoid granting credits for customer-owned transmission facilities.”⁵⁹

31. The Commission went on to revise the credits test for new transmission facilities by providing that a network customer would receive credit for “transmission facilities added subsequent to the effective date of [Order No. 890]” if those facilities are

⁵⁷ Order No. 890, 118 FERC ¶ 61,119 at P 354. The full paragraph at issue here reads as follows:

We reject requests to eliminate the presumption of integration for new customer-owned facilities, as advocated by certain transmission providers. The planning-related reforms adopted in Order No. 890 will ensure that a process exists to jointly plan all transmission facilities, including new facilities developed by customers. Comparability requires that transmission providers and customers alike benefit from a presumption of integration. It is also appropriate for both the transmission provider and its customers to be subject to the integration standard to the extent the presumption of integration is overcome, notwithstanding any coordinated planning of those facilities. Under Order No. 890, the Commission therefore will not apply, as some petitioners imply, a different or stricter standard to a transmission provider’s own facilities when a network customer has been denied credits.

⁵⁸ *Id.* P 729.

⁵⁹ *Id.* P 735.

integrated into the operations of the transmission provider's facilities.⁶⁰ The customer's transmission facilities would be presumed to be integrated "if it is shown that, if owned by the transmission provider, such facilities would be eligible for inclusion in the transmission provider's rate base."⁶¹ The Commission was not persuaded by arguments on rehearing that the presumption should be eliminated, saying that "[c]omparability requires that transmission providers and customers alike benefit from a presumption of integration."⁶² This statement immediately follows the statement mentioning joint planning of "all transmission facilities" on which the Rehearing Parties rely.⁶³ The issue presented was therefore one of the comparable treatment of transmission providers and customers, a central principle of both Order No. 888 and Order No. 890.⁶⁴ Thus, when read in context, it is clear that "all transmission facilities" means facilities owned by transmission providers as well as facilities owned by customers, not all facilities regardless of whether they expand the transmission grid. Nothing in this discussion is relevant to the issue whether the Order No. 890 transmission planning requirements apply to SoCal Edison's asset management projects.

32. Contextualizing the statement on which the Rehearing Parties rely is important because the Rehearing Parties fault the Commission for relying "on four paragraphs out of the more than 1,700 paragraphs contained in Order 890" when finding that it "adopted the transmission planning requirements in Order No. 890 to remedy opportunities for undue discrimination in *expansion* of the transmission grid."⁶⁵ The Rehearing Parties substantially overstate the amount of potentially relevant text, given the many topics covered in Order No. 890 in addition to transmission planning. But more importantly, the four paragraphs cited in the TMCR Order explain the need for, and thus the purpose and scope of, the Commission's transmission planning reforms,⁶⁶ as well as the inability of the existing *pro forma* OATT to support the goal of non-discriminatory grid

⁶⁰ *Id.* P 753.

⁶¹ *Id.* P 754.

⁶² Order No. 890-A, 121 FERC ¶ 61,297 at P 354.

⁶³ *Id.*

⁶⁴ *See, e.g.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,647-31,649; Order No. 890, 118 FERC ¶ 61,119 at PP 84, 494-495.

⁶⁵ Rehearing Request at 18 (quoting TMCR Order, 164 FERC ¶ 61,160 at P 31 (citing Order No. 890, 118 FERC ¶ 61,119 at PP 57-58, 421-422) (emphasis in original)).

⁶⁶ Order No. 890, 118 FERC ¶ 61,119 at PP 57-58.

expansion.⁶⁷ On the other hand, we find no basis to conclude that the statements on which the Rehearing Parties rely are intended to modify any of the Commission's explicit statements describing the purpose and scope of its Order No. 890 transmission planning reforms. In other words, in examining Order No. 890 in the TMCR Order, the Commission appropriately relied on Order No. 890's most relevant statements of purpose and scope.

