

162 FERC ¶ 61,129
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

Monongahela Power Company
Potomac Edison Company
West Penn Power Company
AEP Indiana Michigan Transmission Company, Inc.
AEP Kentucky Transmission Company, Inc.
AEP Ohio Transmission Company, Inc.
AEP West Virginia Transmission Company, Inc.
Appalachian Power Company
Indiana Michigan Power Company
Kentucky Power Company
Kingsport Power Company
Ohio Power Company
Wheeling Power Company
Commonwealth Edison Company
Commonwealth Edison Company of Indiana, Inc.
Dayton Power and Light Company
Virginia Electric and Power Company
Public Service Electric and Gas Company
PECO Energy Company
PPL Electric Utilities Corporation
Baltimore Gas and Electric Company
Jersey Central Power & Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Potomac Electric Power Company
Atlantic City Electric Company
Delmarva Power & Light Company
UGI Utilities Inc.
Allegheny Electric Cooperative, Inc.
CED Rock Springs, LLC
Old Dominion Electric Cooperative
Rockland Electric Company
Duquesne Light Company
Neptune Regional Transmission System, LLC

Docket Nos. EL16-71-000
ER17-179-000

Trans-Allegheny Interstate Line Company
 Linden VFT, LLC
 American Transmission Systems, Incorporated
 City of Cleveland, Department of Public Utilities,
 Division of Cleveland Public Power
 Duke Energy Ohio, Inc.
 Duke Energy Kentucky, Inc.
 City of Hamilton, Ohio
 Hudson Transmission Partners, LLC
 East Kentucky Power Cooperative, Inc.
 City of Rochelle
 ITC Interconnection LLC
 PJM Interconnection, L.L.C.

ORDER ACCEPTING IN PART PROPOSED TARIFF REVISIONS AND
 REQUIRING TARIFF REVISIONS PURSUANT TO SECTION 206

(Issued February 15, 2018)

TABLE OF CONTENTS

	Paragraph Numbers
I. Background	5.
II. Show Cause Order	10.
A. Show Cause Order	14.
B. Attachment M-3 Filing	18.
III. Filings and Pleadings.....	22.
A. Show Cause Order Initial Responses	22.
1. The PJM Transmission Owners’ Response to the Show Cause Order.....	22.
2. Responses Seeking Exclusion from the Show Cause Order	26.
3. Other Responses to the Show Cause Order.....	28.
B. Answers and Further Comments Regarding the Local Transmission Planning Process and the Show Cause Order.....	32.
1. Answers to the PJM Transmission Owners’ Response to the Show Cause Order	33.
2. Comments Regarding the PJM Transmission Owners’ Provision of Models, Criteria, and Assumptions	35.
3. Comments Regarding the Lack of a Clear Transmission Planning Process or Schedule.....	38.
4. Comments Regarding the Need for Supplemental Projects	41.
5. Answers to Old Dominion’s and American Municipal Power’s Responses to the Show Cause Order	43.

6. Answers to the PJM Transmission Owners’ Answers	48.
7. The PJM Transmission Owners’ December Answers	50.
8. Motion to Lodge	52.
C. Docket No. ER17-179-000 – Attachment M-3 to PJM OATT	53.
1. The PJM Transmission Owners’ Section 205 Filing	54.
2. American Municipal Power’s Motion to Dismiss	56.
3. Comments on the Substance of Attachment M-3	58.
4. Linden Answer	62.
5. The PJM Transmission Owners’ Answers	63.
D. Procedural Matters	66.
E. Substantive Matters	70.
1. The PJM Transmission Owners’ Implementation of the PJM Operating Agreement and PJM OATT Is Unjust and Unreasonable	72.
2. The PJM Transmission Owners’ Section 205 Filing	92.
3. Setting the Just and Reasonable Rate	105.
F. Other Filings	118.
IV. Refunds and Compliance Filing	120.

1. On August 26, 2016, the Commission issued an order establishing a proceeding under section 206 of the Federal Power Act (FPA)¹ and Rule 209(a) of the Commission’s Rules of Practice and Procedures² to determine whether the PJM Interconnection, L.L.C. (PJM) Transmission Owners and PJM are complying with their obligations under Order No. 890.³ The Commission directed the PJM Transmission Owners to: (1) propose revisions to the PJM Operating Agreement to comply with Order No. 890; or (2) propose revisions to their portions of the PJM Open Access Transmission Tariff (OATT) or their individual Open Access Transmission Tariffs to comply with Order No. 890; or (3) show cause why they should not be required to do so.⁴ On September 26, 2016, several of the

¹ 16 U.S.C. § 824e (2012).

² 18 C.F.R. § 385.209(a) (2017).

³ *Monongahela Power Co.*, 156 FERC ¶ 61,134 (2016) (Show Cause Order); *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (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).

⁴ Show Cause Order, 156 FERC ¶ 61,134 at P 15.

PJM Transmission Owners filed a request for rehearing of the Show Cause Order. The Commission denied the rehearing request on December 2, 2016.⁵

2. On October 25, 2016, the PJM Transmission Owners filed a response to the Show Cause Order stating that no revisions are necessary to ensure their compliance with Order No. 890 because the PJM Operating Agreement already complies with the Order No. 890 requirements addressed in the Show Cause Order.

3. Also on October 25, 2016, in Docket No. ER17-179-000, the PJM Transmission Owners and PJM jointly filed, pursuant to section 205 of the FPA,⁶ an amendment to the PJM OATT (Attachment M-3) and a revision to Schedule 6 of the PJM Operating Agreement. The PJM Transmission Owners and PJM state that their filing in Docket No. ER17-179-000 (Attachment M-3 Filing) is made in conjunction with their response to the Show Cause Order. The PJM Transmission Owners and PJM state that the proposed modifications provide additional detail regarding the process for planning certain locally planned transmission facilities.

4. In this order, we find that the PJM Transmission Owners are implementing the PJM Operating Agreement in a manner that is inconsistent with the requirements of Order No. 890 and, therefore, that the PJM Operating Agreement and the PJM OATT is not just and reasonable and is unduly discriminatory and preferential. In addition, we conclude that, the PJM Transmission Owners have not fully met their burden under FPA section 205 to demonstrate that the modifications that they propose, jointly with PJM, in the Attachment M-3 Filing are just and reasonable and not unduly discriminatory or preferential. Accordingly, we accept in part the PJM Transmission Owners' section 205 filing and, pursuant to our section 206 authority, require revisions to both the PJM Operating Agreement and Attachment M-3 to the PJM OATT.

I. Background

5. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a basis that is just, reasonable, and not unduly discriminatory or preferential. Among other things, the Commission in Order No. 890 directed all transmission providers to develop a transmission planning process that satisfied nine transmission planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects.

⁵ *Monongahela Power Co.*, 157 FERC ¶ 61,178 (2016).

⁶ 16 U.S.C. § 824d (2012).

The Commission explained that, collectively, these principles would reduce “opportunities for undue discrimination in transmission planning” by requiring transmission providers to facilitate the timely and meaningful input and participation of stakeholders in the development of transmission plans.⁷ The Commission further explained that doing so would help to avoid “after-the-fact” litigation by stakeholders regarding “transmission plans that were developed in the first instance without their input.”⁸ We discuss the requirements of certain of the aforementioned principles below when evaluating the PJM Transmission Owners’ response to the Show Cause Order.

6. The Commission also determined that the transmission-owning members of a regional transmission organization (RTO) or independent system operator (ISO) must participate in the transmission planning process and that the process must be open to transmission customers and other stakeholders. Although the Commission left it to the RTOs and ISOs to determine how to satisfy Order No. 890’s requirements, the Commission observed that an RTO or ISO would not comply with Order No. 890 unless the RTO or ISO required its transmission owners within its footprint to engage in a transmission planning process that complied with the requirements of Order No. 890.⁹ In its initial Order No. 890 compliance filing, PJM stated that, with respect to transmission owners that do not have their own OATTs on file and who have turned over to PJM operational control of their transmission facilities, PJM’s transmission planning procedures satisfied the directives of Order No. 890.¹⁰ PJM stated that its members rely on PJM to plan for the enhancement and expansion of transmission facilities through the Regional Transmission Expansion Planning (RTEP) process.¹¹

⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 425.

⁸ *Id.* PP 425, 454.

⁹ *Id.* P 440.

¹⁰ *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163, at P 122 (2008) (citing PJM December 7, 2007 filing in Docket No. OA08-32-000, at 34).

¹¹ *Id.* P 13. As described in Schedule 6 of the PJM Operating Agreement, the PJM RTEP process consists of baseline reliability reviews and analysis to identify the transmission needs associated with generation interconnection and merchant transmission interconnection and assures coordination of expansion plans across multiple transmission

owners’ systems, permitting the identification of the most effective and efficient expansion plan for the region.

7. In order to meet the specific service requests for certain transmission customers, and treat all customers comparably, PJM stated that it created a new category (Supplemental Projects¹²) for transmission facilities developed under the local transmission owner planning processes. PJM stated that the PJM Transmission Owners are obligated to comply with Order No. 890 in their transmission planning.¹³ PJM explained that the Supplemental Project category would be incorporated into the PJM planning process in a manner consistent with Order No. 890.¹⁴

8. 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,¹⁵ as well as on the Local Plan itself prior to it being submitted to the Subregional Regional Transmission Expansion Plan (RTEP) Committee.¹⁶ PJM complied with that directive by revising sections 1.3(d) and (f) in

¹² A Supplemental Project is defined 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).

¹³ *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163 at P 138.

¹⁴ *Id.* PP 138-139.

¹⁵ The Local Plan shall include Supplemental Projects as identified by the Transmission Owners within their zone and Subregional RTEP projects developed to comply with all applicable reliability criteria, including transmission owners' planning criteria or based on market efficiency analysis and in consideration of Public Policy Requirements. PJM, Intra-PJM Tariffs, Operating Agreement, Definitions I-L (10.0.0)

¹⁶ *PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,166, at P 28 (2009). As defined in section 1.3 of Schedule 6 of the PJM Operating Agreement, the Subregional RTEP Committee reviews and provides input on subregional RTEP projects and provides recommendations to the Transmission Expansion Advisory Committee concerning subregional RTEP projects. The Subregional RTEP Committee is open to participation by (i) all Transmission Customers, as that term is defined in the PJM Tariff, and applicants for transmission service; (ii) any other entity proposing to provide Transmission Facilities to be integrated into the PJM Region; (iii) all Members; (iv) the electric utility regulatory agencies within the States in the PJM Region, the Independent State Agencies Committee, and the State Consumer Advocates and (v) any other interested entities or persons.

Schedule 6 of the PJM Operating Agreement to include: (1) an opportunity for stakeholders through the Subregional RTEP Committee to review and comment on the transmission owner's criteria, assumptions, and models prior to finalizing the Local Plan; (2) a provision for the scheduling of Subregional RTEP Committee meetings to accommodate such reviews; and (3) a statement that any unresolved stakeholder issues stemming from the local transmission planning process will be addressed in the Subregional RTEP Committee.¹⁷ In addition, PJM amended subsections 1.5.4(a) and (g) of Schedule 6 of the PJM Operating Agreement to require that transmission owners provide their criteria and assumptions, including the models used in their Local Plan.¹⁸ PJM has since reiterated that these procedures require that the regional and local transmission planning processes be fully integrated into PJM's overall transmission planning process, and has clarified that the Local Plan is a product of the Subregional RTEP Committees rather than of the transmission owners alone.¹⁹

9. On November 12, 2015, Commission staff held a technical conference²⁰ to examine PJM's application of its transmission planning process to Supplemental Projects. Commission staff invited representatives of PJM and the PJM Transmission Owners to speak at the conference and all interested persons to submit post-technical conference comments. Discussions at the technical conference and the post-technical conference comments raised concerns about whether the PJM Transmission Owners are implementing their local transmission planning processes in a manner that is consistent with the PJM Operating Agreement and the requirements of Order No. 890.

II. Show Cause Order

10. On August 26, 2016, in Docket No. EL16-71-000, the Commission issued the Show Cause Order. The Commission stated that based on the comments received at the technical conference, it appeared that some PJM Transmission Owners are conducting significant local transmission planning activities *before* the need for a Supplemental Project is brought to PJM for discussion in the stakeholder process. In addition, the Commission was concerned that certain of the PJM Transmission Owners appear to

¹⁷ *PJM Interconnection, L.L.C.*, 130 FERC ¶ 61,167, at P 12 (2010).

¹⁸ *PJM Interconnection, L.L.C.*, 130 FERC ¶ 61,167 at P 11.

¹⁹ *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,038, at P 34 (2015); *see also PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,166 at P 22; PJM, Intra-PJM Tariffs, Operating Agreement, Definitions I-L (10.0.0).

²⁰ *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,197 (2015) (order accepting and suspending tariff revisions and establishing technical conference).

be identifying—and even taking steps toward developing—Supplemental Projects before providing “stakeholders . . . the opportunity to participate meaningfully in the transmission planning process.”²¹ Similarly, the Commission was concerned that not all stakeholders are receiving an opportunity to review and comment on the criteria, assumptions, and models that the PJM Transmission Owners use to identify the need for and to develop Supplemental Projects.²²

11. The Commission stated in the Show Cause Order that these actions appeared to be inconsistent with the representations made to the Commission in the PJM Transmission Owners’ Order No. 890 compliance filings. Furthermore, given that the reforms of Order No. 1000²³ were built on the foundation laid by Order No. 890 and that the PJM RTEP process necessarily relies, in part, on information from the PJM Transmission Owners’ local transmission planning activities, the Commission was also concerned that a lack of transparency in the PJM Transmission Owners’ local transmission planning processes for developing Supplemental Projects could undermine PJM’s implementation of Order No. 1000’s reforms.²⁴

12. Therefore, pursuant to section 206 of the FPA, the Commission established a proceeding in the Show Cause Order to determine whether the PJM Transmission Owners are complying with their obligations under Order No. 890. The Commission required that, within 60 days of the date of the Show Cause Order, the PJM Transmission Owners (1) propose revisions to the PJM Operating Agreement to comply with Order No. 890, (2) revise their portions of the PJM OATT or revise their individual OATTs

²¹ Show Cause Order, 156 FERC ¶ 61,134 at P 14.

²² *Id.* P 13.

²³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

²⁴ Show Cause Order, 156 FERC ¶ 61,134 at P 13.

to comply with Order No. 890,²⁵ or (3) show cause why they should not be required to do so.²⁶

13. In the Show Cause Order, the Commission also explained the rationale for providing different options for how the PJM Transmission Owners could respond. The Commission noted that, although the PJM Transmission Owners currently use the PJM-administered transmission planning process (as outlined in the PJM Operating Agreement) to comply with Order No. 890, revisions to the PJM Operating Agreement were not necessarily required. Rather, the PJM Transmission Owners, with whom the obligation to satisfy Order No. 890 rests, could also demonstrate compliance by revising their respective portions of the PJM OATT, or by revising their individual OATTs.²⁷

A. Show Cause Order

14. Notice of the Show Cause Order was published in the *Federal Register*, 81 Fed. Reg. 63,753 (2016), with interventions and protests due on or before September 16, 2016.

