

168 FERC ¶ 61,171
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Public Utilities Commission, Northern
California Power Agency, City and County of San
Francisco, State Water Contractors, and Transmission
Agency of Northern California

Docket No. EL17-45-001

v.

Pacific Gas and Electric Company

ORDER DENYING REHEARING

(Issued September 19, 2019)

1. The California Public Utilities Commission, the Northern California Power Agency (NCPA), the City and County of San Francisco, the State Water Contractors, and the Transmission Agency of Northern California (collectively, Complainants) filed on October 1, 2018 a request for rehearing of the Commission's August 31, 2018 order denying the complaint (Complaint) filed in this proceeding against Pacific Gas and Electric Company (PG&E) on February 2, 2017.¹ The Complaint alleged that PG&E is

¹ *Cal. Pub. Utils. Comm'n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161 (2018) (Order on Complaint). Complainants also filed on October 1, 2018 a request for rehearing of the Commission's August 31, 2018 order accepting Southern California Edison's (SoCal Edison) tariff revisions filed on December 1, 2017 in Docket No. ER18-370-000. These revisions added an Appendix XI to SoCal Edison's tariff that creates a new annual Transmission Maintenance and Compliance Review process. The rehearing request in Docket No. ER18-370-002 advances substantively the same arguments that Complainants make in their rehearing request in this proceeding. The Commission is issuing concurrently with this order an order denying Complainants' request for rehearing in Docket No. ER18-370-002, *Southern California Edison Company*, 168 FERC ¶ 61,170.

in violation of its obligation under Order No. 890² to conduct an open, coordinated, and transparent transmission planning process because more than 80 percent of PG&E's transmission planning is done on an internal basis without opportunity for stakeholder input or review. In the Order on Complaint, the Commission found that the Complainants had not shown that PG&E's transmission owner tariff is unjust, unreasonable, unduly discriminatory, or unduly preferential because it does not require the asset management projects and activities in question to go through an Order No. 890-compliant transmission planning process.³ In this order, we deny rehearing.

I. Background

2. The Order on Complaint describes the history and requirements of Order Nos. 890 and 890-A as relevant here.⁴ The Order on Complaint also explains how each participating transmission owner's (PTO) local transmission planning is evaluated under the California Independent System Operator Corp.'s (CAISO) current transmission planning process (TPP).⁵

3. Complainants argued in their Complaint that PG&E is not complying with Order No. 890's transmission planning requirements because the majority of its capital transmission expenditures do not go through any CAISO or other public transmission planning process. Complainants stated that PG&E groups its capital transmission expenditures into programs or Major Work Categories based on the primary project driver: line capacity and substation capacity; electric substation management; transmission line management; system reliability and automation; work requested by others; environmental; information technology infrastructure and technology; and common capital expenditures. According to Complainants, PG&E submits only two of those Major Work Categories—those related to line and substation capacity and a portion of work requested by others dealing with Generator Interconnection Projects—to CAISO

² *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).

³ Order on Complaint, 164 FERC ¶ 61,161 at P 65.

⁴ *Id.* PP 2-5.

⁵ *Id.* PP 6-10.

for review, either through its TPP or its Generation Interconnection and Deliverability Allocation Procedures (GIDAP).⁶ Complainants stated that, among other things, PG&E provides no stakeholder process or external review before approving projects in the following Major Work Categories.⁷

Program	Description
Substation Management Projects	Projects to replace or upgrade substation equipment, including transformers, breakers, switches, ground grid, insulators, and bus structures.
Transmission Line Management Projects	Projects to replace deteriorating transmission line equipment and manage existing line assets, including projects to increase line ratings.
System Reliability and Automation Projects	Projects to implement substation infrastructure improvements, integrated protection and control systems, and automated applications that automatically process and act on system data.
Work Requested by Others	Projects in this Major Work Category that are not submitted to CAISO include state infrastructure projects. These projects provide new and expanded services and replace existing facilities. (Generator Interconnection processes in this Major Work Category go through the GIDAP.)
Information Technology-Infrastructure and Technology	Project planning, requirements identification, business process design, data enhancement, software and hardware purchase, installation, configuration, testing, and deployment.
Common Expenditures	Allocated and direct-assigned expenditures for the acquisition and installation of computers, tools, and office equipment.