33. The Rehearing Parties' remaining arguments pertaining to Order No. 890 rest on erroneous inferences, and are likewise unpersuasive. While the Rehearing Parties acknowledge that the paragraphs that the Commission cites do discuss grid expansion, they claim that the Commission ignored the fact that the "pre-Order [No.] 890 *pro forma* OATT already contained an obligation 'to plan for the needs of their network customers' in addition to expanding their systems."⁶⁸ The Rehearing Parties maintain that planning for customer needs "may or may not include grid expansion," and Order No. 890 did not change this planning obligation.⁶⁹ The Rehearing Parties' reading of this transmission planning requirement is not sustainable when the tariff provision in question is read in context.

34. The tariff language that the Rehearing Parties refer to is found in section 28.2 of the *pro forma* OATT adopted in Order No. 888. It reads as follows.

. . . The Transmission Provider shall include the Network Customer's Network Load in its Transmission System planning and shall, consistent with Good Utility Practice, endeavor to construct and place into service sufficient transmission capacity to deliver the Network Customer's Network Resources to serve its Network Load on a basis comparable to the Transmission Provider's delivery of its own generating and purchased resources to its Native Load Customers.⁷⁰

35. The planning under discussion in this provision is planning that ensures open access, and it ensures open access by treating customer needs on the same basis as

⁶⁷ *Id.* PP 422-423.

⁶⁸ Rehearing Request at 27 (quoting Order No. 890, 118 FERC ¶ 61,119 at P 424).

⁶⁹ *Id.*

⁷⁰ *Pro Forma* OATT, pt. III, § 28.2 Transmission Provider Responsibilities (appended to Order No. 888, FERC Stats. & Regs. ¶ 31,036, App. D); *see also* Order No. 890, 118 FERC ¶ 61,119 at P 418.

transmission provider needs. When discussing this requirement in Order No. 890, the Commission explained that “[a]lthough many transmission providers have an incentive to *expand* the grid to meet their state-imposed obligations to serve, they can have a disincentive to remedy transmission congestion when doing so reduces the value of their generation or otherwise stimulates new entry or greater competition in their area.”⁷¹ In other words, while transmission providers have an incentive to expand the transmission grid to serve their own load, they could have a disincentive to expand the grid for the benefit of competitors. Thus the requirement to plan for network customer needs was intended to correct this situation.

36. The Rehearing Parties acknowledge that this planning requirement was intended to counteract “the economic self-interest of transmission monopolists,”⁷² but their focus is not on planning that facilitates non-discriminatory transmission access for customers but rather on what the Rehearing Parties view as the potential for self-interested conduct that accompanies “investing billions of dollars annually in [asset management projects] with no opportunity for third party review of the cost and need for the projects.”⁷³ This is a concern about self-interest as a cause of imprudent investment, which is subject to review in the ratemaking process and, as such, is ancillary to the transmission planning process. The Commission made clear in Order No. 890 that the planning requirements obligating transmission providers to coordinate with customers and other stakeholders are “intended to address transmission planning issues, and are not intended to provide a forum for ancillary issues. . .” that could be “better addressed elsewhere.”⁷⁴

37. In Order No. 890, the Commission stated that, with the exception of a requirement that a transmission plan address the applicable cost allocation method, “the planning obligations included in [Order No. 890] do not address whether or how investments identified in a transmission plan should be compensated.”⁷⁵ The Rehearing Parties’ concerns focus directly on compensation in rates for investments that the Commission stipulated is not part of the transmission planning process and therefore is not

⁷¹ Order No. 890, 118 FERC ¶ 61,119 at P 422 (emphasis supplied).

⁷² Rehearing Request at 27 (quoting Order No. 890, 118 FERC ¶ 61,119 at P 423 (quoting Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,682)).

⁷³ *Id.* at 33; *see also id.* at 4, 11-12, 33-34.

⁷⁴ Order No. 890, 118 FERC ¶ 61,119 at P 453.

⁷⁵ *Id.* P 438.

encompassed by the requirement set forth in section 28.2 of the *pro forma* OATT that transmission providers plan for network customer needs.