15. American Municipal Power, Inc.; American Wind Energy Association and Mid-Atlantic Renewable Energy Coalition; Buckeye Power, Inc.; Calpine Corporation; Citizens Utility Board of Illinois; DATC LLC; Dayton Power and Light Company; DC Office of the People's Counsel; Delaware Division of the Public Advocate; Delaware Public Service Commission (Delaware Commission); Direct Energy Business, LLC and Direct Energy Business Marketing, LLC; Duke Energy Corporation; Duquesne Light Company; EDF Renewable Energy, Inc.; EDP Renewables North America LLC; E.ON Climate & Renewables North America, LLC; Hudson Power Transmission Developers LLC; Independent Market Monitor for PJM; Indiana Office of Utility Consumer Counselor; Invenegy Thermal LLC and Invenegy Wind LLC; Maryland Public Service Commission; Maryland Office of People's Counsel; Mid-Atlantic MCN LLC; MISO Transmission Owners²⁸; National Rural Electric Cooperative Association; New Jersey

²⁵ The Commission explained that the PJM Transmission Owners choosing this option should, pursuant to their filing rights agreement with PJM, make an eTariff compliance filing to revise the appropriate provisions of the PJM OATT. *Id.* P 15 n.30 (citing *Am. Elec. Power Serv. Corp.*, 110 FERC ¶ 61,276, at P 10 (2005) (requiring that PJM Transmission Owner tariffs be included in the PJM OATT for ease of reference); *Am. Elec. Power Serv. Corp.*, 110 FERC ¶ 61,187, at P 33 (2005) (same)).

²⁶ *Id.*

²⁷ *Id.*

²⁸ MISO Transmission Owners consist of: Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company and Ameren Transmission Company (*continued ...*)

Division of Rate Counsel; New York Power Authority; NextEra Energy Transmission MidAtlantic, LLC (NextEra Transmission); North Carolina Electric Membership Corporation; Northeast Transmission Development, LLC (Northeast Transmission); Northern Indiana Public Service Company; Office of the Ohio Consumers' Counsel; Old Dominion Electric Cooperative (Old Dominion); Pennsylvania Office of Consumer Advocate; Public Service Commission of West Virginia; Southern Maryland Electric Cooperative, Inc.; Virginia Division of Consumer Counsel; and West Virginia Consumer Advocate Division filed timely motions to intervene. Virginia State Corporation Commission filed a notice of intervention. Public Service Electric and Gas Company filed a motion to intervene out-of-time.

16. On October 25, 2016, the PJM Transmission Owners submitted a response to the Show Cause Order. Also, on October 25, 2016, American Municipal Power; City of Cleveland, Department of Public Utilities, Division of Cleveland Public Power (Cleveland Public Power); City of Hamilton, Ohio (City of Hamilton); East Kentucky Power Cooperative, Inc. (EKPC); Essential Power Rock Springs, LLC (Essential Power Rock Springs); Hudson Transmission Partners, LLC (Hudson Transmission) and Neptune Regional Transmission System, LLC (Neptune); Linden VFT LLC (Linden); and Old Dominion filed responses to the Show Cause Order.

17. On November 22, 2016, NextEra Transmission filed an answer and protest.²⁹ On November 23, 2016, PJM filed an answer to the responses to the Show Cause Order. On

of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; South Mississippi Electric Power Association; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

²⁹ NextEra Transmission states that its November 22, 2016 pleading addresses
(continued ...)

November 25, 2015, and December 7, 2016, the PJM Transmission Owners filed answers to the responses to the Show Cause Order and to NextEra Transmission, respectively. American Municipal Power and Old Dominion, on December 8, 2016, and Northeast Transmission, on December 19, 2016, filed answers to the PJM Transmission Owners' answer. On December 22, 2016, the PJM Transmission Owners filed an answer to American Municipal Power's, Old Dominion's, and Northeast Transmission's answers.

B. Attachment M-3 Filing

18. Also on October 25, 2016, in Docket No. EL17-179-000, the PJM Transmission Owners submitted the Attachment M-3 Filing. Notice of the Attachment M-3 Filing was published in the *Federal Register*, 81 Fed. Reg. 75,399 (2016), with interventions and protests due on or before November 15, 2016. On November 8, 2016, Old Dominion filed a motion to extend the period for filing comments in this proceeding. On November 14, 2016, the Commission issued a Notice of Extension of Time extending the comment deadline up to and including November 22, 2016.

19. Exelon Corporation; American Electric Power Service Corporation; Dayton Power and Light Company; Rockland Electric Company; Duke Energy Corporation; ITC Interconnection LLC; Duquesne Light Company; Mid-Atlantic MCN LLC; Public Service Electric and Gas Company; Dominion Resources Services, Inc.; NRG Power Marketing LLC and GenOn Energy Management, LLC; Buckeye Power, Inc.; Delaware Commission; Office of the Ohio Consumers' Counsel; Northeast Transmission; North Carolina Electric Membership Corporation; Old Dominion; and American Municipal Power filed timely motions to intervene. Virginia State Corporation Commission filed a notice of intervention.

20. On November 15, 2016, American Municipal Power filed a Motion to Dismiss and an Answer to the Attachment M-3 Filing.³⁰ On November 21, 2016, Delaware Commission submitted comments supporting American Municipal Power's Motion to Dismiss and Answer. On November 22, 2016, Old Dominion, Linden, and American Municipal Power filed protests to the Attachment M-3 Filing.

responses to the Show Cause Order in Docket No. EL16-71-000 and protests the revisions filed by the PJM Transmission Owners in Docket No. ER17-179-000. As such, NextEra Transmission requests that its pleading be considered in both dockets.

³⁰ American Municipal Power states that its November 15, 2016 pleading addresses arguments raised by the PJM Transmission Owners in both Docket No. ER17-179-000 and Docket No. EL16-71-000. Therefore, American Municipal Power asks that its pleading be considered in both proceedings.

21. The PJM Transmission Owners filed answers on November 30, 2016 and December 7, 2016. On December 19, 2016 and on December 22, 2016, Linden and Old Dominion, respectively, filed answers to the PJM Transmission Owners' answers.

III. Filings and Pleadings

A. Show Cause Order Initial Responses

1. The PJM Transmission Owners' Response to the Show Cause Order

22. The PJM Transmission Owners assert that the planning process for Supplemental Projects in the PJM Operating Agreement satisfies Order No. 890. They state that Schedule 6 of the PJM Operating Agreement requires that stakeholders participating in the Subregional RTEP Committees receive "sufficient opportunit[ies] to review and provide written comments on the criteria, assumptions, and models used in local planning activities prior to finalizing the Local Plan."³¹ They explain that the process begins with PJM posting the planning criteria, models, and assumptions for Supplemental Projects to the PJM website prior to an initial assumptions meeting, which provides a forum to discuss, among other things, "the assumptions to be used in performing the evaluation and analysis of the potential enhancements and expansions to the Transmission Facilities," and that this includes Supplemental Projects.³² The PJM Transmission Owners state that stakeholders may also submit comments before the assumptions meetings take place. In addition, they state that discussions regarding the criteria, models, and assumptions used to plan Supplemental Projects take place at the assumptions meetings before any Supplemental Projects are developed.³³

23. The PJM Transmission Owners also state that the PJM Operating Agreement requires the Subregional RTEP Committees to provide for "timely review" of Supplemental Projects and that unresolved stakeholder issues must be addressed prior to finalizing the Local Plan.³⁴ They argue that review by the Subregional RTEP

³¹ The PJM Transmission Owners October 25, 2016 Response at 6 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d) (4.0.0)).

³² *Id.* (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.6(b) (3.3.0)).

³³ *Id.*

³⁴ *Id.* at 7 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d) (4.0.0)).

Committee provides an opportunity for stakeholders to comment on the needs and proposed Supplemental Projects before they become part the final Local Plan.³⁵ The PJM Transmission Owners explain that Supplemental Projects are planned to address, among other things, retail demand, or to enhance the safety, efficiency, resiliency, or security of the transmission owner's system. The PJM Transmission Owners explain that, in these circumstances, the potential solution to the need for a Supplemental Project is often apparent and it would not help stakeholders to suggest that the transmission owner does not have a potential solution in mind. The PJM Transmission Owners further argue that it is not reasonable for stakeholders to expect a transmission owner to identify needs in isolation from the most obvious solution, which is typically replacement of the facility.³⁶

24. The PJM Transmission Owners also state that the Commission accepted their local transmission planning process as compliant with Order No. 890 and that the planning process for Supplemental Projects was thus fully litigated. They contend that there is no evidence of intervening events that would change the Commission's prior determination.³⁷ In fact, the PJM Transmission Owners state that, along with PJM, they have taken steps to improve the transmission planning process for Supplemental Projects. They point to what they describe as more detailed descriptions of their analyses of local system needs and proposed solutions and the fact that they are making subject matter experts available at Subregional RTEP Committee meetings.³⁸

25. The PJM Transmission Owners also contend that the transmission planning process for Supplemental Projects complies with the Order No. 890 principles identified in the Show Cause Order.³⁹ The PJM Transmission Owners state that the Subregional RTEP Committees satisfy the openness principle because they are open to participation by a broad range of stakeholders.⁴⁰ The PJM Transmission Owners further state the transmission planning process for Supplemental Projects complies with the transparency principle because the PJM Operating Agreement requires that they reduce to writing and

³⁵ *Id.*

³⁶ *Id.* at 9.

³⁷ *Id.* at 11.

³⁸ *Id.* at 12.

³⁹ *Id.* at 13 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 455, 460).

⁴⁰ *Id.* (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(e) (4.0.0)).

make available the basic methodology, criteria, and processes they use to develop their transmission plans, all of which, they assert, is posted on the PJM website.⁴¹ The PJM Transmission Owners note, however, that the criteria driving the need for Supplemental Projects do not always provide for a bright line test similar to those used for transmission projects planned by PJM. In any case, they note, Order No. 890 does not require bright-line tests for local transmission planning.⁴² For example, the conclusion that a facility needs to be replaced because of a risk of failure is a matter of engineering judgment as to both the need for and timing of replacement.

2. Responses Seeking Exclusion from the Show Cause Order

26. Several PJM Transmission Owners requested that the Commission either terminate the show cause proceedings with respect to them or exclude them from any remedy ordered by the Commission. Three municipal or cooperative PJM Transmission Owners raise similar arguments. City of Hamilton states that it does not engage in transmission planning itself. City of Hamilton also states that by virtue of its municipal governance, any transmission planning that it did perform would satisfy Order No. 890's requirements.⁴³ Cleveland Public Power states that it is a Zero Revenue Requirement Party under the PJM Consolidated Transmission Owners Agreement, meaning that it is not entitled to revenue distributions from PJM and does not have a rate for transmission service in the PJM OATT.⁴⁴ Cleveland Public Power states that it does not engage in an ongoing transmission planning process and that any transmission planning it might conduct would comply with Order No. 890 because it participates in the PJM transmission planning process.⁴⁵ EKPC states that the Commission should not adopt requirements with respect to local transmission planning processes that would conflict with its Rural Utilities Service⁴⁶ regulations. EKPC states that although it considers comments submitted through the Subregional RTEP Committee, the cooperative must

⁴¹ *Id.* at 14-15.

⁴² *Id.*; The PJM Transmission Owners November 25, 2016 Answer at 11.

⁴³ City of Hamilton October 25, 2016 Response at 4-5.

⁴⁴ Cleveland Public Power October 25, 2016 Response at 4.

⁴⁵ *Id.* at 7 (citing PJM Manual 14B, PJM Transmission Planning Process).

⁴⁶ EKPC states that it relies on financing from the Rural Utilities Service, and that agency imposes its own regulations with regard to transmission planning.

remain able to meet all Rural Utilities Service obligations, and cannot elect to comply instead with stakeholder requests.⁴⁷

27. Four other PJM Transmission Owners requested that the Commission terminate the section 206 proceeding with regard to them. Essential Power Rock Springs states that it is a Transmission Owner because it owns certain limited network upgrades necessary for the interconnection of its electric generation facility, and that its transmission development obligations are limited to routine maintenance and replacement of equipment “in the ordinary course or as directed by PJM for system reliability, operational performance, or economic reasons” and it does not engage in meaningful transmission planning.⁴⁸ Hudson Transmission and Neptune jointly argue that they should not be named parties in the Show Cause Order because, as owners of merchant transmission facilities, they have no obligation to identify or build new transmission facilities within PJM and, they assert, the Commission has previously found that merchant transmission facilities are not required to participate in the regional transmission planning process.⁴⁹ Similarly, Linden argues that it should not be a named party in the Show Cause Order because it is not entitled to cost recovery from a transmission service tariff and does not plan Supplemental Projects.⁵⁰

3. Other Responses to the Show Cause Order

28. Old Dominion contends that the transmission planning process for Supplemental Projects violates the openness, coordination, and transparency principles in Order No. 890.⁵¹ Old Dominion argues that, in practice, the Subregional RTEP Committee meetings are not being conducted in a manner that is consistent with the PJM Operating Agreement and prior Commission directives.⁵² In particular, Old Dominion contends that the PJM Transmission Owners are neither posting the criteria, models, and

⁴⁷ EKPC October 25, 2016 Response at 5-7.

⁴⁸ Essential Power Rock Springs October 25, 2016 Response at 5.

⁴⁹ Hudson Transmission and Neptune October 25, 2016 Answer at 5-6, 8 (citing PJM Interconnection, L.L.C., Filing to Add Standardized Terms for Merchant Transmission Facilities to the PJM Tariff, Docket No. ER03-405-000).

⁵⁰ Linden October 25, 2016 Response at 4-8.

⁵¹ Old Dominion October 25, 2016 Response at 8, 11.

⁵² *Id.* at 9 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d) (4.0.0)).

assumptions used to plan Supplemental Projects, nor providing sufficient opportunities for stakeholders to review and comment on that information.⁵³

29. American Municipal Power agrees that the PJM Transmission Owners use unclear and opaque criteria in developing Supplemental Projects and are not planning Supplemental Projects in a manner that is consistent with the Order No. 890 principles.⁵⁴ Regarding the transparency principle, American Municipal Power asserts that the methodologies and models underlying Local Plans are not transparent. American Municipal Power further claims that, for some PJM Transmission Owners, the local planning criteria posted on PJM's website are not comprehensive.⁵⁵ Regarding the information exchange principle, American Municipal Power asserts that "information exchange must include a give-and-take and not just the deposit of superfluous information on a website without explanation or response to feedback on the information," as is currently the case.⁵⁶ Finally, regarding the comparability principle, American Municipal Power doubts that the transmission planning process for the Local Plans complies with the comparability principle, but states that it cannot be certain without more detailed information.⁵⁷

30. Old Dominion proposes revisions to the PJM Operating Agreement. These revisions would require: (i) a meeting for stakeholders to provide feedback on the inputs to the transmission planning process for Supplemental Projects, including the criteria, models, and assumptions used to plan; (ii) a second meeting to discuss needs identified through that process along with an opportunity for stakeholder input; and (iii) PJM review and approval of the resulting Local Plan prior to the start of each RTEP study year.⁵⁸ Old Dominion also proposes a distinction between "flow-impacting" and "non-flow impacting" Supplemental Projects, projects that, respectively, impact or do not impact flows on the PJM network transmission system. Old Dominion suggests that the Commission require PJM to select a flow-impacting Supplemental Project, while the PJM Transmission Owners could continue to select the "non-flow impacting" projects.⁵⁹

⁵³ Old Dominion October 25, 2016 Response at 4, 10.

⁵⁴ American Municipal Power October 25, 2016 Comments at 6.

⁵⁵ *Id.* at 15.

⁵⁶ *Id.* at 16.

⁵⁷ *Id.* at 16-17.

⁵⁸ Old Dominion October 25, 2016 Response at 11.

⁵⁹ *Id.* at 12; *see* Old Dominion December 8, 2016 Answer at 10.