4. Complainants asserted that these activities fall within the scope of the Order No. 890 transmission planning requirements. Complainants stated that PG&E capitalizes all the work in the Major Work Categories described above, which is then reflected in rates charged to its customers. Complainants maintained that all capitalized transmission work should go through an Order No. 890-compliant transmission planning process. According to Complainants, capital investment in a company's transmission system involves a significant amount of discretion, and it is the type of work that should go through a comprehensive transmission planning process.⁸ Complainants argued that

⁶ Complaint at 28.

⁷ *Id.* at 29-30.

⁸ *Id.* at 30-32.

because PG&E does not do this, it fails to comply with any of Order No. 890's transmission planning principles.⁹

5. Complainants also asserted that Commission precedent in other transmission planning regions requires local transmission planning be conducted in accordance with Order No. 890's transmission planning principles. Complainants stated that an Order to Show Cause¹⁰ regarding Supplemental Projects¹¹ in the PJM Interconnection, L.L.C. (PJM) footprint made clear that Supplemental Projects must go through an Order No. 890-compliant transmission planning process. According to Complainants, PJM's response to the PJM Show Cause Order clarified that Supplemental Projects include work similar to asset management projects.¹² Complainants also argued that the Commission subsequently found in the February 15 PJM Order¹³ that Supplemental Projects must go through an Order No. 890-compliant process and that the Commission should make the same determination in this proceeding.¹⁴

6. In response to issues raised in the Complaint, as well as in connection with SoCal Edison's tariff revisions filed in Docket No. ER18-370-000,¹⁵ the Commission directed its staff to hold a technical conference in new Docket No. AD18-12-000, as well as in

⁹ *Id.* at 27-61.

¹⁰ *Monongahela Power Co.*, 156 FERC ¶ 61,134 (PJM Show Cause Order), *reh'g dismissed*, 157 FERC ¶ 61,178 (2016).

¹¹ PJM 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 PJM, and is not a state public policy project pursuant to section 1.5.9(a)(ii) of Schedule 6 of the PJM Operating Agreement. *See* PJM, Intra-PJM Tariffs, Operating Agreement, Definitions S-T (10.0.1).

¹² Complaint at 39 (citing PJM Transmission Owners' Response to PJM Show Cause Order, Docket No. EL16-71-000, at 4 (filed Oct. 25, 2016) (PJM TOs Response)).

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

¹⁴ Order on Complaint, 164 FERC ¶ 61,161 at P 54.

¹⁵ *See supra* note 1.

Docket Nos. EL17-45-000 and ER18-370-000.¹⁶ 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.¹⁷

7. The Commission denied the Complaint in the Order on Complaint, finding that the Order No. 890 transmission planning reforms were intended to address concerns regarding undue discrimination in grid expansion, and to the extent that PG&E asset management projects do not expand the grid, they do not fall within the scope of those reforms.¹⁸ The Commission found that the transmission-related maintenance and compliance projects, which it referred to as “asset management projects,”¹⁹ at issue in this proceeding do not, as a general matter, expand the CAISO grid. Instead, asset management projects include maintenance, repair, and replacement work, as well as infrastructure security, system reliability, and automation projects that PG&E undertakes to maintain its existing electric transmission system and to meet regulatory compliance requirements.²⁰ 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 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.²¹

8. With regard to transmission planning practices in other RTOs/ISOs, 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,

¹⁶ Notice of Technical Conference in Docket Nos. AD18-12-000, EL17-45-000, and ER18-370-000 (Mar. 23, 2018).

¹⁷ Order on Complaint, 164 FERC ¶ 61,161 at P 44.

¹⁸ *Id.* P 66.

¹⁹ 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 46.