2. Undue Discrimination and Just and Reasonable Rates

38. The Rehearing Parties maintain that the Commission reads Order No. 890 so narrowly that it “eviscerates” the Commission’s obligations under sections 205 and 206 of the FPA⁷⁶ to ensure that all Commission rules are just and reasonable and not unduly discriminatory or preferential and “to ensure just and reasonable transmission rates.”⁷⁷ However, as the Commission noted in the TMCR Order, there is no evidence that “PTOs in general—and SoCal Edison in particular—are using asset management projects and activities to discriminate against wholesale customers.”⁷⁸ Moreover, even if there is a potential for abuse of the type that the Rehearing Parties allege, there is no basis to conclude that the specific measures they seek are the only way to address the issue. Rehearing Parties argue here that the TMCR is inadequate in this respect, but the sole basis of their claim is that the TMCR does not embody the Order No. 890 transmission planning requirements.⁷⁹ This argument, however, simply asserts the view that an Order No. 890-compliant transmission planning process, which the Rehearing Parties describe as being more rigorous than the TMCR,⁸⁰ could eliminate the potential for the type of undue discrimination that the Rehearing Parties maintain exists. It does not demonstrate that the TMCR process could not eliminate it.⁸¹

39. We are not persuaded by the Rehearing Parties’ contention that the Commission violated its duty to ensure that the Order No. 890 transmission planning process rules prevent undue discrimination when it found that the Rehearing Parties had not demonstrated the existence of discrimination here. The Rehearing Parties state that the

⁷⁶ 16 U.S.C. §§ 824d, 824e (2018).

⁷⁷ Rehearing Request at 33.

⁷⁸ TMCR Order, 164 FERC ¶ 61,160 at P 38.

⁷⁹ Rehearing Request at 29-31.

⁸⁰ *Id.* at 31.

⁸¹ The Commission noted in the Order on Complaint issued in Docket No. EL17-45-001 that the TMCR may provide a “useful example” for addressing issues of the type that Rehearing Parties are raising here. Order on Complaint, 164 FERC ¶ 61,161 at P 74.

Commission has a “legal obligation under the FPA, federal court precedent, and [Order No. 888] to consider the impact of ‘any rule, regulation, practice, or contract’ for undue discrimination,”⁸² and the Commission’s finding that discrimination had not been shown violates this obligation. We disagree.

40. While the Rehearing Parties maintain that the exclusion of asset management projects from the Order No. 890 transmission planning process “perpetuates the undue discrimination [that Order No. 890] sought to eradicate,”⁸³ they misstate the type of undue discrimination targeted by Order No. 890. The Rehearing Parties’ argument rests on their claim that “the February 15 PJM Order explained that *failure to permit stakeholders to advocate for other solutions was an issue of undue discrimination.*”⁸⁴ They assert that the limits on stakeholder advocacy in the planning for SoCal Edison’s asset management projects and activities at issue here result in undue discrimination that the Commission must remedy because, as stated in the February 15 PJM Order, the Commission “promulgated Order No. 890, in part, to prevent undue discrimination by ensuring that stakeholders could advocate effectively for alternative solutions.”⁸⁵ However, the undue discrimination at issue is not the potential limitation on stakeholder advocacy per se, but rather the undue discrimination in transmission access that could occur without stakeholder advocacy.

41. The Commission noted in the February 15 PJM Order that Order No. 890 sought to remedy undue discrimination by providing “customers with avenues to ‘the planning and *expansion* of transmission facilities to meet the[ir] reasonable needs.’”⁸⁶ We have discussed the connection between transmission planning, grid expansion, and undue discrimination in transmission service—the relevant form of undue discrimination for purposes of Order No. 890 compliance—at length above. The Rehearing Parties do not explain how not including in the Order No. 890 transmission planning process activities

⁸² Rehearing Request at 30.

⁸³ *Id.*

⁸⁴ *Id.* at 31 (emphasis in original).