Old Dominion requests that the Commission require any revisions be made to the PJM Operating Agreement, as opposed to manuals or other documents not on file with the Commission, to ensure that they are mandatory and enforceable. Old Dominion also states that refunds are not necessary here because the appropriate remedy is prospective changes in the PJM local transmission planning process, and that refunds would “cause more upset than is reasonable.”⁶⁰

31. American Municipal Power proposes revisions to the PJM Operating Agreement to require that certain transmission projects that are currently identified as Supplemental Projects be instead classified as baseline projects.⁶¹ American Municipal Power claims that its proposed revisions to the PJM Operating Agreement would bring the transmission planning process for Supplemental Projects into compliance with Order No. 890’s coordination, openness, transparency, information exchange, and comparability transmission planning principles. Regarding the coordination principle, American Municipal Power asserts that the current transmission planning process for Supplemental Projects is inconsistent with that principle because information is not provided to stakeholders early in the process and, even then, stakeholders do not have a meaningful opportunity for input.⁶² American Municipal Power proposes, therefore, to revise the PJM Operating Agreement to: (i) require the PJM Transmission Owners to provide information regarding Local Plans at an earlier stage; (ii) permit written feedback from stakeholders prior to finalization of the Local Plans; (iii) require that affected PJM Transmission Owners respond to those comments; and (iv) include a clear dispute resolution process.⁶³

B. Answers and Further Comments Regarding the Local Transmission Planning Process and the Show Cause Order

32. The parties submitted several answers to each other’s filings, which, as noted below, we accept because they assisted us in our decision making process. The following subsections summarize those answers by the topics they address.

⁶⁰ *Id.* at 13.

⁶¹ American Municipal Power October 25, 2016 Comments at 9-10.

⁶² *Id.* at 11.

⁶³ *Id.* at 12.

1. **Answers to the PJM Transmission Owners' Response to the Show Cause Order**

33. American Municipal Power observes that, although the PJM Transmission Owners claim that the PJM Operating Agreement satisfies Order No. 890's requirements, they do not assert that, in practice, the transmission planning process for Supplemental Projects complies with Order No. 890.⁶⁴ Old Dominion agrees, arguing that even if the PJM Operating Agreement appears to comply with Order No. 890, in practice the PJM Transmission Owners have not uniformly complied with the transparency, openness, and coordination principles of Order No. 890.⁶⁵ American Municipal Power also contends that because Supplemental Projects are coming to represent the majority of the transmission cost increases, it is important to ensure that Supplemental Projects are planned through an Order No. 890-compliant transmission planning process.⁶⁶

34. Northeast Transmission urges the Commission to find that the PJM Operating Agreement does not comply with Order No. 890 with respect to Supplemental Projects and to require the PJM Transmission Owners to file a local transmission planning process for those projects or to turn over all transmission planning to PJM.⁶⁷ Northeast Transmission claims that the process for planning Supplemental Projects is neither clear nor transparent.⁶⁸ For example, Northeast Transmission notes that the PJM Operating Agreement states that the purpose of the Subregional RTEP Committee is to "facilitate the development and review of the Subregional RTEP Projects," but does not mention Supplemental Projects within that purpose.⁶⁹ Northeast Transmission argues that the PJM Operating Agreement is vague as to its application to Supplemental Projects and is potentially inapplicable because the only sentence that references Supplemental Projects

⁶⁴ American Municipal Power November 15, 2016 Motion to Dismiss and Answer at 8, 16; Old Dominion November 22, 2016 Protest at 4.

⁶⁵ Old Dominion November 22, 2016 Protest at 4.

⁶⁶ American Municipal Power November 15, 2016 Motion to Dismiss and Answer at 9-11; Northeast Transmission December 19, 2016 Answer at 4-5.

⁶⁷ Northeast Transmission December 19, 2016 Answer at 17.

⁶⁸ *Id.* at 5.

⁶⁹ *Id.* at 8 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3 (4.0.0)).

directly begins with “in addition,” indicating that the preceding material did not apply to such projects.⁷⁰

2. Comments Regarding the PJM Transmission Owners’ Provision of Models, Criteria, and Assumptions

35. American Municipal Power states that some PJM Transmission Owners have begun conducting initial assumptions meetings and posting criteria for Supplemental Projects on the PJM website, both of which it describes as a good first step. However, American Municipal Power argues that, without the specific criteria, methodologies, and guidelines to show how the assumptions are implemented, it is impossible to understand or replicate a transmission owner’s evaluation process or propose alternative solutions.⁷¹ American Municipal Power explains that for other categories of transmission projects, the PJM Transmission Owners provide much more detailed information, information on which stakeholders rely to understand and evaluate PJM’s decision-making.⁷²

36. American Municipal Power further states that a review of the slides from the Subregional RTEP Committee meetings reveals that certain Supplemental Projects were far along or completed before stakeholders received the underlying assumptions.⁷³ Similarly, Old Dominion reiterates its belief that some PJM Transmission Owners are conducting significant local transmission planning—including, in some cases, developing projects—before the underlying need for the Supplemental Project is raised in the PJM stakeholder process.⁷⁴

37. Northeast Transmission asserts that, currently, a Supplemental Project can be essentially whatever a particular PJM Transmission Owner wants it to be.⁷⁵ Northeast Transmission asserts that the PJM Transmission Owners generally do not tie an identified Supplemental Project to any clear, transparent, or definitive criteria,

⁷⁰ *Id.* at 9.

⁷¹ American Municipal Power November 15, 2016 Motion to Dismiss and Answer at 12.

⁷² *Id.* at 12-13.

⁷³ *Id.* at 17.

⁷⁴ Old Dominion November 22, 2016 Protest at 2.

⁷⁵ Northeast Transmission December 19, 2016 Answer at 6.

assumptions, or models previously provided.⁷⁶ Northeast Transmission further argues that the slides discussed by American Municipal Power indicate that the information provided to stakeholders regarding Supplemental Projects varies widely among the PJM Transmission Owners. Northeast Transmission states that the fact that some transmission owners may provide sufficient information should not alleviate the Commission's concern regarding the PJM Transmission Owners' local transmission planning processes.⁷⁷

3. Comments Regarding the Lack of a Clear Transmission Planning Process or Schedule

38. NextEra Transmission observes that the PJM Operating Agreement does not describe the frequency of meetings, planning cycles, or milestones used to develop Supplemental Projects and also does not clearly distinguish between the steps taken by PJM and the PJM Transmission Owners within the Transmission Expansion Advisory Committee and the Subregional RTEP Committees.⁷⁸ For example, NextEra Transmission notes that the section of the PJM Operating Agreement that describes the process for meetings regarding assumptions and planning studies does not outline the specific opportunities to provide input regarding the criteria and models used to plan Supplemental Projects, nor does it identify the planning studies that the PJM Transmission Owners perform. NextEra Transmission suggests that this lack of clarity is the reason stakeholders have complained that they do not have an opportunity to participate meaningfully in the development of Local Plans.⁷⁹

39. According to Northeast Transmission, Order No. 890 requires a local transmission planning process with deadlines and dates that provides a clear understanding of when Supplemental Projects will be submitted and when the Local Plan will be complete.⁸⁰ Northeast Transmission states that Schedule 6 of the PJM Operating Agreement provides

⁷⁶ *Id.* at 6, 13 (citing The PJM Transmission Owners November 25, 2016 Answer).

⁷⁷ *Id.* at 12 (citing Show Cause Order, 156 FERC ¶ 61,134 at PP 13-14).

⁷⁸ NextEra Transmission November 22, 2016 Answer and Protest at 4 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§ 1.3(d) (4.0.0) and 1.5.6 (3.3.0)).

⁷⁹ *Id.* at 5.

⁸⁰ *Id.* at 18.

no schedule for local transmission planning, instead allowing individual transmission owners to submit Supplemental Project proposals on a continuing basis.⁸¹

40. Northeast Transmission further argues that the PJM Transmission Owners do not provide stakeholders with sufficient opportunity to fully understand the transmission planning need, let alone the project that will meet that need.⁸² Northeast Transmission states that the PJM Transmission Owners are incorrect in contending that, in some instances, it is inevitable and unavoidable that Supplemental Projects may be presented the same time as the need(s) they address and that those contentions belie the assertion that the current transmission planning process complies with Order No. 890's transparency principle.⁸³

4. Comments Regarding the Need for Supplemental Projects

41. Northeast Transmission argues it is impossible to tell from the information provided by PJM Transmission Owners why certain transmission projects must be built as Supplemental Projects rather than as regional transmission projects.⁸⁴ Northeast Transmission argues that the ratepayer benefits of Supplemental Projects cannot be easily determined, particularly when the criteria, assumptions, and models used to determine the "need" for such projects appear designed largely to result in that "need."⁸⁵

42. NextEra Transmission argues that the lack of clarity in the PJM Operating Agreement results in perceived, if not real, incentives for the PJM Transmission Owners to structure Supplemental Projects to avoid or replace regional transmission projects that would otherwise be subject to a competitive transmission development process under Order No. 1000. NextEra Transmission states that PJM appears to evaluate Supplemental Projects on an on-going basis to determine whether they resolve needs identified in the regional transmission planning process, but there is no process detailing how PJM reclassifies a Supplemental Project as a regional transmission project.⁸⁶

⁸¹ *Id.* at 17-18.

⁸² *Id.* at 16.

⁸³ *Id.* at 12-13 (citing The PJM Transmission Owners November 25, 2016 Answer at 17).

⁸⁴ *Id.* at 13.

⁸⁵ *Id.* at 14.

⁸⁶ NextEra Transmission November 22, 2016 Answer and Protest at 5-7 (citing *(continued ...)*)

5. **Answers to Old Dominion's and American Municipal Power's Responses to the Show Cause Order**

43. PJM contends that Old Dominion's and American Municipal Power's suggested revisions to the PJM Operating Agreement are outside the scope of this proceeding and not necessary for the Supplemental Project transmission planning process to comply with Order No. 890.⁸⁷ PJM argues that the changes they propose would require wholesale revisions to the regional and local transmission planning process, and that the Commission should consider adopting such changes only through a generic rulemaking, if at all.⁸⁸ PJM further argues that nothing in the Show Cause Order, Order No. 890, or the comments in this proceeding support shifting responsibility for planning Supplemental Projects from the PJM Transmission Owners to PJM.⁸⁹ PJM states that Supplemental Projects are neither required for compliance with PJM's criteria nor are their costs allocated beyond the transmission zone in which they are located.⁹⁰ As a result, PJM contends, the relevant transmission owner is best positioned to identify any needed Supplemental Projects.⁹¹ PJM further argues that, although the PJM Operating Agreement provides a mechanism for addressing stakeholder feedback regarding potential transmission projects, the ultimate forum for addressing the prudence of particular transmission projects is before the Commission.⁹² PJM opposes Old Dominion's proposal to add a new provision to the PJM Operating Agreement that would require that Local Plans be completed prior to PJM starting a new RTEP study

PJM Interconnection L.L.C., 154 FERC ¶ 61,097, at P 27 (2016)).

⁸⁷ PJM November 23, 2016 Answer at 2. Generally, Old Dominion and American Municipal Power suggest that the PJM Operating Agreement should be revised to require additional meetings and opportunities for stakeholder feedback and information exchange, greater PJM involvement in planning for and selecting certain Supplemental Projects, and PJM review and approval of Local Plans.

⁸⁸ PJM November 23, 2016 Answer at 4-5.

⁸⁹ *Id.* at 2.

⁹⁰ *Id.* at 3.

⁹¹ *Id.*

⁹² *Id.* at 4.

year.⁹³ PJM asserts that it needs flexibility to accommodate changes that occur throughout the planning year without delay.⁹⁴

44. The PJM Transmission Owners agree that many of American Municipal Power's and Old Dominion's recommendations are beyond the scope of this proceeding, exceed the requirements of Order No. 890, and, in addition, are based on a misunderstanding of the actual transmission planning process for Supplemental Projects.⁹⁵ The PJM Transmission Owners assert that neither Old Dominion nor American Municipal Power presents evidence demonstrating that the current Supplemental Project transmission planning process does not comply with Order No. 890.⁹⁶ They further assert that the additional detail in the Attachment M-3, which they filed pursuant to FPA section 205 in Docket No. ER17-179-000,⁹⁷ is more than sufficient to address American Municipal Power's and Old Dominion's remaining concerns.⁹⁸ The PJM Transmission Owners also suggest that, because no participant has identified shortcomings in the dispute resolution procedures, additional dispute resolution procedures are unnecessary.⁹⁹

45. The PJM Transmission Owners contend that shifting transmission planning responsibility for Supplemental Projects to PJM is neither necessary nor appropriate. They point to Order No. 890's explicit recognition that RTOs and their transmission-owning members may divide planning responsibilities for different types of projects.¹⁰⁰ The PJM Transmission Owners add that the ultimate responsibility for transmission planning remains with transmission providers, noting that, even when the Commission required transmission owners to participate in regional transmission planning in Order No. 1000, it did not mandate that regional planning authorities assume all planning responsibility.¹⁰¹ The PJM Transmission Owners contend that American Municipal

⁹³ *Id.* at 5.

⁹⁴ *Id.*

⁹⁵ *Id.* at 2.

⁹⁶ *Id.* at 3.

⁹⁷ Docket No. ER17-179-000 is discussed further below.

⁹⁸ The PJM Transmission Owners November 25, 2016 Answer at 3.

⁹⁹ *Id.* at 13.

¹⁰⁰ *Id.* at 7 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 440).

¹⁰¹ *Id.* at 7-8.

Power's and Old Dominion's proposed changes would interfere with the PJM Transmission Owners' local planning authority and would require PJM to duplicate the PJM Transmission Owners' knowledge of and familiarity with their local systems.¹⁰² The PJM Transmission Owners add that adopting uniform Supplemental Project planning criteria, which they argue also is not required by Order No. 890, would be impractical and counter-productive.¹⁰³ The PJM Transmission Owners state that the different considerations, risk assessments and prioritizations, and evaluations of local needs vary among transmission owners and over time—considerations that uniform criteria would not be able to address.¹⁰⁴

46. The PJM Transmission Owners also disagree that additional opportunities for stakeholder input are necessary for compliance with Order No. 890. They state that the current transmission planning process provides numerous opportunities for stakeholders to review, provide input, and engage with transmission owners regarding Supplemental Projects. They point to a list and description of Mid-Atlantic Subregional RTEP Committee meetings that occurred during 2015-2016, which they maintain provided an opportunity for stakeholder participation, consistent with Order No. 890.¹⁰⁵ They note that both American Municipal Power and Old Dominion submitted written questions about Supplemental Projects discussed in the 2015 meetings, and during a January 2016 meeting, several transmission owners provided detailed presentations on Supplemental Projects in response to those questions.¹⁰⁶

47. Regarding the transmission owners that stated that they do not plan Supplemental Projects, the PJM Transmission Owners state that Attachment M-3, discussed further below, addresses their concerns because it clarifies that the procedures for planning Supplemental Projects will only apply to transmission owners that plan those projects.¹⁰⁷ In addition, PJM Transmission Owners agree with Old Dominion's statements that refunds would not be appropriate in this proceeding even if the Commission were to

¹⁰² *Id.* at 9-10.

¹⁰³ *Id.* at 11.

¹⁰⁴ *Id.* at 12.

¹⁰⁵ *Id.* at 13-18.

¹⁰⁶ *Id.* at 18.