²⁰ *Id.* P 67.

²¹ *Id.* P 69.

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.²²

9. Finally, the Commission found that NCPA failed to provide evidentiary support for its claim that PG&E 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 206.²³ The Commission found allegations pertaining to PTOs other than PG&E to be beyond the scope of this proceeding.²⁴ The Commission also noted that while the projects and activities at issue in this proceeding are not subject to the transmission planning requirements of Order No. 890, Complainants, other stakeholders, and PG&E are all likely to benefit from increased transparency into asset management projects. The Commission strongly encouraged PG&E to continue its efforts to work with Complainants and other stakeholders to develop a process to share and review information with interested parties regarding asset management projects that are not considered through the TPP.²⁵

II. Rehearing Request

10. Complainants argue that the Commission erred in the Order on Complaint 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.²⁶ To support this argument, Complainants assert that the Commission made six specific errors in the Order on Complaint that justify a grant of rehearing. First, they maintain that the Commission erred in finding that the February 15 PJM Order does not apply here. According to Complainants, the Commission incorrectly found that

²² *Id.* P 72.

²³ *Id.* P 73.

²⁴ *Id.*

²⁵ *Id.* P 74.

²⁶ Rehearing Request at 16.

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.²⁷ Complainants 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.²⁸ According to Complainants, 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 transmission planning process, the Commission erred in finding in this proceeding that PG&E’s asset management projects are not likewise subject to that process.²⁹

11. Second, Complainants 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.³⁰ They argue that this finding is inconsistent with the requirement set forth in the Energy Policy Act of 2005³¹ (EPA 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.³² Complainants 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.”³³ According to Complainants, this reference to “all transmission facilities” means that the Order No. 890 transmission planning requirements

²⁷ *Id.* at 18 (citing Order on Complaint, 164 FERC ¶ 61,161 at P 72).

²⁸ *Id.* at 18-19.

²⁹ *Id.* at 14, 18-20.

³⁰ *Id.* at 14-15.

³¹ The Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

³² Rehearing Request at 22-24.

³³ *Id.* at 24-25 (quoting Order No. 890-A, 121 FERC ¶ 61,297 at P 354 (emphasis supplied by Complainants)).

apply to facilities that do not expand the transmission grid as well as those that do.³⁴ Finally, Complainants 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.”³⁵ According to Complainants, 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.³⁶

12. Third, Complainants 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. Complainants 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. Complainants argue that their situation represents an even starker problem because they have no opportunity to comment on asset management projects, whereas PJM stakeholders had some ability to comment on Supplemental Projects.³⁷

13. Fourth, Complainants argue that failure to require that asset management projects be subject to an Order No. 890-compliant transmission planning process results in undue discrimination. Complainants maintain that the Commission violated its duty to remedy undue discrimination by finding that there was no evidence that PG&E had engaged in undue discrimination in connection with asset management projects.³⁸

14. Fifth, Complainants 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. Complainants state that the

³⁴ *Id.* at 25.

³⁵ *Id.* at 26 (quoting Order No. 890, 118 FERC ¶ 61,119 at P 454).

³⁶ *Id.* at 26-27.

³⁷ *Id.* at 15, 28-29.

³⁸ *Id.* at 15, 30.

Commission has an obligation under FPA sections 205³⁹ and 206⁴⁰ 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. Complainants argue that as a result, the Order No. 890 transmission planning requirements must apply to asset management projects.⁴¹

15. Sixth, Complainants 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.⁴²

16. PG&E filed an answer to Complainants' rehearing request on October 16, 2018.

Discussion

A. Procedural Matters

17. 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 reject PG&E's answer to Complainants' rehearing request.

B. Substantive Matters

18. We deny rehearing and affirm the Order on Complaint's determination that Complainants have not met their burden of proof under FPA section 206. Specifically, Complainants have not shown that PG&E's asset management projects and activities fall within the scope of Order No. 890's transmission planning reforms or that failing to include these projects and activities within the Order No. 890 transmission planning reforms results in undue discrimination, violates EPAct 2005 requirements, or is inconsistent with Commission precedent.