⁸⁵ *Id.* (quoting February 15 PJM Order, 162 FERC ¶ 61,129 at P 79 (citing Order No. 890, 118 FERC ¶ 61,119 at P 425 (explaining that the Commission promulgated Order No. 890 to remedy undue discrimination, in part, by providing customers with avenues to ensure that “the planning and expansion of transmission facilities [] meet the[ir] reasonable needs”)) (emphasis supplied by Rehearing Parties)).

⁸⁶ February 15 PJM Order, 162 FERC ¶ 61,129 at P 79 (citing Order No. 890, 118 FERC ¶ 61,119 at P 425) (emphasis supplied).

focused on how maintaining existing levels of service, “perpetuates the undue discrimination [that Order No. 890] sought to eradicate,”⁸⁷ i.e., discrimination in transmission access. Rehearing Parties thus have not shown that the Commission has violated its policy under Order No. 890 on this point.⁸⁸

42. The only specific allegation of discrimination that the Rehearing Parties provide is NCPA’s claim that one California PTO, PG&E, is discriminating against wholesale customers, such as NCPA, in favor of its own retail customers in performing facility repairs and in prioritizing planned facility upgrades.⁸⁹ The Commission found in the TMCR Order that NCPA had not provided evidentiary support for its allegation, and to the extent that NCPA was concerned about such discrimination, it could raise the matter in a separate FPA section 206 proceeding.⁹⁰ On rehearing, the Rehearing Parties do not seek to rebut the Commission’s finding that NCPA had not satisfied its evidentiary burden. Instead, the Rehearing Parties assert that the “potential” for such discrimination is “sufficient to justify” inclusion of asset management projects in an Order No. 890-compliant transmission planning process.⁹¹ But, as discussed already, because asset management projects do not necessarily involve expansion of the transmission grid, they do not ordinarily present the potential for the type of discrimination that the Order No. 890 transmission planning requirements are intended to address, i.e., discrimination in transmission access. For this reason, we also disagree with Rehearing Parties’ assertion that SoCal Edison’s TMCR process violates Order No. 890 “and will result in undue discrimination in [SoCal Edison’s] grid expansion efforts.”⁹² As the Commission noted in the TMCR Order, “there may . . . be instances in which a PTO’s asset management project or activity may result in an increase in transmission capacity that is not incidental,” and in such instances “the incremental portion of the asset management

⁸⁷ Rehearing Request at 30.

⁸⁸ *See id.* at 16.

⁸⁹ *Id.* at 32; TMCR Order, 164 FERC ¶ 61,160 at P 24; NCPA Reply Comments, Docket Nos. AD18-12-000 and EL17-45-000, at 7 (filed June 15, 2018).

⁹⁰ TMCR Order, 164 FERC ¶ 61,160 at P 38.

⁹¹ Rehearing Request at 32.

⁹² *Id.* at 31.

project or activity would be subject to the transmission planning requirements of Order No. 890.”⁹³

43. The Rehearing Parties’ remaining argument regarding Commission obligations under FPA sections 205 and 206 is that failure to include asset management projects in the Order No. 890 transmission planning process can lead to unjust and unreasonable rates. The Rehearing Parties discuss at some length the magnitude of SoCal Edison’s investment in asset management projects and assert that this investment will have a significant impact on rates.⁹⁴ They state that the Commission reads Order No. 890 “so narrowly that it eviscerates FERC’s fundamental obligation to ensure just and reasonable transmission rates.”⁹⁵ According to Rehearing Parties, the Commission’s reading of Order No. 890 “leads to the absurd result that Order [No.] 890’s protections to ensure just and reasonable rates are available only for expansion projects.”⁹⁶ There are two errors in this argument.