¹⁰⁷ *Id.* at 30.

conclude that the transmission planning process for Supplemental Projects no longer complies with Order No. 890.¹⁰⁸

6. Answers to the PJM Transmission Owners' Answers

48. American Municipal Power argues that nothing in its recommendations would require the PJM Transmission Owners to cede control over decisions about planning assumptions and methodologies to PJM or to stakeholders.¹⁰⁹ American Municipal Power explains that its proposal is no different than the role PJM currently plays in regards to the development of transmission owners' Form No. 715 criteria, and that individual transmission owner criteria could similarly become part of the PJM criteria.¹¹⁰

49. American Municipal Power also disagrees with the PJM Transmission Owners that needs often cannot be identified separately from solutions.¹¹¹ American Municipal Power argues that the most "obvious" solution to a particular need may not always be the best or right solution and that there is no benefit to presenting that "obvious" solution at the same time as the need. American Municipal Power further asserts that the factors that the PJM Transmission Owners use to identify the "obvious" solutions are precisely the sort of considerations that would benefit from greater transparency, openness, and stakeholder participation.¹¹² American Municipal Power refers to slides from the December 1, 2016 Subregional RTEP meetings, which it claims show that the PJM Transmission Owners presented nearly 100 transmission projects for stakeholder review, 80 percent of which were Supplemental Projects.¹¹³ American Municipal Power asserts that two of the projects presented were 100 percent completed, seven were currently under construction, and 24 were already in the engineering phase, at which point it is not possible for stakeholders to provide meaningful input.¹¹⁴

¹⁰⁸ *Id.* at 4.

¹⁰⁹ American Municipal Power December 8, 2016 Answer at 6-9.

¹¹⁰ *Id.* at 10.

¹¹¹ *Id.* at 11 (citing The PJM Transmission Owners November 25, 2016 Answer at 10).

¹¹² *Id.* at 12.

¹¹³ *Id.* at 12-13.

¹¹⁴ *Id.* at 13.

7. The PJM Transmission Owners' December Answers

50. The PJM Transmission Owners argue that, rather than improving the process, NextEra Transmission's suggestions would create a more rigid timeline of meetings and transmission planning cycle deadlines that could hamper the flexibility PJM needs to administer the transmission planning process efficiently.¹¹⁵ The PJM Transmission Owners further argue that Old Dominion and American Municipal Power make misleading allegations regarding the December 1, 2016 Subregional RTEP Committee meetings. The PJM Transmission Owners explain that the December 1, 2016 meetings were not the only Subregional RTEP Committee meetings of the 2016 PJM planning cycle.¹¹⁶ The PJM Transmission Owners argue that the transmission owners presented their planning assumptions and methodologies for the 2016 planning cycle in February 2016, provided updates on Supplemental Projects and responded to questions from stakeholders in July 2016, left extensive time for answering questions at the December 1 meetings, and PJM scheduled additional meetings for January 2017 as a follow-up.¹¹⁷

51. The PJM Transmission Owners argue that Northeast Transmission's assessment of Schedule 6 of the PJM Operating Agreement is incorrect and ignores the provisions that lay out the process for planning Supplemental Projects.¹¹⁸ The PJM Transmission Owners contend that this process for stakeholder input and review is sufficiently flexible to accommodate the full range of transmission system needs.¹¹⁹

8. Motion to Lodge

52. On January 13, 2018, American Municipal Power, Delaware Municipal Electric Corporation, Delaware Division of the Public Advocate, New Jersey Division of Rate Counsel, Old Dominion, and PJM Industrial Customer Coalition filed a motion to lodge to supplement the factual record with an economic survey and data.

¹¹⁵ The PJM Transmission Owners December 7, 2016 Answer to NextEra at 4.

¹¹⁶ The PJM Transmission Owners December 22, 2016 Answer at 3.

¹¹⁷ *Id.* at 4.

¹¹⁸ *Id.* at 6-7.

¹¹⁹ *Id.* at 7.

C. Docket No. ER17-179-000 – Attachment M-3 to PJM OATT

53. On October 25, 2016—the same day on which the PJM Transmission Owners responded to the Show Cause Order—they, jointly with PJM, made a separate filing under FPA section 205, proposing to add Attachment M-3 to the PJM OATT and corresponding revisions to the PJM Operating Agreement to provide further detail regarding the transmission planning process for Supplemental Projects. The following sections summarize that filing and the pleadings filed in response.

1. The PJM Transmission Owners’ Section 205 Filing

54. As an initial matter, the PJM Transmission Owners state that the pendency of the proceeding initiated by the Show Cause Order does not prevent them from making a filing under FPA section 205, even if that filing is related to the subject matter of that proceeding.¹²⁰ The PJM Transmission Owners explain that Attachment M-3 provides that each PJM Transmission Owner will provide to PJM the assumptions and methodology, including any criteria and models, it uses to plan Supplemental Projects, and that this information will be posted prior to the initial assumptions meeting that is outlined in sections 1.3(d) and 1.5.6(b) of Schedule 6 of the PJM Operating Agreement. Attachment M-3 also clarifies that, under section 1.5.6(b) of Schedule 6 of the PJM Operating Agreement, stakeholders will have an opportunity to provide comments prior to or following that initial assumptions meeting.¹²¹

55. The PJM Transmission Owners state that Attachment M-3 provides that the PJM Transmission Owners will review system needs and the drivers of those needs at the Subregional RTEP Committee meetings and also present potential solutions being considered to meet those needs. The PJM Transmission Owners argue that due to the nature of Supplemental Projects, it is in many cases neither feasible nor helpful to describe a local system need without identifying a potential solution that can address that need. They note that a transmission owner’s identification of a potential solution does not limit its consideration of stakeholder comments that could lead the transmission owner to modify its initial solution.¹²² The PJM Transmission Owners further state that Attachment M-3 provides that a description of the system needs and drivers and potential solutions will be posted at least 5 business days in advance of the Subregional RTEP Committee meeting and stakeholders will have 30 days after the meeting to provide comments on the identified system needs, drivers, and potential solutions to the PJM

¹²⁰ Attachment M-3 Filing Transmittal Letter at 2.

¹²¹ *Id.* at 3.

¹²² *Id.*

Transmission Owner.¹²³ The PJM Transmission Owners also state that Attachment M-3 provides that the PJM Transmission Owners will submit Supplemental Projects for inclusion in the final Local Plan under the schedule established by PJM and that stakeholders will have another opportunity to comment at the Transmission Expansion Advisory Committee before the Local Plan is integrated in the Regional Transmission Expansion Plan. Finally, the PJM Transmission Owners state that Attachment M-3 provides that Attachment M-3 may be modified under section 205 of the FPA by a joint filing by the PJM Transmission Owners under the mechanism established by the Consolidated Transmission Owners Agreement.¹²⁴

2. American Municipal Power's Motion to Dismiss

56. American Municipal Power moves to dismiss the PJM Transmission Owners' section 205 filing, arguing that it is an end-run around the Show Cause Order.¹²⁵ American Municipal Power contends that Attachment M-3 addresses the same processes that were the subject of the Show Cause Order and makes changes that are directly responsive to that order.¹²⁶ American Municipal Power argues that the filing is improper because, notwithstanding that overlap, the filing subjects the PJM Transmission Owners to a less demanding burden of proof than section 206.¹²⁷ Delaware Commission agrees, and urges the Commission to evaluate Attachment M-3 under section 206, not section 205.¹²⁸

57. American Municipal Power and Old Dominion argue that the Commission should consider which PJM governing document is appropriate for revisions to the local transmission planning process and particularly the difference in the ability to modify the PJM Operating Agreement and PJM OATT.¹²⁹ Old Dominion explains that revisions

¹²³ *Id.* at 4.

¹²⁴ *Id.*

¹²⁵ American Municipal Power November 15, 2016 Motion to Dismiss and Answer at 1. Delaware Commission supports American Municipal Power's motion to dismiss. Delaware Commission November 21, 2016 Comments at 8.

¹²⁶ American Municipal Power November 15, 2016 Motion to Dismiss and Answer at 4.

¹²⁷ *Id.* at 6.

¹²⁸ Delaware Commission November 21, 2016 Comments at 3-5.

¹²⁹ American Municipal Power November 15, 2016 Motion to Dismiss and
(continued ...)

to the PJM Operating Agreement require a super-majority vote, but that revisions to the PJM OATT are subject either to PJM's or the PJM Transmission Owners' unilateral authority to revise.¹³⁰

3. Comments on the Substance of Attachment M-3

58. American Municipal Power and Old Dominion support some of the changes the PJM Transmission Owners propose in Attachment M-3, but urge the Commission to require the PJM Transmission Owners to submit those changes in the docket for the Show Cause Order.¹³¹ Old Dominion and American Municipal Power further recommend the Commission direct PJM and the PJM Transmission Owners to include the proposed revisions to the transmission planning process in the PJM Operating Agreement instead of the PJM OATT.¹³² American Municipal Power observes that all RTEP protocols are in the PJM Operating Agreement, and that Attachment M-3 would be layered on top of those protocols.¹³³

59. American Municipal Power states that Attachment M-3 is a step in the right direction in that it requires each PJM Transmission Owner to provide the assumptions and methodology, including any criteria and models, used to plan Supplemental Projects to stakeholders for review prior to finalization of the Local Plan.¹³⁴ Nevertheless, American Municipal Power urges the Commission to require further revisions. American Municipal Power suggests that the Commission reject the provision of Attachment M-3 that would give the PJM Transmission Owners unilateral authority to file changes to the transmission planning process for Supplemental Projects. In addition, American Municipal Power reiterates the need for a dispute resolution process to resolve

Answer at 6; Old Dominion November 22, 2016 Protest at 9.

¹³⁰ Old Dominion November 22, 2016 Comments at 9; American Municipal Power November 15, 2016 Motion to Dismiss and Answer at 5-7.

¹³¹ American Municipal Power November 15, 2016 Motion to Dismiss and Answer at 3; Old Dominion November 22, 2016 Protest at 10.

¹³² American Municipal Power November 15, 2016 Motion to Dismiss and Answer at 8; Old Dominion November 22, 2016 Protest at 10; American Municipal Power November 22, 2016 Protest at 3-4.

¹³³ American Municipal Power November 22, 2016 Protest at 6.

¹³⁴ *Id.* at 3-4.

disagreements regarding Supplemental Projects prior to incorporating them into the Local Plans.¹³⁵

60. NextEra Transmission argues that Attachment M-3 would reinforce, rather than resolve, the confusion regarding Supplemental Projects by simply layering additional procedures in the PJM OATT on top of those set forth in Schedule 6 of the PJM Operating Agreement, creating a transmission planning process that is defined in two distinct documents.¹³⁶ In particular, NextEra Transmission points to the fact that Attachment M-3 would rely on the posting requirements and schedules for stakeholder input established in Schedule 6 of the PJM Operating Agreement and, therefore, would not address the issues in the PJM Operating Agreement.¹³⁷

61. Delaware Commission states that, although Attachment M-3 allows stakeholders to provide comments, there is no requirement that the PJM Transmission Owners consider, evaluate, or otherwise respond to those comments. Delaware Commission states the PJM Transmission Owners should be required to respond to stakeholders and provide a reason for accepting or rejecting proposed changes.¹³⁸

4. Linden Answer

62. Linden seeks confirmation that ordinary maintenance of its transmission facility does not constitute a Supplemental Project. Linden also requests that the Commission exempt transmission owners that are Zero Revenue Requirement Parties from the provisions of Attachment M-3. Linden argues that, as a Zero Revenue Requirement Party, it does not develop Supplemental Projects because those are proposed by transmission owners to satisfy their own local planning criteria.¹³⁹ Linden asserts that the Commission has specifically waived the requirement that Linden annually file its transmission planning criteria on the FERC Form No. 715.¹⁴⁰

¹³⁵ *Id.* at 9-10.

¹³⁶ NextEra Transmission November 22, 2016 Answer and Protest at 7-8.

¹³⁷ *Id.* at 7.

¹³⁸ Delaware Commission November 21, 2016 Comments at 5-7.

¹³⁹ Linden November 22, 2016 Protest at 2-3.

¹⁴⁰ *Id.* at 3.

5. The PJM Transmission Owners' Answers

63. The PJM Transmission Owners urge the Commission to deny American Municipal Power's motion to dismiss. The PJM Transmission Owners argue that their section 205 filing is not an "end-run" around the Show Cause Order because the Commission did not in that order find that the existing transmission planning process for Supplemental Projects was not just and reasonable. They further argue that proposing Attachment M-3 is an exercise of their section 205 filing rights, which the Show Cause Order did not impair, and is consistent with their ultimate responsibility for local transmission planning.¹⁴¹

64. The PJM Transmission Owners also assert that Attachment M-3 is an appropriate location for the transmission planning process for Supplemental Projects. They assert that the Show Cause Order explicitly provided the PJM Transmission Owners with the option of filing revisions in tariffs, or portions thereof, for which the PJM Transmission Owners have sole filing rights and that, if American Municipal Power disagreed with the Commission, it should have sought rehearing.¹⁴² The PJM Transmission Owners explain that, while they welcome active and meaningful engagement from stakeholders during all stages of the Supplemental Project Planning process, the PJM Transmission Owners are ultimately responsible for local transmission planning.¹⁴³

65. The PJM Transmission Owners state that no participant in this proceeding has pointed to evidence that Attachment M-3 is not just and reasonable, and the fact that some participants have proposed alternative revisions is irrelevant to whether Attachment M-3 is just and reasonable.¹⁴⁴ In addition, they observe that many of the proposed revisions are already reflected in Attachment M-3, including Old Dominion's proposal to provide stakeholders a right to propose alternative solutions and to establish a meeting for early input into the PJM Transmission Owners criteria, models, and/or assumptions.¹⁴⁵ Similarly, the PJM Transmission Owners argue that Delaware Commission's request to require the PJM Transmission Owners to consider and respond

¹⁴¹ The PJM Transmission Owners December 7, 2016 Answer to Comments and Protests at 9-12.

¹⁴² The PJM Transmission Owners November 30, 2016 Answer at 10.

¹⁴³ *Id.* at 10-11.

¹⁴⁴ The PJM Transmission Owners December 7, 2016 Answer to Comments and Protests at 5.

¹⁴⁵ *Id.* at 4-5.

to stakeholder input regarding Supplemental Projects overlooks the fact that Attachment M-3 provides that stakeholders can submit comments for the PJM Transmission Owners' consideration, which the PJM Transmission Owners argue is all that Order No. 890 requires.¹⁴⁶ Responding to Linden's request that it should be excluded from the process, the PJM Transmission Owners state Attachment M-3 provides the process "will only apply to Transmission Owners that plan Supplemental Projects."¹⁴⁷

D. Procedural Matters

66. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁴⁸ the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

67. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,¹⁴⁹ we grant Public Service Electric and Gas Company's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

68. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁵⁰ prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. Nevertheless, we accept the answers filed by NextEra Transmission, PJM, the PJM Transmission Owners, Old Dominion, American Municipal Power, Northeast Transmission, and Linden, because they have provided information that assisted us in our decision-making process.

69. We reject American Municipal Power, Delaware Municipal Electric Corporation, Delaware Division of the Public Advocate, New Jersey Division of Rate Counsel, Old Dominion, and PJM Industrial Customer Coalition's motion to lodge. The supplemental materials provided are cumulative to the existing record in this proceeding, and the arguments presented represent a late-filed answer that we reject pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure.¹⁵¹

¹⁴⁶ *Id.* at 7-8.

¹⁴⁷ *Id.* at 14.

¹⁴⁸ 18 C.F.R. § 385.214 (2017).

¹⁴⁹ *Id.* § 385.214(d).

¹⁵⁰ *Id.* § 385.213(a)(2).

¹⁵¹ *Id.* We note that the movants filed the motion to lodge after the Commission
(continued ...)