1. Scope of Order No. 890 Planning Reforms

19. The Commission explained in the Order No. 890 rulemaking proceeding that the transmission planning requirements proposed and adopted there were intended to

³⁹ 16 U.S.C. § 824d (2012).

⁴⁰ 16 U.S.C. § 824e (2012).

⁴¹ Rehearing Request at 16, 31-32.

⁴² *Id.* at 4, 16.

promote the central policy goal of Order No. 888.⁴³ 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.⁴⁴

20. 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.⁴⁵ 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.⁴⁶

⁴³ *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-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, 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).

⁴⁴ *Preventing Undue Discrimination and Preference in Transmission Service*, Notice of Proposed Rulemaking, 71 FR 36,276 (Jun. 6, 2006), FERC Stats. & Regs. ¶ 32,603, at P 10 (2006) (cross-referenced at 115 FERC ¶ 61,338).

⁴⁵ *Id.* P 25.

⁴⁶ *Id.* PP 25, 52.

21. 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.⁴⁷

22. 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.”⁴⁸ 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.”⁴⁹

23. 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.”⁵⁰ The Commission concluded that it did “not believe

⁴⁷ *Id.* P 52 (emphasis supplied).

⁴⁸ *Id.* P 31 (emphasis supplied).

⁴⁹ *Id.* P 36.

⁵⁰ 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.”⁵¹

24. 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 Order on Complaint that “the transmission planning reforms that the Commission adopted in Order No. 890 were intended to address concerns regarding undue discrimination in grid expansion.”⁵²

25. Complainants 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,”⁵³ including investment in asset management projects, and not simply to activities that expand the transmission grid. Complainants maintain that a “full and fair reading” of Order No. 890 supports this conclusion,⁵⁴ 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.”⁵⁵ 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.”⁵⁶ 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 Complainants rely does not support their general theory that the

⁵¹ *Id.* (emphasis supplied).

⁵² Order on Complaint, 164 FERC ¶ 61,161 at P 66.

⁵³ Rehearing Request at 1-2 (emphasis in original), 16.

⁵⁴ *Id.* at 1.

⁵⁵ *Id.* at 27 (quoting Order No. 890, 118 FERC ¶ 61,119 at P 422).

⁵⁶ Order No. 890, 118 FERC ¶ 61,119 at P 422.

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.

26. Complainants 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.”⁵⁷ According to Complainants, 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.”⁵⁸ 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.⁵⁹ 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.

27. In addition, Complainants 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.”⁶⁰ According to Complainants, this reference to “all transmission facilities” means that the Order No. 890 transmission planning requirements apply to PG&E’s asset management projects.⁶¹

⁵⁷ Rehearing Request at 28 (quoting Eric Hirst, U.S. Transmission Capacity: Present Status and Future Prospects at v (Aug. 2004) (U.S. Transmission Capacity)).

⁵⁸ *Id.*

⁵⁹ Order No. 890, 118 FERC ¶ 61,119 at P 58 (citing U.S. Transmission Capacity at v).

⁶⁰ Rehearing Request at 24-25 (quoting Order No. 890-A, 121 FERC ¶ 61,297 (emphasis supplied by Complainants)).

⁶¹ *Id.* at 25.

28. Complainants 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.⁶² 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.⁶³ 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.”⁶⁴

29. 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

⁶² 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.

⁶³ *Id.* P 729.

⁶⁴ *Id.* P 735.

integrated into the operations of the transmission provider's facilities.⁶⁵ 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."⁶⁶ 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."⁶⁷ This statement immediately follows the statement mentioning joint planning of "all transmission facilities" on which Complainants rely.⁶⁸ 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. 890.⁶⁹ 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 PG&E's asset management projects.

30. Contextualizing the statement on which Complainants rely is important because Complainants 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."⁷⁰ Complainants 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 Order on Complaint explain the need for, and thus the purpose and scope of, the Commission's transmission planning reforms,⁷¹ as well as the inability of the existing

⁶⁵ *Id.* P 753.