44. First, to the extent SoCal Edison’s investments in asset management projects are included in its wholesale transmission revenue requirement, those costs are subject to review by the Commission in the course of a SoCal Edison transmission rate proceeding under FPA section 205, with interested parties having an opportunity to intervene in such a proceeding and protest the recovery of costs. Entities may also challenge these investments under FPA section 206.⁹⁷ Second, while an Order No. 890-compliant

⁹³ TMCR Order, 164 FERC ¶ 61,160 at P 34.

⁹⁴ See Rehearing Request at 32-33; see also *id.* at 4, 11-12.

⁹⁵ *Id.* at 33.

⁹⁶ *Id.*

⁹⁷ *New England Power Co.*, Opinion No. 231, 31 FERC ¶ 61,047, at 61,084 (describing prudence standard), *reh’g denied*, Opinion No. 231-A, 32 FERC ¶ 61,112 (1985), *aff’d sub nom. Violet v. FERC*, 800 F.2d 280 (1st Cir. 1986); *Transcontinental Gas Pipe Line Corp.*, 59 FPC 1237, 1239 (1977) (finding that even prudent costs are not necessarily includable in rate base unless they are “prudent investments for utility property that are used and useful to provide service to customers”), *aff’d sub nom. Tennessee Gas Pipeline Co. v. FERC*, 606 F.2d 1094, 1123 (D.C. Cir. 1979), *cert. denied*, 445 U.S. 920 and 447 U.S. 922 (1980); *Pub. Serv. Co. of New Hampshire*, Opinion No. 37, 6 FERC ¶ 61,299 (1979) (disallowing certain fuel costs in the course of prudence review); *Minnesota Power & Light Co.*, Opinion No. 87, 11 FERC ¶ 61,313 (1980) (disallowing certain rate increases on the basis of imprudence).

transmission planning process should promote efficient and cost effective solutions in the expansion of the transmission grid, thus creating potential benefits for consumers, as discussed above it is not a ratemaking process. The Rehearing Parties' proposal to make consideration of the justness and reasonableness of SoCal Edison's expenditures on asset management projects part of the Order No. 890 transmission planning process is thus inconsistent with the nature and purpose of that process. Therefore, contrary to Rehearing Parties' assertion, the Commission's reading of Order No. 890 does not ensure that just and reasonable rates are available only for expansion projects.

3. The Role of EAct 2005

45. The Rehearing Parties attempt to infer support for their position from the Commission's invocation in Order No. 890 of sections 1223⁹⁸ and 1241⁹⁹ of EAct 2005. The Commission stated in Order No. 890 that "EAct 2005 recognized the importance of adequate transmission infrastructure development" and that "[t]he Congressional directives in EAct 2005 are intended to reverse the decline in transmission infrastructure investment" and "to encourage the deployment of advanced technologies."¹⁰⁰ The Commission found in Order No. 890 that the reforms adopted there "are *consistent* with the policies and priorities embodied in EAct 2005."¹⁰¹ The Rehearing Parties, on the other hand, argue that the sections of EAct 2005 in question mandate that asset management projects be included in the Order No. 890 transmission planning process. We disagree.

46. Section 1241 of EAct 2005, which has been codified in FPA section 219,¹⁰² addresses incentives for transmission infrastructure investment. While the Commission stated that its Order No. 890 reforms were "consistent with" the policy of promoting transmission investment embodied in section 1241 of EAct 2005,¹⁰³ the Order No. 890 reforms were not required by, or issued under, that section or any other provision of EAct 2005.¹⁰⁴ On the contrary, the Commission noted that section 219 required a

⁹⁸ Codified at 42 U.S.C. § 16422 (2012).

⁹⁹ Codified at 16 U.S.C. § 824s (2018).

¹⁰⁰ Order No. 890, 118 FERC ¶ 61,119 at P 22.

¹⁰¹ *Id.* P 79 (emphasis supplied).

¹⁰² *See supra* note 99.

¹⁰³ Order No. 890, 118 FERC ¶ 61,119 at P 79.