E. Substantive Matters

70. As noted, the Show Cause order began an inquiry under section 206 of the FPA into the justness and reasonableness of the Order No. 890 procedures contained in the PJM Operating Agreement and the PJM OATT. At the same time as the PJM Transmission Owners responded to the Show Cause Order, they filed pursuant to section 205 a revised transmission planning process for Supplemental Projects, which they proposed to include in the portion of the PJM OATT reserved for their section 205 filings. As summarized above, in the comments and responses regarding both the Show Cause Order and the section 205 filing, the parties have addressed at length the issues raised in the Show Cause Order, including whether and how the PJM Transmission Owners' section 205 filing resolves those issues. Accordingly, in this order we address both whether the PJM Operating Agreement and the PJM OATT complies with Order No. 890 and whether the section 205 filing resolves the concerns identified in the Show Cause Order. As explained below, we find that the PJM Operating Agreement and the PJM OATT as applied by the PJM Transmission Owners is unjust and unreasonable as it does not fully comply with Order No. 890 and that the PJM Transmission Owners' section 205 filing fails to remedy certain of those defects.

71. The courts have found that the Commission can “transform” a section 205 proceeding into a section 206 proceeding.¹⁵² In *W. Resources*, the Court of Appeals for the District of Columbia Circuit explained that the Commission may transform a proceeding that begins under section 205 of the FPA or under the parallel section 4 of the Natural Gas Act¹⁵³ into a proceeding under FPA section 206 or NGA section 5,¹⁵⁴ if the Commission makes three findings: “first, it must conclude . . . that [the filing entity] failed to carry its burden of proof that the proposed rate was just and reasonable; second, it must itself demonstrate that the default position, the prior rate, is no longer just and reasonable; and third, it must establish that its substitute rate is just and reasonable.”¹⁵⁵

issued the Government in the Sunshine Act meeting notice specifically listing this proceeding as a matter to be considered by the Commission at its February 15, 2018 meeting, despite the fact that most of the supplemental materials are dated months prior to the filing, and there have been no pleadings filed in this proceeding since December 2016.

¹⁵² *W. Resources, Inc. v. FERC*, 9 F.3d 1568, 1579 (D.C. Cir. 1993) (*W. Resources*).

¹⁵³ 15 U.S.C. § 717c (2012).

¹⁵⁴ *Id.* § 717d.

¹⁵⁵ *W. Resources*, 9 F.3d at 1579; see *Pub. Serv. Comm'n of N.Y. v. FERC*, (continued ...)

We make each of those three determinations below. First, we find that the transmission planning practices currently employed by the PJM Transmission Owners are unjust and unreasonable and unduly discriminatory and preferential insofar as they violate Order No. 890's coordination and transparency principles as well as the PJM Operating Agreement and the PJM OATT. Second, we find that, for the same reasons, the PJM Transmission Owners have failed to demonstrate that certain aspects of their section 205 filing are just and reasonable insofar as those aspects rely largely on the provisions of the PJM Operating Agreement that we find are being implemented in a manner that is unjust and unreasonable. Third, we establish a just and reasonable transmission planning process for Supplemental Projects by requiring revisions to both the PJM Operating Agreement and the PJM OATT. The following sections explain these determinations in turn.

1. **The PJM Transmission Owners' Implementation of the PJM Operating Agreement and PJM OATT Is Unjust and Unreasonable**

72. As noted, we find that the PJM Transmission Owners' practices in planning Supplemental Projects are inconsistent with Order No. 890 and in violation of the PJM Operating Agreement. In particular, we find that the PJM Transmission Owners' implementation of the transmission planning process is inconsistent with Order No. 890's coordination and transparency principles. Accordingly, we find that the provisions of the PJM Operating Agreement containing the transmission planning process for Supplemental Projects are unjust and unreasonable and unduly discriminatory and preferential.¹⁵⁶

a. **Order No. 890's Transparency Principle**

73. Order No. 890's transparency principle "require[s] transmission providers to disclose to all customers and other stakeholders the basic criteria, assumptions,

866 F.2d 487, 491 (D.C. Cir. 1989) ("[W]here a § 4 proceeding is under way, the Commission may discover facts that persuade it that reductions or changes are appropriate that require the exercise of its § 5 powers. . . . [T]he Commission is free to act on those discoveries, so long as it shoulders the § 5 burdens.").

¹⁵⁶ FPA section 206 provides that "whenever the Commission, after a hearing held upon its own motion or upon complaint, shall find . . . that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential" the Commission shall determine the "the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force." 16 U.S.C § 824e(a) (2012).

and data that underlie their transmission system plans.”¹⁵⁷ To comply with that requirement, transmission providers must “reduce to writing and make available the basic methodology, criteria, and processes they use to develop their transmission plans.”¹⁵⁸ “This information should enable customers, other stakeholders, or an independent third party to replicate the results of planning studies and thereby reduce the incidence of after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion.”¹⁵⁹

74. The PJM Operating Agreement requires the PJM Transmission Owners to provide to the PJM Office of Interconnection, among other things, “all criteria, assumptions and models used in the current Local Plan,” which the PJM Office of Interconnection then posts to its website.¹⁶⁰ However, the record in this proceeding indicates that the PJM Transmission Owners often provide models, criteria, and assumptions as part of the Supplemental Project transmission planning process that are vague or incomplete and do not allow stakeholders “to replicate the results of planning studies.” Therefore, stakeholders in many cases cannot at an early stage identify the needs that Supplemental Projects will address.¹⁶¹ The planning information for Supplemental Projects is, for many of the PJM Transmission Owners, considerably less detailed and less helpful to stakeholders than the information that they provide regarding FERC Form 715 projects, which are also included in the Local Plans. In addition, in some cases, the PJM Transmission Owners provide the models, criteria, and assumptions to stakeholders at the same time as a proposed Supplemental Project, at which point that project is often at an advanced stage of development and stakeholder feedback is less likely to be meaningful or effective. As a result of these two factors—the quality of the models, criteria, and assumptions the PJM Transmission Owners provide and the point in the transmission planning process at which they are provided—stakeholders frequently are not in a position to comment on the transmission planning studies or the resulting

¹⁵⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 461, 471.

¹⁵⁸ *Id.* P 471.

¹⁵⁹ *Id.*; *see also id.* P 424 (explaining that a purpose of Order No. 890 is to remedy undue discrimination that occurs because stakeholders often have no way “to determine whether the plan developed by the transmission provider in isolation is unduly discriminatory” other than through “after-the-fact” disputes).

¹⁶⁰ PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§ 1.5.4(a) and (e) (3.2.0).

¹⁶¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471.

transmission needs before the PJM Transmission Owners take significant steps towards developing Supplemental Projects to address those needs.

75. For example, as American Municipal Power explains, some PJM Transmission Owners are not providing specific planning criteria for Supplemental Projects and, in those instances where planning criteria are provided, the transmission owners often do not provide guidance regarding how those criteria underlie the transmission needs that Supplemental Projects will address.¹⁶² Directing the Commission to the transmission planning criteria that the PJM Transmission Owners provide via PJM's website, American Municipal Power explains the PJM Transmission Owners vary considerably in the level of detail that they make available to stakeholders. American Municipal Power states that many transmission owners provide information that is "woefully" insufficient to allow stakeholders to assess the need for a Supplemental Project or to evaluate whether a proposed Supplemental Project is an appropriate solution for that need.¹⁶³ As a result, American Municipal Power concludes, stakeholder participation is often limited to asking "only after-the-fact questions with no opportunity to influence the in-progress projects, at which point meaningful participation is all but impossible."¹⁶⁴ In addition, American Municipal Power refers the Commission to presentations that the PJM Transmission Owners gave regarding four Supplemental Projects at the July and December 2016 Subregional RTEP Committee meetings.¹⁶⁵ American Municipal Power contends that the information provided in these presentations is too limited to satisfy Order No. 890 and, in any case, is provided too late in the transmission planning process to enable stakeholders to play a meaningful role in the planning of these Supplemental Projects. For example, American Municipal Power states that two of the Supplemental Projects "initially presented" at the December 2016 Subregional RTEP Committee meetings were already complete while another seven were already under construction and 24 were already in the engineering phase.¹⁶⁶

¹⁶² American Municipal Power October 25, 2016 Comments at 13-15; *id.* Attachment B (showing excerpts of presentations at which the PJM Transmission Owners present Supplemental Projects); American Municipal Power November 15, 2016 Motion to Dismiss and Answer at 15-17.

¹⁶³ American Municipal Power October 25, 2016 Comments at 13-15.

¹⁶⁴ *Id.* at 11.

¹⁶⁵ *Id.*, Attachment B; *id.* at 11-12; American Municipal Power December 8, 2016 Answer at 12 & n.11; American Municipal Power November 15, 2016 Motion to Dismiss and Answer at 15-17.

¹⁶⁶ American Municipal Power December 8, 2016 Answer at 13. The PJM
(continued ...)

76. Old Dominion describes a similar situation. It states that, “[i]n practice, the Subregional RTEP Committee meetings do not provide local planning criteria in some instances, and in others the criteria are provided together with proposed Supplemental Projects.”¹⁶⁷ As a result, Old Dominion asserts that there is no point in the transmission planning process for Supplemental Projects at which stakeholders can review the need or criteria violation apart from the proposed solution or propose alternatives for satisfying the identified need or criteria violation.¹⁶⁸ Similarly, Northeast Transmission adds that the Supplemental “[P]rojects [that] are presented to stakeholders nearly fully planned” often do not follow clearly from the limited information that stakeholders receive regarding planning criteria and assumptions that the PJM Transmission Owners use to identify Supplemental Projects.¹⁶⁹

Transmission Owners contend that the December 1, 2016 Subregional RTEP meetings were not the only Subregional RTEP meetings within that planning cycle and that those other meetings “provide[d] numerous opportunities for stakeholders to review, provide input, and engage with Transmission Owners.” *See* The PJM Transmission Owners November 25, 2016 Answer at 14-16. That answer does not, however, contradict American Municipal Power’s assertion that certain Supplemental Projects were “initially presented” to stakeholders only after they were completed or after construction or engineering had begun. In any case, a cursory review of the Subregional RTEP planning documents posted to PJM’s website (and referenced repeatedly in the parties various filings) appears to confirm American Municipal Power’s assertions. For example, the December 1, 2016 presentation for the Western Meeting of the PJM Subregional RTEP Committee contains two Supplemental Projects with in-service dates on or before December 1, 2016, that do not appear in the other presentations for the Western Meetings of the Subregional RTEP Committees in the 2016 and 2016 planning cycles. *See* PJM, *Subregional RTEP Committee – Western*, <http://www.pjm.com/committees-and-groups/committees/srrtep-w.aspx> (last visited May 10, 2017).

¹⁶⁷ Old Dominion October 25, 2016 Response at 9; Old Dominion December 8, 2016 Answer at 7, 12 & Attachment A (referring the Commission to presentations from the December 1, 2016 MidAtlantic Subregional RTEP Committee meeting, which, according to Old Dominion, fail to adequately describe the criteria used to identify the project, precluding a meaningful consideration of alternatives); *see also id.* at 8 (stating “that planning for Supplemental Projects does not meet the Order No. 890 transmission planning principle of coordination Transmission Owners generally do not identify criteria for Supplemental Projects”).

¹⁶⁸ Old Dominion October 25, 2016 Response at 7-10.

¹⁶⁹ Northeast Transmission December 19, 2016 Answer at 12-13.

77. Based on this evidence, we find that the PJM Transmission Owners are implementing the transmission planning process for Supplemental Projects in a manner that is inconsistent with Order No. 890's transparency principle. The record indicates that, in practice, the PJM Transmission Owners are providing transmission planning information, including models, criteria, and assumptions, that is inadequate to allow stakeholders to replicate their planning studies, as Order No. 890 requires. In addition, we find that this information is often provided too late in the transmission planning process for stakeholders to participate before the PJM Transmission Owners have taken significant steps toward developing Supplemental Projects. As a result, stakeholders are unable to use this information in the manner that Order No. 890 required that they be able to use it, including to "replicate the results of planning studies and thereby reduce the incidence of after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion."¹⁷⁰ Without the ability to identify the underlying transmission needs identified in the planning studies performed by the PJM Transmission Owners, stakeholders will often be ill-positioned, or entirely unable, to provide timely and meaningful input on those needs or the transmission solutions proposed to meet those needs, at least when those needs and solutions are presented at the same time. Accordingly, we conclude that the PJM Operating Agreement, as implemented by the PJM Transmission Owners, is unjust and unreasonable and is unduly discriminatory or preferential insofar as it permits the PJM Transmission Owners to administer a transmission planning process for Supplemental Projects that is inconsistent with Order No. 890.

78. The PJM Transmission Owners' response to the Show Cause Order and their various answers do not call for a contrary conclusion. The PJM Transmission Owners acknowledge that the need underlying a Supplemental Project is often initially presented at the same time as the Supplemental Project that will meet that need.¹⁷¹ They state that "[m]ultiple factors drive the consideration of Supplemental Projects, including the need for increased safety, performance, adequacy, resiliency, and operability of transmission facilities."¹⁷² In addition, they observe that different transmission owners vary in how they assess the effect of these drivers on their individual transmission systems. But the fact that there may be multiple criteria and considerations underlying the need for a Supplemental Project does not prevent the PJM Transmission Owners from timely

¹⁷⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471.

¹⁷¹ The PJM Transmission Owners November 25, 2016 Answer at 16-17; The PJM Transmission Owners October 25, 2016 Response at 8-9; *see* Old Dominion October 25, 2016 Response at 9-10.

¹⁷² The PJM Transmission Owners November 25, 2016 Answer at 12-13.

posting a thorough description of those criteria and considering stakeholder feedback before identifying a particular Supplemental Project. Similarly, the fact that those criteria may vary among the PJM Transmission Owners also does not prevent them from timely posting each transmission owner's different criteria. As American Municipal Power observes, the PJM Transmission Owners already post to the PJM website their individual planning criteria for FERC Form 715 projects. Although some of the PJM Transmission Owners also post criteria for planning Supplemental Projects, there is significant variation among the PJM Transmission Owners in the detail provided regarding Supplemental Projects.¹⁷³

79. The PJM Transmission Owners' response to the Show Cause Order illustrates the problems with their providing the models, criteria, and assumptions, as well as the resulting needs, at the same time that they provide the Supplemental Projects that they identify to meet those needs. The PJM Transmission Owners state that it is not reasonable to expect a PJM Transmission Owner to identify the planning inputs that may lead to an identified Supplemental Project "in isolation from the most obvious solution, which is typically replacement of the facility at risk."¹⁷⁴ However, as American Municipal Power points out, the most obvious solution will not always be the best solution.¹⁷⁵ In many cases Supplemental Projects address facilities that have existed for several decades, during which time the topography of the electricity grid and the set of potential technologies available to address the underlying need may have changed considerably. As a result, rebuilding the facility that was the most obvious solution many years ago may no longer be the best solution today. The Commission promulgated Order No. 890, in part, to prevent undue discrimination by ensuring that stakeholders could advocate effectively for alternative solutions.¹⁷⁶ The PJM Transmission Owners' practice of frequently presenting the criteria, models, and assumptions, as well as the resulting needs, at the same time as those "obvious" solutions impairs stakeholders' ability to do just that.

¹⁷³ American Municipal Power October 25, 2016 Comments at 13-15.

¹⁷⁴ The PJM Transmission Owners October 25, 2016 Response at 9.

¹⁷⁵ American Municipal Power December 8, 2016 Answer at 11-12 ("As distributed generation, storage, renewables and micro-grids gain greater penetration, the 'right' answer for addressing aging infrastructure may change.").

¹⁷⁶ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 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 "the planning and expansion of transmission facilities to meet the[ir] reasonable needs").