⁶⁶ *Id.* P 754.

⁶⁷ Order No. 890-A, 121 FERC ¶ 61,297 at P 354.

⁶⁸ *Id.*

⁶⁹ *See, e.g.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,647-49; Order No. 890, 118 FERC ¶ 61,119 at PP 84, 494-495.

⁷⁰ Rehearing Request at 17 (quoting Order on Complaint, 164 FERC ¶ 61,161 at P 66 (citing Order No. 890, 118 FERC ¶ 61,119 at PP 57-58, 421-422) (emphasis in original)).

⁷¹ Order No. 890, 118 FERC ¶ 61,119 at PP 57-58.

pro forma OATT to support the goal of non-discriminatory grid expansion.⁷² On the other hand, we find no basis to conclude that the statements on which Complainants 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 Order on Complaint, the Commission appropriately relied on Order No. 890's most relevant statements of purpose and scope.

31. Complainants' remaining arguments pertaining to Order No. 890 rest on erroneous inferences, and are likewise unpersuasive. While Complainants 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."⁷³ Complainants maintain that planning for customer needs "may or may not include grid expansion," and Order No. 890 did not change this planning obligation.⁷⁴ Complainants' reading of this transmission planning requirement is not sustainable when the tariff provision in question is read in context.

32. The tariff language that Complainants 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.⁷⁵

33. 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 transmission provider needs. When discussing this requirement in Order No. 890, the

⁷² *Id.* PP 422-423.

⁷³ Rehearing Request at 26 (quoting Order No. 890, 118 FERC ¶ 61,119 at P 424).

⁷⁴ *Id.*

⁷⁵ *Pro Forma* OATT, pt. III, § 28.2 Transmission Provider Responsibilities (appended to Order No. 888, FERC Stats. & Regs. ¶ 31,036 at app. D); *see also* Order No. 890, 118 FERC ¶ 61,119 at P 418.

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.”⁷⁶ 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.

34. Complainants acknowledge that this planning requirement was intended to counteract “the economic self-interest of transmission monopolists,”⁷⁷ but their focus is not on planning that facilitates non-discriminatory transmission access for customers but rather on what Complainants 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.”⁷⁸ 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.”⁷⁹

35. 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.”⁸⁰ Complainants’ 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 encompassed by the requirement set forth in section 28.2 of the *pro forma* OATT that transmission providers plan for network customer needs.

⁷⁶ Order No. 890, 118 FERC ¶ 61,119 at P 422 (emphasis supplied).

⁷⁷ Rehearing Request at 26 (quoting Order No. 890, 118 FERC ¶ 61,119 at P 423 (quoting Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,682)).

⁷⁸ *Id.* at 31; *see also id.* at 4, 11-12, 32-33.

⁷⁹ Order No. 890, 118 FERC ¶ 61,119 at P 453.

⁸⁰ *Id.* P 438.

2. Undue Discrimination and Just and Reasonable Rates

36. Complainants maintain that the Commission reads Order No. 890 so narrowly that it “eviscerates” the Commission’s obligations under sections 205 and 206 of the FPA⁸¹ to ensure that all Commission rules are just and reasonable and not unduly discriminatory or preferential and “to ensure just and reasonable transmission rates.”⁸² According to Complainants, 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.”⁸³ However, as the Commission noted in the Order on Complaint, there is no evidence that “PTOs in general—and PG&E in particular—are using asset management projects and activities to discriminate against wholesale customers.”⁸⁴ Moreover, even if there is a potential for abuse of the type that Complainants allege, there is no basis to conclude that the specific measures they seek are the only way to address the issue. In fact, the Commission strongly encouraged PG&E to work with Complainants and other stakeholders to develop a process to share and review information with interested parties regarding asset management projects and activities that are not considered through the TPP. The Commission also noted that it had approved in Docket No. ER18-370-000 a proposal by Southern California Edison Company intended to serve this purpose.⁸⁵

37. We are not persuaded by Complainants’ 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 Complainants had not demonstrated the existence of discrimination here. Complainants state that the 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,”⁸⁶ and the Commission’s finding that discrimination had not been shown violates this obligation. We disagree for two reasons.