¹⁰⁴ The Commission stated that all of its Order No. 890 reforms were undertaken

separate rulemaking regarding transmission investment incentives, which the Commission had carried out in Order Nos. 679 and 679-A.¹⁰⁵ There is no basis to conclude that EAct 2005 section 1241 creates further Commission duties pertaining to transmission planning, and we thus are not persuaded by the Rehearing Parties' contention that the Commission's interpretation of the Order No. 890 transmission planning requirements in the TMCR Order is inconsistent with the Commission's "obligation to comply" with section 1241 of EAct 2005.¹⁰⁶

47. The Rehearing Parties likewise do not demonstrate that the Commission failed to carry out an obligation under section 1223 of EAct 2005 by excluding asset management projects from the Order No. 890 transmission planning process. Section 1223(b) specifies that "[i]n carrying out the Federal Power Act . . . , the Commission shall encourage, *as appropriate*, the deployment of advanced transmission technologies,"¹⁰⁷ as defined in section 1223(a). The Commission stated in Order No. 890 that "[a] more transparent and coordinated regional planning process will further . . . the Commission's responsibilities under EAct 2005 section 1223."¹⁰⁸ The Rehearing Parties conclude from this that "Order 890 necessarily intends that its reforms would facilitate deployment of 'advanced transmission technologies' for replacement of *existing transmission facilities*—regardless of whether they expand the grid or not."¹⁰⁹ There is no basis for this inference.

48. A statement that the Commission's proposed transmission planning reforms could further the goals of EAct 2005 section 1223 does not mean that section 1223 mandates that these reforms must cover matters unrelated to their overall purpose, such as asset management projects that do not expand the transmission grid. It means that in addition to promoting non-discriminatory transmission access, the Commission's proposed reforms also served to encourage deployment of advanced transmission technologies in projects that fall within the scope of the reforms. The Rehearing Parties turn the Commission's determination in Order No. 890 on its head and treat what the Commission

pursuant to its authority under FPA section 206 to remedy undue discrimination. *See id.* P 40.

¹⁰⁵ *Id.* (citing *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007)).

¹⁰⁶ Rehearing Request at 3.

¹⁰⁷ 42 U.S.C. § 16422 (b) (2012) (emphasis supplied).

¹⁰⁸ Order No. 890, 118 FERC ¶ 61,119 at P 425.

¹⁰⁹ Rehearing Request at 24 (emphasis in original).

described as an effect of the reforms—encouraging deployment of advanced transmission technologies—into a cause, i.e., into a requirement that forces the Commission to pursue ends that Order No. 890 did not contemplate.

49. Rehearing Parties’ argument is inconsistent with the statutory requirement in question because Section 1223 provides that the Commission’s duty to encourage deployment of advanced transmission technologies is a duty to encourage it “as appropriate.” Such judgments are essentially discretionary, and given the focus of the Order No. 890 transmission planning reforms on activities and projects that expand the transmission grid, there is no basis to conclude that because some projects that do not expand the grid may deploy advanced transmission technologies, those projects are necessarily included within the scope of the reforms. As a result, there also is no basis for the Rehearing Parties’ contention that by invoking section 1223 of EPCA 2005 in Order No. 890, the Commission “expressly contemplated” that its new transmission planning requirements include infrastructure improvements that do not expand the transmission grid.¹¹⁰

50. We also disagree with the Rehearing Parties’ contention that a finding that asset management projects do not fall within Order No. 890’s transmission planning requirements “*undermines* rather than encourages the policies and priorities embodied in EPCA 2005.”¹¹¹ According to the Rehearing Parties, this is because the finding leaves decisions on the replacement of existing facilities to transmission providers and precludes stakeholder input that could encourage pursuit of these policies and priorities.¹¹² But just as there is no evidence that PTOs are using asset management projects to discriminate against wholesale customers, there also is no evidence that not including those projects in the Order No. 890 transmission planning process has discouraged, and thus undermined, either investment that expands the transmission grid or the deployment of advanced technologies.