80. Similarly, we are not persuaded by the PJM Transmission Owners' contention that "the types of needs that Supplemental Projects address make it appropriate and, in many cases necessary, for PJM Transmission Owners to identify 'proposed solutions' when they present their analysis of th[e] needs" underlying those solutions.¹⁷⁷ The PJM Transmission Owners have not supported their position that transmission planning requires the simultaneous presentation of needs and solutions. They do not explain why it is useful, much less "inevitable and unavoidable," for stakeholders to review the needs underlying Supplemental Projects, or the models, criteria, and assumptions underlying those needs, at the same time that the PJM Transmission Owners identify the Supplemental Projects to meet those needs.¹⁷⁸ Although the PJM Transmission Owners state that "the analysis of local system needs often cannot be divorced from the identification of potential solutions,"¹⁷⁹ they neither explain that statement nor explain why this fact prevents them from posting their models, criteria, and assumptions before they identify Supplemental Projects as the Commission is requiring in this proceeding.

b. Order No. 890's Coordination Principle

81. Order No. 890's coordination principle seeks "to eliminate the potential for undue discrimination in planning by opening appropriate lines of communication between transmission providers" and stakeholders.¹⁸⁰ Appropriate lines of communication, the Commission explained, must "provide for the timely and meaningful input and participation of customers into the development of transmission plans," which "means that customers must be included at the early stages of the development of the transmission plan and not merely given an opportunity to comment on transmission plans that were developed in the first instance without their input."¹⁸¹ The Commission, however, is more concerned about the "substance of [transmission providers'] coordination" with their stakeholders "than its form."¹⁸² Accordingly, although "rigid

¹⁷⁷ The PJM Transmission Owners October 25, 2016 Response at 8.

¹⁷⁸ The PJM Transmission Owners November 25, 2016 Answer at 17 (stating that "in some cases it is inevitable and unavoidable" that potential Supplemental Projects are presented at the same time as the underlying needs because "local system needs often cannot be divorced from the identification of potential solutions").

¹⁷⁹ *Id.* at 17.

¹⁸⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 452.

¹⁸¹ *Id.* P 454.

¹⁸² *Id.* PP 451-452.

and formal” meeting procedures might be one way of satisfying the coordination requirement, “there may be other ways as well,” such as the formation of a permanent planning committee.¹⁸³

82. The PJM Operating Agreement provides that the Subregional RTEP Committees will receive “sufficient opportunity to review and provide written comments on the criteria, assumptions, and models used in local planning activities prior to finalizing” the relevant plans. In addition, the PJM Operating Agreement also provides that the Subregional RTEP Committees will receive sufficient opportunity to review and provide written comments on Supplemental Projects and on the PJM Transmission Owners’ Local Plans.¹⁸⁴ The record in this proceeding indicates, however, that the opportunities for review and comment that PJM stakeholders receive are, in practice, often insufficient to provide for timely and meaningful input, as required by Order No. 890. The record demonstrates that the PJM Transmission Owners are not consistently providing stakeholders with a sufficient opportunity early in the transmission planning process to provide feedback on the models, criteria, and assumptions that underlie each PJM Transmission Owner’s transmission planning process for Supplemental Projects or the transmission needs identified during that process. Similarly, the record indicates that the PJM Transmission Owners are not providing stakeholders with a sufficient opportunity to comment on the Supplemental Projects that the PJM Transmission Owners propose to meet those needs. In addition, even where there may be an opportunity for stakeholder input, there is often considerable uncertainty about the specifics of that opportunity, limiting its utility to stakeholders.

83. For example, NextEra Transmission explains that the PJM Operating Agreement does not establish a meeting schedule or the “frequency of meetings, planning cycles, or milestones used in developing Supplemental Projects” and is instead “silent as to any opportunity to provide input regarding the criteria and models to be used by the PJM Transmission Owners” or the studies performed by the PJM Transmission Owners as opposed to those performed by PJM as part of the RTEP.¹⁸⁵ NextEra Transmission contends that the resulting “lack of clarity in the [PJM] Operating Agreement” explains why stakeholders are not receiving an opportunity to participate meaningfully in the planning of Supplemental Projects.¹⁸⁶

¹⁸³ *Id.* P 452.

¹⁸⁴ PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d) (4.0.0).

¹⁸⁵ NextEra Transmission November 22, 2016 Answer and Protest at 5.

¹⁸⁶ *Id.* at 5.

84. Old Dominion describes a similar situation in which stakeholders often lack a sufficient opportunity to review and provide written comments on potential Supplemental Projects. Specifically, Old Dominion explains that Supplemental Projects are often presented to stakeholders for the first time via a webinar, at which point the projects are often already at an “advanced” stage of development.¹⁸⁷ Old Dominion states that, as a result, “there is no stage in the PJM planning process where the need or criteria violation that necessitates a Supplemental Project is identified apart from the proposed solution” — a dynamic that, according to Old Dominion, prevents stakeholders from having a meaningful opportunity to analyze or offer alternatives to a proposed Supplemental Project.¹⁸⁸

85. American Municipal Power raises similar concerns, explaining that the PJM Transmission Owners often provide only “summary data” regarding transmission needs and the Supplemental Projects that are selected to meet those needs. American Municipal Power further states that summary data is often provided when the Supplemental Project is “either complete or at a stage in development that is far beyond the design phase,” which gives stakeholders an opportunity to ask only “after-the-fact questions and not any meaningful opportunity for input.”¹⁸⁹ American Municipal Power explains that this problem is not necessarily a problem with the language of the PJM Operating Agreement, but rather with how the PJM Transmission Owners are implementing that agreement in practice.¹⁹⁰

86. Finally, Northeast Transmission states that “the problem with the local transmission planning in PJM is the lack of a clearly defined and consistently repeated process for local planning.”¹⁹¹ Northeast Transmission contends that vagueness regarding the PJM Transmission Owners’ obligations with regard to planning Supplemental Projects has created uncertainty regarding the PJM Transmission Owners’ obligations—which may have contributed to a situation in which the PJM Operating Agreement appears, on its face, to comply with Order No. 890, even though, in practice,

¹⁸⁷ Old Dominion October 25, 2016 Response 10.

¹⁸⁸ *Id.* 8; *see also* Old Dominion December 8, 2016 Answer (reiterating these concerns).

¹⁸⁹ American Municipal Power October 25, 2016 Comments at 11-12.

¹⁹⁰ American Municipal Power November 15, 2016 Motion to Dismiss and Answer at 16.

¹⁹¹ Northeast Transmission December 19, 2016 Answer at 3.

stakeholders do not receive the opportunity for meaningful input that it might appear to provide.¹⁹²

87. Based on this evidence, we find that the PJM Transmission Owners are implementing the transmission planning process for Supplemental Projects in a manner that is inconsistent with Order No. 890's coordination principle. The record indicates that, in some cases, there is little clarity regarding when critical information is provided to stakeholders, including whether the PJM Transmission Owners must provide that information in advance of the meetings at which that information is discussed. We are particularly concerned about this lack of detail because the information and issues discussed at those meetings are often complex, and, in many cases, stakeholders will not be able to participate meaningfully at those meetings without sufficient time to review that information beforehand. Presenting that information at the same time it is to be discussed does not afford stakeholders a sufficient time to review.

88. In addition, the record indicates that there is a lack of clarity regarding when stakeholders may comment on the models, criteria, and assumptions underlying the transmission planning process for Supplemental Projects, the transmission needs identified during that planning process, or the transmission projects proposed to meet those needs. In many cases, the PJM Transmission Owners are not providing stakeholders with sufficient opportunity to comment on the different stages of the transmission planning process for Supplemental Projects and, in other cases, the PJM Operating Agreement may not provide stakeholders with the detail necessary to take advantage of such opportunities even if they are available.

89. That outcome is inconsistent with Order No. 890's requirement that a transmission planning process must provide for appropriate lines of communication between stakeholders and transmission planners. Although Order No. 890 did not prescribe the requirements for coordination or require the adoption of "rigid and formal meeting procedures," Order No. 890 did require that transmission planners provide adequate detail regarding the meeting schedule and opportunities for comment so that stakeholders have an opportunity to participate meaningfully in the transmission planning process.¹⁹³ Because we conclude that the PJM Operating Agreement is not providing stakeholders with such an opportunity for Supplemental Projects, we find that the PJM Operating Agreement does not comply with Order No. 890.

90. Here again, the PJM Transmission Owners' arguments do not require a contrary conclusion. In their initial response to the Show Cause Order, the PJM Transmission

¹⁹² *Id.* at 4-9.

¹⁹³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 452.

Owners refer the Commission to various provisions of the PJM Operating Agreement, which, they contend, provide numerous, well-defined opportunities for stakeholders to participate in the transmission planning process.¹⁹⁴ However, at the same time, the PJM Transmission Owners note that many Supplemental Projects arise from an assessment of multiple considerations associated with a specific facility and, therefore, they contend that the needs underlying a Supplemental Project cannot be analyzed separately from the likely solution.¹⁹⁵ But it is not clear when, if ever, stakeholders have the opportunity to comment on those considerations, or participate at the different stages of the process for planning a Supplemental Project before the relevant PJM Transmission Owner has taken significant steps toward the development of that Supplemental Project. The PJM Transmission Owners' contentions that different stages of the transmission planning process cannot be separated from one another belie their statements regarding the numerous, well-defined opportunities for stakeholder input.

91. In short, we conclude that the PJM Transmission Owners' practices in implementing Order No. 890 and the PJM Operating Agreement's provisions with respect to Supplemental Projects are unjust and unreasonable insofar as they fail to provide for "appropriate" lines of communication, as Order No. 890 requires. We further conclude that the provisions in the PJM Operating Agreement are opaque and fail to provide sufficient clarity regarding the opportunities for stakeholder involvement in the transmission planning process for Supplemental Projects. However, as noted, during the pendency of this section 206 proceeding, the PJM Transmission Owners filed proposed Attachment M-3 to the PJM OATT, which addresses substantially the same issues and in many cases incorporates provisions of the PJM Operating Agreement that are discussed above. Accordingly, we will address Attachment M-3 to the PJM OATT before discussing what revisions are necessary to bring the transmission planning process for Supplemental Projects into compliance with the FPA.

2. The PJM Transmission Owners' Section 205 Filing

92. As noted above, the PJM Transmission Owners also made a filing pursuant to section 205 of the FPA in which they propose a new Attachment M-3 that replicates some of the language addressing the transmission planning process for Supplemental Projects that is already in the PJM Operating Agreement and provides certain other clarifying language. We find that the PJM Transmission Owners have supported as just and reasonable their position that the Commission should allow them to move the transmission planning provisions for Supplemental Projects from the PJM Operating Agreement to the PJM OATT in the form of Attachment M-3. However, we conclude

¹⁹⁴ The PJM Transmission Owners October 25, 2016 Response at 5-10.

¹⁹⁵ *E.g.*, The PJM Transmission Owners November 25, 2016 Answer at 12-13.

that Attachment M-3 would not ensure that Supplemental Projects are planned in an Order No. 890-compliant fashion and, therefore, we find that Attachment M-3 would not remedy the defects in the PJM Operating Agreement that we outlined above. Accordingly, we accept in part the PJM Transmission Owners' section 205 filing, including their proposal to move the provisions governing the transmission planning process for Supplemental Projects from the PJM Operating Agreement to the PJM OATT. However, we also require revisions to that filing, as illustrated in Appendix A, pursuant to section 206 of the FPA. As explained above, the D.C. Circuit's decision in *W. Resources*¹⁹⁶ provides that the Commission may revise a section 205 filing pursuant to section 206 provided that the Commission makes three findings: (1) that the existing tariff is unjust and unreasonable; (2) that the section 205 proposed rate has not been shown to be just and reasonable; and (3) that the new rate is itself just and reasonable. Having already explained why the existing transmission planning process for Supplemental Projects in the PJM Operating Agreement is not just and reasonable, we now address the substance of the PJM Transmission Owners' section 205 filing containing Attachment M-3 and explain why it has not been shown to be just and reasonable.

a. American Municipal Power Motion To Dismiss the Section 205 Filing

93. We first address American Municipal Power's motion to dismiss the PJM Transmission Owners' section 205 filing. We deny the motion. The Show Cause Order required the PJM Transmission Owners to propose revisions to either the PJM Operating Agreement or the PJM OATT, or show cause why no changes are required to either document.¹⁹⁷ In their October 25th response to the Show Cause Order, the PJM Transmission Owners chose to explain why no revisions were required.

94. Selecting that option, however, does not preclude the PJM Transmission Owners from proposing revisions to the PJM OATT under FPA section 205. Nothing in the Show Cause Order prohibited the PJM Transmission Owners from revising the PJM OATT to add detail about the Supplemental Project transmission planning process. Nor could the Show Cause Order have precluded the PJM Transmission Owners from making such a filing. As the D.C. Circuit has explained, "nothing in section 206 sanctions denying utilities their right to unilaterally file rate and term changes."¹⁹⁸ To the

¹⁹⁶ *W. Resources*, 9 F.3d at 1579.

¹⁹⁷ Show Cause Order, 156 FERC ¶ 61,134 at P 15.

¹⁹⁸ *See Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002).

contrary, the PJM Transmission Owners may, at any time, exercise their statutory right under FPA section 205 to file changes to their tariff.

95. American Municipal Power also mischaracterizes the requirements of the FPA and the Show Cause Order. American Municipal Power contends that, “[p]ursuant to the [Show Cause Order], the PJM [Transmission Owners] have the burden of demonstrating that the current OATT and [PJM Operating Agreement] language governing the transmission planning process remains just and reasonable.”¹⁹⁹ That is incorrect. When the Commission begins a proceeding under section 206 of the FPA, as the Commission did here, it is the Commission that bears the burden of proof to show that the existing rate is unjust and unreasonable; it is not the PJM Transmission Owners’ burden to show that the existing rate continues to be just and reasonable.²⁰⁰ And, as the D.C. Circuit has explained, the substance of that burden—i.e., the just and reasonable standard—is the same regardless whether it is on the filing party under section 205 or the Commission or a complainant under section 206.²⁰¹ The PJM Transmission Owners’ section 205 filing therefore did not change the applicable burden of proof as to the existing rate to a “less demanding burden of proof than section 206.”²⁰²

b. Determination Regarding the Tariff Location of the Transmission Planning Process for Supplemental Projects

96. American Municipal Power’s motion to dismiss can also be understood as a protest of the PJM Transmission Owners’ section 205 filing. In particular, American Municipal Power contends that moving the transmission planning process for Supplemental Projects to the PJM OATT would not be just and reasonable because the PJM Transmission Owners would have exclusive filing rights to revise that transmission planning process, and any revisions by the PJM Board of Managers would

¹⁹⁹ American Municipal Power November 15, 2016 Motion to Dismiss and Answer at 6.

²⁰⁰ See, e.g., *Ala. Power Co. v. FERC*, 993 F.2d 1557, 1571 (D.C. Cir. 1993) (“[T]he proponent of a rate change under § 206, here FERC, has the burden of proving that the existing rate is unlawful.”).

²⁰¹ *FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 353 (D.C. Cir. 2014) (“The statutory ‘just and reasonable’ standard is the same under section 205 and section 206.”).