⁸¹ 16 U.S.C. §§ 824d, 824e (2012).

⁸² Rehearing Request at 31.

⁸³ *Id.* at 32.

⁸⁴ Order on Complaint, 164 FERC ¶ 61,161 at P 73.

⁸⁵ *Id.* P 74.

⁸⁶ Rehearing Request at 28.

38. First, Complainants bear the burden of proof in this FPA section 206 proceeding,⁸⁷ but they have only expressed a belief that undue discrimination is occurring and assert that “a planning process needs to be in place so that customers can determine whether undue discrimination is occurring and then address it.”⁸⁸ This claim effectively concedes that the Commission correctly found that undue discrimination has not been shown, and this concession negates their claim that the Commission failed to consider undue discrimination in this proceeding.

39. Second, while Complainants 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,”⁸⁹ they misstate the type of undue discrimination targeted by Order No. 890. Complainants’ 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.*”⁹⁰ They assert that the limits on stakeholder advocacy in the planning for PG&E’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.*”⁹¹ 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.

40. 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

⁸⁷ 16 U.S.C. § 824e(b); *see also, e.g., FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 353 (D.C. Cir. 2014); *Md. Pub. Serv. Comm’n v. FERC*, 632 F.3d 1283, 1285 n.1 (D.C. Cir. 2011).

⁸⁸ Rehearing Request at 30.

⁸⁹ *Id.* at 28.

⁹⁰ *Id.* at 29 (emphasis in original).

⁹¹ *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 Complainants)).

and *expansion* of transmission facilities to meet the[ir] reasonable needs.”⁹² 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. Complainants do not explain how not including in the Order No. 890 transmission planning process activities that are focused on maintaining existing levels of service, “perpetuates the undue discrimination [that Order No. 890] sought to eradicate,”⁹³ i.e., discrimination in transmission access. Complainants have thus not shown that the Commission has violated its policy under Order No. 890 on this point.⁹⁴

41. The only specific allegation of discrimination that Complainants provide is NCPA’s claim that 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.⁹⁵ The Commission found in the Order on Complaint 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.⁹⁶ On rehearing, Complainants do not seek to rebut the Commission’s finding that NCPA had not satisfied its evidentiary burden. Instead, Complainants 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.⁹⁷ 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. Moreover, Complainants’ argument misstates the applicable statutory standard. To grant a complaint of undue discrimination, FPA section 206 requires that the Commission find

⁹² February 15 PJM Order, 162 FERC ¶ 61,129 at P 79 (citing Order No. 890, 118 FERC ¶ 61,119 at P 425) (emphasis supplied).

⁹³ Rehearing Request at 28.

⁹⁴ *See id.* at 15.

⁹⁵ *Id.* at 30; Order on Complaint, 164 FERC ¶ 61,161 at P 56; NCPA Reply Comments, Docket Nos. AD18-12-000 and EL17-45-000, at 7 (filed June 15, 2018).

⁹⁶ Order on Complaint, 164 FERC ¶ 61,161 at P 73.

⁹⁷ Rehearing Request at 30.

that a “rule, regulation, practice, or practice affecting [a jurisdictional] rate *is* . . . unduly discriminatory or preferential. . . .”⁹⁸

42. Complainants also have not explained why their concern about potential discrimination cannot be addressed through the process of information sharing and review that the Commission has encouraged PG&E to develop. Nor do Complainants explain why a complaint under FPA section 206 cannot address any actual discrimination. We thus do not agree with Complainants’ contention that “in finding that NCPA had not demonstrated [the] undue discrimination” it had alleged, the Commission also found “that it was not worth worrying about” because it did not require that the issue be addressed in an Order No. 890 transmission planning process.⁹⁹ The Commission explicitly acknowledged the importance of the transparency that Complainants seek regarding such matters, and it addressed means of achieving that transparency in the Order on Complaint.¹⁰⁰

43. Complainants’ 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. Complainants discuss at some length the magnitude of PG&E’s investment in asset management projects and assert that this investment will have a significant impact on rates.¹⁰¹ Complainants state that PG&E is making these investments without “third-party review,”¹⁰² and this absence of third-party review “eviscerates FERC’s fundamental obligation to ensure just and reasonable transmission rates.”¹⁰³ There are two errors in this argument.