4. PJM’s Transmission Planning Process for Supplemental Projects

51. Finally, we disagree with the Rehearing Parties that the Commission’s TMCR Order is inconsistent with the February 15 PJM Order.¹¹³ The Rehearing Parties assert

¹¹⁰ *Id.* at 26.

¹¹¹ *Id.* at 25 (emphasis in original).

¹¹² *Id.* (quoting 16 U.S.C. § 824s(b)(3) and 42 U.S.C. § 16422).

¹¹³ *Id.* at 5.

that PJM Supplemental Projects are “in many cases . . . identical” to asset management projects,¹¹⁴ and that the Commission treated them in the February 15 PJM Order “exactly” as the Rehearing Parties maintain the Commission should treat asset management projects in this proceeding.¹¹⁵ This is incorrect. The February 15 PJM Order did not address, and did not make findings on, the question whether PJM’s Supplemental Projects must be included within PJM’s Order No. 890 transmission planning process.

52. As explained in the PJM Show Cause Order and the February 15 PJM Order, PJM had stated that to meet the specific service requests for certain transmission customers, and to treat all customers comparably, it had created the category of Supplemental Projects for transmission facilities developed under the local transmission owner planning processes. PJM also stated that this category of projects would be incorporated into the PJM planning process in a manner consistent with Order No. 890.¹¹⁶ Upon reviewing PJM’s subsequent compliance filing, the Commission directed PJM to provide the opportunity for stakeholders to review and comment on the criteria, assumptions, and models used in local transmission planning activities prior to finalization of the Local Plan, as well as on the Local Plan itself prior to it being submitted to the Subregional Regional Transmission Expansion Plan Committee.¹¹⁷ PJM complied with that directive, and the Commission approved its planning process on that basis. PJM subsequently reiterated that these procedures require that the regional and local transmission planning processes be fully integrated into PJM’s overall transmission planning process, and the Commission has relied on these statements in continuing to find that PJM’s local transmission planning processes satisfy the Order No. 890 transmission planning principles.¹¹⁸

53. The Commission found in the February 15 PJM Order that the PJM Transmission Owners were implementing the transmission planning process for Supplemental Projects in a manner that is inconsistent with Order No. 890’s transparency principle. Specifically, the Commission found that the PJM Transmission Owners were providing transmission planning information that was inadequate to allow stakeholders to replicate

¹¹⁴ *Id.* at 20.

¹¹⁵ *Id.* at 5.

¹¹⁶ PJM Show Cause Order, 156 FERC ¶ 61,134 at PP 5-6; February 15 PJM Order, 162 FERC ¶ 61,129 at P 7.

¹¹⁷ PJM Show Cause Order, 156 FERC ¶ 61,134 at P 7.

¹¹⁸ *Id.* P 8.

their planning studies, as Order No. 890 requires. In addition, the information was often provided too late in the transmission planning process for stakeholders to participate before the PJM Transmission Owners had taken significant steps toward developing Supplemental Projects. As a result, stakeholders were unable to use this information in the way that Order No. 890 required they be able to use it.¹¹⁹ The Commission required a number of revisions to the PJM Tariff to correct these problems.¹²⁰

54. The Commission did not address the question whether Supplemental Projects must be included in PJM's Order No. 890-compliant transmission planning process in either the PJM Show Cause Order or the February 15 PJM Order. Rather, those orders addressed the question whether Supplemental Projects were being treated in accordance with PJM's Order No. 890-compliant transmission planning process once PJM had elected to include them in that process. Thus the Commission stated in the TMCR Order, "[t]he question of whether asset management projects and activities that do not increase the capacity of the grid must go through an Order No. 890-compliant transmission planning process was not at issue in the February 15 PJM Order."¹²¹ PJM had elected to include these projects in the transmission planning process, and therefore whether any Supplemental Projects that do not increase the capacity of the grid must be included in the process was not relevant to the proceeding.