²⁰² American Municipal Power November 15, 2016 Motion to Dismiss and Answer at 6. In any case, the PJM Transmission Owners bear the burden of showing that the section 205 filing is just and reasonable—a burden that, as we explain below, they have met only in part.

need to take the form of a complaint pursuant to FPA section 206.²⁰³ Old Dominion also protests the PJM Transmission Owners' proposal to move the transmission planning process for Supplemental Projects to the PJM OATT. Old Dominion notes that given the significance of transmission planning and the reluctance of some transmission owners to comply with Order No. 890 requirements in the past, improvements to the Supplemental Planning process should be included in the PJM Operating Agreement where revisions require a super-majority vote of PJM stakeholders.²⁰⁴

97. We are not persuaded. In Order No. 890, the Commission clarified that "individual transmission owners must, to the extent that they perform transmission planning within an RTO or ISO, comply with the Final Rule."²⁰⁵ The record in this proceeding indicates that the planning for Supplemental Projects is done almost entirely by the PJM Transmission Owners, with PJM playing a relatively minor role in which it reviews the proposed Supplemental Projects only to ensure that they do not have adverse reliability impacts. Accordingly, given that the PJM Transmission Owners bear primary responsibility to plan Supplemental Projects,²⁰⁶ we find that it is just and reasonable for the provisions governing the Supplemental Project transmission planning process to be contained within the PJM OATT with the PJM Transmission Owners retaining the FPA section 205 filing rights.²⁰⁷ Finally, we note that, although the PJM Transmission Owners have the right to propose changes to Attachment M-3, those changes can take effect only if the PJM Transmission Owners demonstrate to the Commission that they are just and reasonable and not unduly discriminatory or preferential.

c. Linden's Protest of the Application of Attachment M-3

98. Linden also protests Attachment M-3, arguing that, as a Zero Revenue Requirement Party that does not plan Supplemental Projects, Linden should not

²⁰³ *Id.* at 5.

²⁰⁴ Old Dominion November 22, 2016 Protest at 9.

²⁰⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at 440. *See also supra* P 13.

²⁰⁶ The PJM Transmission Owners November 30, 2016 Answer at 9, 11.

²⁰⁷ Indeed, this outcome, in which the PJM Transmission Owners address the transmission planning process for Supplemental Projects in the OATT was expressly stated as an option in the Show Cause Order. Show Cause Order, 156 FERC ¶ 61,134 at P 15. *See infra* P 116 (requiring clarifying edits to indicate where Supplemental Projects fit in the process for developing PJM's Local Plan and that specifics of that process are in Attachment M-3).

be required to participate in a process for planning Supplemental Projects.²⁰⁸ As noted, the PJM Transmission Owners answer Linden's protest by explaining that Attachment M-3 already produces their desired outcome because it excludes from its application transmission owners that do not plan Supplemental Projects. The PJM Transmission Owners further state that they "would have no objection to the Commission's affirming this interpretation in its order on proposed Attachment M-3."²⁰⁹

99. We confirm that interpretation. The PJM Transmission Owners are correct that Attachment M-3 explicitly excludes parties, such as Linden, that do not plan Supplemental Projects as that term is defined in the PJM Operating Agreement. We conclude, therefore, that Linden's protest is no obstacle to accepting in part Attachment M-3.

d. Determination Regarding the Provisions of the Transmission Planning Process for Supplemental Projects

100. Although we find that the PJM Transmission Owners' proposal to move the provisions governing the transmission planning process for Supplemental Projects to Attachment M-3 to be just and reasonable, we find that, in several respects, the PJM Transmission Owners have not shown that the substance of Attachment M-3 complies with Order No. 890. In particular, we find that Attachment M-3 duplicates and otherwise relies heavily on the provisions of the PJM Operating Agreement that we found above to be unjust and unreasonable because they do not comply with Order No. 890. Accordingly, we find that accepting Attachment M-3 as proposed would not remedy the ways in which the PJM Transmission Owners have implemented the provisions of the PJM Operating Agreement in a manner that is inconsistent with Order No. 890 and, therefore, that Attachment M-3 has not been shown to be just and reasonable.

101. First, we find that Attachment M-3 does not address the ways in which the PJM Transmission Owners are implementing the transmission planning process for Supplemental Projects in a manner inconsistent with Order No. 890's transparency principle. Attachment M-3 requires the PJM Transmission Owners to post their models, criteria, and assumptions in accordance with sections 1.3(d) and 1.5.6(b) of Schedule 6 of the PJM Operating Agreement and to discuss that information at an initial assumptions meeting. The PJM Operating Agreement already includes those same requirements.²¹⁰

²⁰⁸ Linden November 22, 2016 Protest at 2-4.

²⁰⁹ The PJM Transmission Owners December 7, 2016 Answer to Comments and Protests at 14-15.

²¹⁰ The PJM Transmission Owners make clear in both their response to the Show Cause Order and in their answer to Northeast Transmission's filing that sections 1.3(d) (*continued ...*)

Nevertheless, as explained above, the PJM Operating Agreement, including sections 1.3(d) and 1.5.6(b), are not providing stakeholders with an adequate opportunity to comment on the models, criteria, and assumptions used to identify the needs underlying Supplemental Projects. In addition, the models, criteria, and assumptions that were provided to stakeholders pursuant to those provisions often lacked the level of detail needed to allow stakeholders “to replicate the results of planning studies” and thereby identify the needs that will be addressed by Supplemental Projects.²¹¹ Because Attachment M-3 proposes to rely on requirements that are already present in the PJM Operating Agreement, we conclude that Attachment M-3 would not remedy the ways in which we have already found the transmission planning process for Supplemental Projects to be inconsistent with Order No. 890’s transparency principle.

102. Second, we find that Attachment M-3 does not provide sufficient detail regarding the opportunities for stakeholder involvement in the transmission planning process for Supplemental Projects. As explained above, the PJM Transmission Owners are providing information regarding Supplemental Projects—including models, criteria, and assumptions, the resulting needs, and the proposed solutions—to stakeholders for the first time at the meetings to discuss that information. As noted, that information and the issues discussed at those meetings are often complex, and it is unrealistic to expect stakeholders to participate meaningfully at those meetings without time to prepare. Presenting that information at the same time it is to be discussed does not afford stakeholders a meaningful opportunity to participate in that discussion.

103. Attachment M-3 provides that the information regarding needs and potential solutions must be posted at least 5 days before the meeting to discuss those items.²¹² However, there is no similar requirement that the models, criteria, and assumptions used in the transmission planning process for Supplemental Projects be posted at least a certain number of days before the meeting to discuss that information. In light of the evidence in the record before us, the absence of a requirement to provide models, criteria,

and 1.5.6(b) of Schedule 6 of the PJM Operating Agreement apply to the transmission planning process for Supplemental Projects. The PJM Transmission Owners October 25, 2016 Response at 6-7; The PJM Transmission Owners December 22, 2016 Answer at 6-7 (describing Northeast Transmission’s reading as “selective and incorrect”). Given that the PJM Transmission Owners contend that these provisions already apply fully to the development of Supplemental Projects, we find that codifying that understanding will not cure the ways in which the PJM Operating Agreement violates Order No. 890.

²¹¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471.

²¹² Attachment M-3 ¶ 2.

and assumptions a certain number of days before the meeting to discuss that information violates Order No. 890's coordination principle.

104. In addition, we find that Attachment M-3 lacks sufficient detail regarding the opportunities for stakeholders to provide comments on the models, criteria, and assumptions used to plan Supplemental Projects. Attachment M-3 provides for stakeholder comments following review of the assumptions and methodology used in planning Supplemental Projects, following the review of needs and solutions, and following the proposed Local Plan. However, in only one of those instances—the review of needs and solutions—does Attachment M-3 provide a defined time period in which stakeholders may provide comments.²¹³ As a result, we find that the proposed revisions would not fully address the Commission's finding that the uncertainty associated with stakeholder opportunities for comment under the existing provisions of the PJM Operating Agreement violate Order No. 890's coordination principle. Indeed, the language and opportunities for comment provided under paragraphs 1 and 3 of Attachment M-3 are substantially similar to the equivalent language in sections 1.3 and 1.5.6 of the PJM Operating Agreement. Accordingly, because we have determined that the PJM Operating Agreement does not provide adequate clarity regarding stakeholder opportunities for comment, it follows that the PJM Transmission Owners have not met their burden to show that the substantially similar language in Attachment M-3 is just and reasonable.²¹⁴

3. Setting the Just and Reasonable Rate

105. Having determined that both the PJM Operating Agreement and the PJM Transmission Owners' section 205 filing modifying the PJM OATT to establish Attachment M-3 are not just and reasonable, we turn now to establishing the just and reasonable and not unduly discriminatory or preferential transmission planning process for Supplemental Projects. As noted, the PJM Transmission Owners have satisfied their burden to show that it is just and reasonable for the details regarding the transmission planning process for Supplemental Projects to be in Attachment M-3 of the PJM OATT but they have not satisfied their burden to show that certain provisions of that attachment are just and reasonable. Accordingly, as explained further below, we direct the PJM Transmission Owners to make the revisions outlined below to Attachment M-3 rather than to the PJM Operating Agreement. Further, in order to ensure clarity as to the provisions governing the planning of Supplemental Projects, we will require PJM to

²¹³ *Id.* ¶¶ 1-3.

²¹⁴ *See infra* P 116 (requiring clarifying edits to indicate where Supplemental Projects fit in the process for developing PJM's Local Plan and that specifics of that process are in Attachment M-3).

make clarifying edits to the PJM Operating Agreement to remove redundant or inconsistent provisions. These two sets of revisions—to Attachment M-3 and to the PJM Operating Agreement²¹⁵—are attached to this order as Appendices A and B, respectively. In the following sections, we explain the revisions required in these appendices and how they will bring Attachment M-3 and the PJM Operating Agreement into compliance with Order No. 890 and will, therefore, constitute a transmission planning process for Supplemental Projects that is just and reasonable and not unduly discriminatory or preferential.

a. Separate Meetings for Needs and Solutions

106. We require the PJM Transmission Owners to revise Attachment M-3 to provide for separate meetings to discuss the needs underlying a Supplemental Project and the solutions proposed to meet those needs. Order No. 890 required public utility transmission providers to provide the models, criteria, and assumptions so that “customers, other stakeholders, or an independent third party” could “replicate the results of planning studies and thereby reduce the incidence of after-the-fact disputes” over the manner in which that planning was conducted.²¹⁶ As explained above, the record in this proceeding shows that the PJM Transmission Owners are, in many cases, implementing the provisions of the PJM Operating Agreement in a manner that falls short of that requirement. In particular, the record shows that the PJM Transmission Owners are either providing models, criteria, and assumptions that are insufficient to replicate the relevant planning studies or providing them too late in the transmission planning process for Supplemental Projects to provide stakeholders sufficient opportunities to provide input.²¹⁷

²¹⁵ We note that the relevant PJM records in eTariff do not accurately reflect all language that the Commission has previously accepted, including, for example, language approved in *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,038 and *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,250 (2015). The existing tariff language included in Appendix B to this order represents, to the best of our knowledge, currently effective language the Commission has previously accepted and may not align with the currently effective record in eTariff or posted on PJM’s website.

²¹⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471.

²¹⁷ As noted, those needs are often presented for the first time at the same meeting in which the PJM Transmission Owners identify the Supplemental Project that they propose to develop, or, in some cases, have already begun developing.

107. We will remedy this unjust and unreasonable result by requiring meetings²¹⁸ to identify the individual PJM Transmission Owner needs underlying Supplemental Projects that are apart from and before the meetings at which the PJM Transmission Owner identifies and proposes potential Supplemental Projects to meet those needs. As a result of this change, the PJM Transmission Owners will convene, at a minimum, three stakeholder meetings in the course of developing a Supplemental Project. First, they will convene a meeting to address the models, criteria, and assumptions used to plan Supplemental Projects. Second, they will convene a meeting to address the needs identified using those models, criteria, and assumptions. Finally, they will convene a meeting to address the solutions proposed to meet those needs. Although Order No. 890 did not require a specific number of meetings, we find that, based on the record in this proceeding, certain minimum meeting requirements are necessary in order for the transmission planning process for Supplemental Projects to satisfy Order No. 890's transparency and coordination principles. In particular, we find that such meetings are necessary to remedy the PJM Transmission Owners' failure to provide models, criteria, and assumptions for Supplemental Projects that are sufficient to permit stakeholders to "replicate the results of planning studies" and thereby identify for themselves the needs that underlie Supplemental Projects.²¹⁹

108. Holding a separate meeting to discuss needs before a separate meeting to discuss potential solutions to meet those needs will allow stakeholders to evaluate the outputs of the PJM Transmission Owners' studies—i.e., the transmission needs—on their own before the PJM Transmission Owners take steps to develop the solutions that will meet those needs. By focusing on the needs by themselves, rather than reviewing those needs at the same time as potential solutions, stakeholders will have the meaningful opportunity to provide the input that Order No. 890 requires.²²⁰ In addition, a meeting focused on individual needs themselves will allow stakeholders to "ensure" that the standards provided by the PJM Transmission Owners "are consistently applied" and to do so before the PJM Transmission Owners have settled on proposed solutions.²²¹ We also find that this additional transparency will help mitigate concerns that Supplemental Projects may be structured to avoid or replace regional transmission projects that would otherwise be subject to competitive transmission development under Order No. 1000.

²¹⁸ The PJM Transmission Owners may satisfy the meetings requirements by conducting virtual meetings.

²¹⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471.

²²⁰ *Id.* at P 454.

²²¹ *Id.* at P 471.

b. Detail Regarding Meetings and Opportunities to Comment

109. We require the PJM Transmission Owners, in consultation with stakeholders, to establish a minimum number of days between the separate meetings to discuss needs and the potential solutions to meet those needs, as discussed in the previous section. We note that, in Order No. 890, the Commission specifically declined to mandate that every transmission provider adopt a “rigid” meeting schedule, although the Commission observed that such a schedule might be one way of complying with the coordination principle.²²² Although we continue to conclude that such a meeting schedule is not necessarily required for a transmission planning process to comply with Order No. 890, we conclude that, based on the specific record in this proceeding, the PJM Transmission Owners’ implementation of the PJM Operating Agreement demonstrates that greater detail in the Supplemental Project transmission planning process is necessary to ensure that the transmission planning process for Supplemental Projects complies with Order No. 890’s coordination principle. Accordingly, we require the PJM Transmission Owners to submit a compliance filing to revise Attachment M-3, as discussed in the following paragraphs.

110. As a result of the revisions to Attachment M-3 discussed above, the PJM Transmission Owners will convene a minimum of three separate meetings as part of the transmission planning process for Supplemental Projects: (1) a meeting to discuss the inputs to the transmission planning process, including models, criteria, and assumptions; (2) a meeting to discuss the needs identified as a result of that process; and (3) a meeting to discuss potential solutions to meet those needs. As explained earlier, the purpose of these separate meetings is to ensure that stakeholders have an adequate opportunity to review the subject matter to be discussed at each meeting—particularly the need(s) driving a Supplemental Project—and to do so at a point in the transmission planning process at which their participation may still be useful (i.e., before the PJM Transmission Owners have taken steps to develop the Supplemental Projects that would render moot the feedback that stakeholders might provide). In addition to separate meetings, we find that it is also necessary to establish a minimum number of days between those meetings. This minimum number of days will ensure that stakeholders have a sufficient opportunity to provide comments at each stage of the transmission planning process and to do so *before* the PJM Transmission Owners proceed to the subsequent stage of that process. The minimum number of days will also ensure that PJM Transmission Owners have an opportunity to consider those comments collectively.

111. In addition, we require the PJM Transmission Owners to revise Attachment M-3 to provide specific timeframes in which Subregional RTEP Committee will post the

²²² *Id.* at P 451.

information to be discussed at a particular meeting and in which stakeholders can present comments on that information. Providing a definite timeframe in which the information to be discussed must be posted will help to ameliorate the confusion, described above, regarding when stakeholders will receive the information used to identify and develop Supplemental Projects. We conclude that these changes will address the vagueness in the PJM Operating Agreement about when information regarding the transmission planning process for Supplemental Projects will be provided to stakeholders.