⁹⁸ 16 U.S.C. § 824e(a) (2012) (emphasis supplied). *See Emera Maine v. FERC*, 854 F.3d 9, 24 (D.C. Cir. 2017) (“The FPA, by requiring FERC to show that an existing rate is unlawful before ordering a new rate under section 206, provides a form of “statutory protection” to a utility.”) (quoting *City of Winnfield v. FERC*, 744 F.2d 871, 875 (D.C. Cir. 1984)).

⁹⁹ *Id.*

¹⁰⁰ Order on Complaint, 164 FERC ¶ 61,161 at P 74.

¹⁰¹ *See* Rehearing Request at 3-4, 9, 11-12, 32-34.

¹⁰² *Id.* at 9; *see also id.* at 3, 31.

¹⁰³ *Id.* at 31.

44. First, to the extent PG&E'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 PG&E 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 206.¹⁰⁴ Second, while an Order No. 890-compliant transmission planning process should promote efficient and cost effective solutions in the expansion of the transmission grid, thus creating potential benefits for consumers, it is not a ratemaking process. As discussed above, the Commission has found that compensation for transmission investment, and thus the justness and reasonableness of that compensation through rates, is not included within the Order No. 890 transmission planning process. Complainants' proposal to make consideration of the justness and reasonableness of PG&E's expenditures part of the Order No. 890 transmission planning process is thus inconsistent with the nature and purpose of that process. Therefore, contrary to Complainants' 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. Complainants attempt to infer support for their position from the Commission's invocation in Order No. 890 of sections 1223¹⁰⁵ and 1241¹⁰⁶ 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

¹⁰⁴ *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).

¹⁰⁵ Codified at 42 U.S.C. § 16422 (2012).

¹⁰⁶ Codified at 16 U.S.C. § 824s (2012).

investment” and “to encourage the deployment of advanced technologies.”¹⁰⁷ The Commission found in Order No. 890 that the reforms adopted there “are *consistent* with the policies and priorities embodied in EAct 2005.”¹⁰⁸ Complainants, 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 219,¹⁰⁹ 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 2005,¹¹⁰ the Order No. 890 reforms were not required by, or issued under, that section or any other provision of EAct 2005.¹¹¹ On the contrary, the Commission noted that section 219 required a separate rulemaking regarding transmission investment incentives, which the Commission had carried out in Order Nos. 679 and 679-A.¹¹² 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 Complainants’ contention that the Commission’s interpretation of the Order No. 890 transmission planning requirements in the Order on Complaint is inconsistent with the Commission’s “obligation to comply” with section 1241 of EAct 2005.¹¹³

47. Complainants 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

¹⁰⁷ Order No. 890, 118 FERC ¶ 61,119 at P 22.

¹⁰⁸ *Id.* P 79 (emphasis supplied).

¹⁰⁹ *See supra* note 106.

¹¹⁰ Order No. 890, 118 FERC ¶ 61,119 at P 79.

¹¹¹ The Commission stated that all of its Order No. 890 reforms were undertaken pursuant to its authority under FPA section 206 to remedy undue discrimination. *See id.* P 40.

¹¹² *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)).

¹¹³ Rehearing Request at 3.

appropriate, the deployment of advanced transmission technologies,”¹¹⁴ 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.”¹¹⁵ Complainants 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.”¹¹⁶ 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. Complainants turn the Commission’s determination in Order No. 890 on its head and treat what the Commission 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. Complainants’ 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 Complainants’ contention that by invoking section 1223 of EAct 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.¹¹⁷

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

¹¹⁵ Order No. 890, 118 FERC ¶ 61,119 at P 425.