55. Moreover, even if some Supplemental Projects are similar to asset management projects as a factual matter, this does not imply that because Supplemental Projects are subject to PJM's Order No. 890-compliant transmission planning process, all similar projects and activities in other RTOs/ISOs that do not expand the transmission grid must pass through such a process. Like the requirements of the *pro forma* OATT itself, Order No. 890 requirements are minimum requirements.¹²² Commission approval under Order No. 890 of a transmission planning process that may cover projects and activities that Order No. 890 does not require be included in the process does not result in expanded standards that apply to all required transmission planning. As the Commission noted in the TMCR Order, "[w]hether or not other transmission planning regions are considering asset management projects and activities through their regional transmission planning

¹¹⁹ February 15 PJM Order, 162 FERC ¶ 61,129 at P 77.

¹²⁰ *Id.* PP 105-116.

¹²¹ TMCR Order, 164 FERC ¶ 61,160 at P 37.

¹²² *See, e.g.,* Order No. 890, 118 FERC ¶ 61,119 at P 418.

process does not, in and of itself, determine whether Order No. 890 requires them to do so.”¹²³

56. The Rehearing Parties base their argument that the February 15 PJM Order applies here on the assertion that “activities that do not increase the capacity of the grid are at the heart of the definition of Supplemental Projects.”¹²⁴ This is incorrect for two reasons.

57. First, what the Rehearing Parties refer to as the definition of Supplemental Projects is not a definition but rather a description of Supplemental Projects contained in a pleading that the PJM Transmission Owners submitted in the proceeding that led to the February 15 PJM Order.¹²⁵ This description does refer to activities that may not expand the transmission grid, such as “replacing equipment that has reached the end of its operational life” and “replacing failed equipment.”¹²⁶ However, even if these activities fall within the actual PJM Tariff definition of Supplemental Projects discussed below, that has no implications for this proceeding. As noted already, Supplemental Projects as a category are a product of PJM choice, not Commission mandate, and PJM’s inclusion of them within its Order No. 890-compliant transmission planning process does not, in and of itself, establish requirements that apply to other RTOs/ISOs.

58. Second, the actual definition of Supplemental Projects found in the PJM Tariff does not substantiate the Rehearing Parties’ assertion that activities that do not increase the capacity of the grid lie at the heart of the definition. The PJM Operating Agreement defines 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

¹²³ TMCR Order, 164 FERC ¶ 61,160 at P 37.

¹²⁴ Rehearing Request at 19-20.

¹²⁵ See *id.* at 20 (quoting PJM Transmission Owners’ Response to PJM Show Cause Order, Docket No. EL16-71-000, at 4 (filed Oct. 25, 2016) (PJM TOs Response) at 4).

¹²⁶ PJM TOs Response at 4.

and is not a state public policy project pursuant to Operating Agreement, Schedule 6, section 1.5.9(a)(ii).¹²⁷

59. This language shows that activities that expand the grid are an element of the definition of Supplemental Projects. In addition, this definition does not support the Rehearing Parties' claim that Supplemental Projects are "in many cases . . . identical" to asset management projects based on their definition.¹²⁸ The Rehearing Parties describe asset management projects as projects from certain Major Work Categories that "are generally planned replacements of assets that are then capitalized,"¹²⁹ thus emphasizing accounting treatment and its implications for rates.¹³⁰ In light of the specific criteria set forth in the definition of Supplemental Projects in the PJM Tariff, there is no basis to conclude that based on their definition, Supplemental Projects are in many cases identical to asset management projects, and this is the case regardless of whether one describes asset management projects as the Rehearing Parties do or as the Commission described them in the TMCR Order.¹³¹

The Commission orders:

The Rehearing Parties' request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹²⁷ PJM, Intra-PJM Tariffs, Operating Agreement, Definitions S-T (10.0.1) (emphasis supplied).

¹²⁸ Rehearing Request at 20.

¹²⁹ *Id.* at 2.

¹³⁰ *See id.* at 34-36 (discussing the percentage of California PTO capital investment consisting of asset management projects and its importance for rate purposes).

¹³¹ *See supra* note 15.