¹¹⁶ Rehearing Request at 23 (emphasis in original).

¹¹⁷ *Id.* at 24.

50. We also disagree with Complainants' 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 EPAct 2005."¹¹⁸ According to Complainants, 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.¹¹⁹ 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. We disagree with Complainants that the Commission's Order on Complaint is inconsistent with the February 15 PJM Order.¹²⁰ Complainants assert that PJM Supplemental Projects are "in many cases . . . identical" to asset management projects,¹²¹ and that the Commission treated them in the February 15 PJM Order "exactly" as Complainants maintain the Commission should treat asset management projects in this proceeding.¹²² 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

¹¹⁸ *Id.* (emphasis in original).

¹¹⁹ *Id.* at 23 (quoting 16 U.S.C. § 824s(b)(3) and 42 U.S.C. § 16422).

¹²⁰ *Id.* at 5.

¹²¹ *Id.* at 19.

¹²² *Id.* at 5.

PJM planning process in a manner consistent with Order No. 890.¹²³ 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.¹²⁴ 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.¹²⁵

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 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.¹²⁶ The Commission required a number of revisions to the PJM Tariff to correct these problems.¹²⁷

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 Order on

¹²³ PJM Show Cause Order, 156 FERC ¶ 61,134 at PP 5-6; February 15 PJM Order, 162 FERC ¶ 61,129 at P 7.

¹²⁴ PJM Show Cause Order, 156 FERC ¶ 61,134 at P 7.

¹²⁵ *Id.* P 8.

¹²⁶ February 15 PJM Order, 162 FERC ¶ 61,129 at P 77.

¹²⁷ *Id.* PP 105-116.

Complaint, “[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.”¹²⁸ 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.¹²⁹ 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 Order on Complaint, “[w]hether or not other transmission planning regions are considering asset management projects and activities through their regional transmission planning process does not, in and of itself, determine whether Order No. 890 requires them to do so.”¹³⁰

56. Complainants 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.”¹³¹ This is incorrect for two reasons.

57. First, what Complainants 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.¹³² 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.”¹³³ However, even if these

¹²⁸ Order on Complaint, 164 FERC ¶ 61,161 at P 72.

¹²⁹ See, e.g., Order No. 890, 118 FERC ¶ 61,119 at P 418.

¹³⁰ Order on Complaint, 164 FERC ¶ 61,161 at P 72.

¹³¹ Rehearing Request at 19.

¹³² See *id.* (quoting PJM TOs Response at 4).

¹³³ PJM TOs Response at 4.

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 Complainants' assertion that activities that do not increase the capacity of the grid lie at the heart of the definition. As the Commission noted in the Order on Complaint,

PJM 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 PJM, and is not a state public policy project pursuant to section 1.5.9(a)(ii) of Schedule 6 of the PJM Operating Agreement.¹³⁴

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 Complainants' claim that Supplemental Projects are "in many cases . . . identical" to asset management projects based on their definition.¹³⁵ Complainants describe asset management projects as projects from certain Major Work Categories that "are generally planned *replacements* of assets that are then capitalized,"¹³⁶ thus emphasizing accounting treatment and its implications for rates.¹³⁷ 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

¹³⁴ Order on Complaint, 164 FERC ¶ 61,161 at n.38 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Definitions S-T (10.0.1)) (emphasis supplied).

¹³⁵ Rehearing Request at 19.

¹³⁶ *Id.* at 2 (emphasis by Complainants).

¹³⁷ *See id.* at 9 (noting that capitalized projects are included in PG&E's transmission rate base rather than being classified and expensed as operations and maintenance work).

management projects as Complainants do or as the Commission described them in the Order on Complaint.¹³⁸

The Commission orders:

Complainants' 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.

¹³⁸ *See supra* note 19.