112. We also require the PJM Transmission Owners to provide an explicit number of days that stakeholders will have to submit comments after the meeting to discuss the criteria, models, and assumptions that the PJM Transmission Owners will use in planning Supplemental Projects. As explained above, the uncertainty regarding stakeholder opportunities for comments and feedback regarding the inputs to the PJM Transmission Owners' transmission planning process for Supplemental Projects often prevented stakeholders from having an adequate opportunity to provide comments regarding those inputs. Although Attachment M-3 provides a date for submitting comments following the proposed meeting to discuss needs and solutions, we find that, to be just and reasonable, the PJM Transmission Owners must provide a similar deadline to receive comments after each of the three required meetings for stakeholders.

113. We do not, in this order, establish the minimum number of days required for the time frames outlined above. Instead, we allow the PJM Transmission Owners, after consultations with stakeholders, to propose in compliance filings: (1) the minimum number of days between each meeting; (2) the minimum number of days before each meeting by which the information to be discussed at that meeting must be posted; and (3) the minimum number of days after each meeting that stakeholders will have to submit written comments regarding the information discussed at each meeting. Upon receiving the PJM Transmission Owners' compliance filing, the Commission will review and consider the filing to determine, based on the record, whether the PJM Transmission Owners' proposal is just and reasonable.

c. Dispute Resolution Procedures

114. We also require the PJM Transmission Owners to clarify what dispute resolution procedures apply to the transmission planning process for Supplemental Projects.²²³ Prior to the PJM Transmission Owners' section 205 filing, the dispute

²²³ Order No. 890's dispute resolution principle requires transmission providers to develop a process for managing both substantive and procedural disputes that arise from the transmission planning process. In Order No. 890, the Commission concluded that transmission providers may use an existing dispute resolution process, but that transmission providers "must specifically address how [the existing] procedures will be used to address planning disputes." Order No. 890, FERC Stats. & Regs. ¶ 31,241 at (*continued ...*)

resolution procedures in Schedule 5 of PJM Operating Agreement appear to have applied to disputes related to the planning of Supplemental Projects. That is because Schedule 5, by its terms, applies to disputes arising under the PJM Operating Agreement, the Consolidated Transmission Owners Agreement, and the Reliability Assurance Agreement.²²⁴ However, the transmission planning process for Supplemental Projects will now be codified in Attachment M-3 of the PJM OATT rather than in the PJM Operating Agreement.²²⁵ As a result, the procedures in Schedule 5 no longer clearly apply to disputes associated with the planning of Supplemental Projects. Accordingly, we require the PJM Transmission Owners to revise Attachment M-3 to comply with Order No. 890's dispute resolution principle by clarifying what dispute resolution procedures apply to disputes arising under Attachment M-3. The PJM Transmission Owners may elect to rely on the dispute resolution procedures in Schedule 5 or on a different set of procedures, although any different procedures must themselves meet the requirements of Order No. 890.

d. Modifications to Attachment M-3

115. We also require the PJM Transmission Owners to revise the "Modifications" provision of Attachment M-3. The PJM Transmission Owners' proposal provides that Attachment M-3 "may only be modified" pursuant to an FPA section 205 filing made in accordance with section 8.5 of the Consolidated Transmission Owners Agreement. We understand the purpose of this provision is merely to preserve the PJM Transmission Owners' FPA section 205 filing rights with respect to Attachment M-3. However, we are concerned that this provision could be read as foreclosing *any* other modification of Attachment M-3, including a modification by the Commission pursuant to FPA section 206.²²⁶ We therefore require the PJM Transmission Owners to revise the Modifications provision of Attachment M-3 to clarify that the limitations imposed therein apply only to section 205 filings, as illustrated in Appendix A.

P 501; *see also* American Municipal Power November 22, 2016 Protest at 9-10 (urging the Commission to require additional dispute resolution procedures in Attachment M-3).

²²⁴ *See* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 5, §§ 1.2 and 2.1 (0.0.0).

²²⁵ *See infra* P 116 (addressing clarifications to the PJM Operating Agreement).

²²⁶ As PJM OATT provisions, Attachment M-3 is of general applicability and is not entitled to the presumption that the higher public interest threshold would apply; we also do not find application of such a threshold warranted as a matter of our discretion. Thus, we do not view this provision to warrant *Mobile-Sierra* protection. *New England Power Generators Ass'n v. FERC*, 707 F. 3d 364, 371 (D.C. Cir. 2013).

e. **Miscellaneous Revisions**

116. Lastly, in light of the changes that we are requiring to Attachment M-3, we will require certain clarifying revisions to the PJM Operating Agreement. Although these changes do not substantively alter the parties' responsibilities under the PJM Operating Agreement, we nevertheless find the following revisions necessary to avoid precisely the sort of uncertainty and confusion that resulted from the PJM Transmission Owners' implementation of the similar provisions under the PJM Operating Agreement. First, we require PJM to revise sections 1.3 and 1.5.6 of Schedule 6 to the PJM Operating Agreement to indicate that the Subregional RTEP Committees will be responsible for scheduling and facilitating the meetings required under the revised Attachment M-3. Second, we require PJM to revise section 1.3(d) of Schedule 6 of the PJM Operating Agreement to provide that the Subregional RTEP Committees are responsible for reviewing the criteria, models, and assumptions used to identify the needs that are resolved with a Supplemental Project. As a result of the PJM Transmission Owners' section 205 filing, the provisions governing those responsibilities are now outlined in Attachment M-3 rather than the PJM Operating Agreement. Nevertheless, the Subregional RTEP Committees remain responsible for convening those meetings and, in light of the evidence in this proceeding, we find it necessary for the PJM Operating Agreement to state that responsibility explicitly.

f. **Alternative Proposals**

117. Old Dominion and American Municipal Power suggest that the PJM Operating Agreement should be revised to require responses from transmission owners to stakeholder comments, greater PJM involvement in planning for and selecting certain Supplemental Projects, and PJM review and approval of Local Plans.²²⁷ The Commission declines to require the additional reforms suggested by Old Dominion and American Municipal Power. We do not find these revisions are required for the PJM Transmission Owners to comply with Order No. 890, and we therefore decline to require them here. We find that the changes we are requiring will ensure the transmission planning process for Supplemental Projects is just and reasonable. Under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology "need not be the only reasonable methodology."²²⁸ The Commission is not required to show that alternative suggestions, such as those

²²⁷ See *supra* PP 30-31.

²²⁸ *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007) ("FERC is not required to choose the best solution, only a reasonable one."); *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995).

proposed by American Municipal Power and Old Dominion, are not just and reasonable or are unduly discriminatory or preferential, nor is the Commission required to show that its approach is *more* just and reasonable. Thus, having determined just and reasonable revisions, outlined above, we need not address the merits of alternative proposals.²²⁹

F. Other Filings

118. A number of the PJM Transmission Owners filed responses to the Show Cause Order seeking either a determination that Order No. 890 did not apply to them or that their particular transmission planning process complied with Order No. 890. In particular, four PJM transmission owners—Essential Power Rock Springs, Hudson Transmission, Neptune, and Linden—responded to the Show Cause Order contending that, because they do not sponsor new transmission facilities and are, in any case, not entitled to cost recovery for their transmission facilities, the Commission should either terminate the proceedings with respect to those entities or excuse them from complying with whatever remedy the Commission orders.²³⁰ In addition, three municipal or cooperative utilities—City of Hamilton, Cleveland Public Power, and EKPC—also filed responses, contending either that they do not regularly plan transmission projects or, to the extent that they do, that their process complies with Order No. 890.

119. As the Show Cause Order explained, the Commission was concerned that the PJM Transmission Owners were not planning Supplemental Projects in a manner consistent with the requirements of Order No. 890. In the foregoing sections, we have required revisions to the process for planning Supplemental Projects to ensure that those transmission projects are planned in an Order No. 890-compliant fashion. Accordingly, to the extent that any of the PJM Transmission Owners are planning Supplemental Projects, they must comply with the process for planning Supplemental Projects that is laid out in the PJM OATT, including the revisions required in the foregoing paragraphs. However, if PJM Transmission Owners are not planning Supplemental Projects, then those requirements are inapplicable to them.

²²⁹ See *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1981) (“FERC has interpreted its authority to review rates under the FPA as limited to an inquiry into whether the rates proposed by a utility are reasonable – and not to extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs”); see also *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,282, at P 31 (2009) (finding that, because the Commission found the ISO’s proposal to be just and reasonable, it need not assess the justness and reasonableness of an alternative proposal).

²³⁰ Essential Power Rock Springs October 25, 2016 Response at 5; Hudson Transmission and Neptune October 25, 2016 Response at 5; Linden October 25, 2016 Response at 4-7.

IV. Refunds and Compliance Filing

120. Pursuant to FPA section 206(b), the Commission set the refund effective date at September 16, 2016.²³¹ No party supports the Commission ordering refunds and we find that since these changes are related to transmission planning processes, not rates, we will exercise our discretion to make these changes prospective.

121. We direct PJM and the PJM Transmission Owners to submit, within 30 days of the date of this order, compliance filings with revisions to the PJM Operating Agreement and PJM OATT, as discussed in the body of this order. The Commission will establish the effective date of these procedures upon review of the compliance filing.

The Commission orders:

(A) The PJM Transmission Owners' section 205 filing is accepted in part, as explained in the body of this order.

(B) American Municipal Power's motion to dismiss is denied, as explained in the body of this order.

(C) Within 30 days of the date of this order, PJM and the PJM Transmission Owners shall make a compliance filing, as set forth in the body of this order.

By the Commission. Chairman McIntyre is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²³¹ See 81 Fed. Reg. 63,753 (2016).

Appendix A – Revisions Required to Attachment M-3

ATTACHMENT M-3

ADDITIONAL PROCEDURES FOR PLANNING OF SUPPLEMENTAL PROJECTS

This document provides additional details of the process that PJM and the PJM Transmission Owners will follow in connection with planning Supplemental Projects, as defined in section 1.42A.02 of the Operating Agreement, in accordance with Schedule 6 of the Operating Agreement. This process will only apply to Transmission Owners that plan Supplemental Projects

1. **Annual Review of Supplemental Projects.** As described in sections 1.3(c) and (d) of Schedule 6 of the Operating Agreement, the Subregional RTEP Committees shall be responsible for the review of Supplemental Projects. The Subregional RTEP Committees shall have a meaningful opportunity to participate and provide feedback, including written comments, throughout the transmission planning process for Supplemental Projects. Disputes shall be resolved in accordance with the procedures set forth at XXX.
2. **Review of Assumptions and Methodology.** Prior to the initial assumptions meeting scheduled in In accordance with sections 1.3(d), 1.5.4(a), and 1.5.6(b) and 1.5.6(c) of Schedule 6 of the Operating Agreement, each Subregional RTEP Committee shall schedule and facilitate a minimum of one Subregional RTEP Committee meeting to review the criteria, assumptions, and models Transmission Owners will provide to Transmission Provider for posting the propose to use to plan and identify Supplemental Projects (Assumptions Meeting). Each Transmission Owner shall provide the criteria, assumptions and methodology, including any criteria and models, it uses to plan Supplemental Projects. The Transmission Provider will post such, and models to PJM for posting at least XX days in advance of the Assumptions Meeting to provide Subregional RTEP Committee Participants sufficient time to review this information. Stakeholders may provide comments on the criteria, assumptions, and methodology in accordance with the schedule for postings it establishes under sections 1.3(d) and 1.5.6(b). The Transmission Owner will review those assumptions and methodology annually at the initial assumptions meeting. Stakeholders may provide comments on the assumptions and methodology, and models to the Transmission Owner for consideration either prior to or following the initial assumptions meeting Assumptions Meeting. The Transmission Owner shall review and consider comments that are received within XX days of the Assumptions Meeting and may respond or provide feedback as appropriate.
3. **Review of System Needs and Potential Solutions.** No fewer than XX days after the Assumptions Meeting, each Subregional RTEP Committee shall schedule and facilitate a minimum of one Subregional RTEP Committee meeting per planning cycle to review the identified criteria violations and resulting system needs, if any, that may drive the need for a Supplemental Project (Needs Meeting). Each Transmission Owner will provide a review of the identified system needs and the drivers of those needs, based on the application of its methodology and assumptions used to plan Supplemental Projects, and

potential criteria, assumptions, and models that it uses to plan Supplemental Projects. The Transmission Owners shall share and post their identified criteria violations and drivers no fewer than XX days in advance of the Needs Meeting. Stakeholders may provide comments on the criteria violations and drivers to the Transmission Owner for consideration prior to, at, or following the Needs Meeting. The Transmission Owner shall review and consider comments that are received within XX days of the Needs Meeting and may respond or provide feedback as appropriate.

4. **Review of Potential Solutions.** No fewer than XX days after the Needs Meeting, each Subregional RTEP Committee shall schedule and facilitate a minimum of one Subregional RTEP Committee meeting per planning cycle to review potential solutions being considered to meet those needs and drivers, at meetings of the Subregional RTEP Committee established under the Operating Agreement scheduled in accordance with section 1.3 of Schedule 6 of the Operating Agreement. The Transmission Owner will provide a description of the system needs and drivers and for the identified criteria violations (Solutions Meeting). The Transmission Owners shall share and post their potential solutions to, as well as any alternatives identified by the Transmission Provider for posting at least five (5) business Owners or stakeholders, no fewer than XX days in advance of the meeting at which they will be reviewed. Solutions Meeting. Stakeholders may provide comments on the identified system needs, drivers, and potential solutions to the Transmission Owner for consideration within thirty (30) calendar days after the meeting, either prior to or following the Solutions Meeting. The Transmission Owner shall review and consider comments that are received within XX days of the meeting and may respond or provide feedback as appropriate.
5. **Submission of Supplemental Projects.** Each Transmission Owner will finalize for submittal to the Transmission Provider Supplemental Projects for inclusion in the Local Plan in accordance with section 1.3 of Schedule 6 of the Operating Agreement and the schedule established by the Transmission Provider. Stakeholders may provide comments on the Supplemental Projects in accordance with that section 1.3 of Schedule 6 of the PJM Operating Agreement before the Local Plan is integrated into the Regional Transmission Expansion Plan. Each Transmission Owner shall review and consider comments that are received at least XX days before the Local Plan is submitted for integration into the Regional Transmission Expansion Plan.
6. **Information Relating to Supplemental Projects.** Information relating to each Transmission Owners's Supplemental Projects will be provided in accordance with, and subject to the limitations set forth in, section 1.5.4 of Schedule 6 of the Operating Agreement. Local Plan Information will be provided to and posted by the Office of Interconnection as set forth in section 1.5.4(e) of Schedule 6 of the Operating Agreement.
7. **No Limitation on Additional Meetings and Communications.** Nothing in this Attachment M-3 precludes any Transmission Owner from agreeing with stakeholders to additional meetings or other communications regarding Supplemental Projects that affect such stakeholders, in addition to the Subregional RTEP Committee process.

Modifications. This Attachment M-3 may only be modified under Section 205 of the Federal Power Act if the proposed modification pursuant to a filing under Section 205 of the Federal Power Act that has been authorized by the PJM Transmission Owners Agreement-Administrative Committee in accordance with Section 8.5 of the Consolidated Transmission Owners Agreement.

Appendix B – Revisions Required to PJM Operating Agreement

PJM Operating Agreement, Schedule 6

1.3 Establishment of Committees.

(a) The Planning Committee shall be open to participation by (i) all Transmission Customers, as that term is defined in the PJM Tariff, and applicants for transmission service; (ii) any other entity proposing to provide Transmission Facilities to be integrated into the PJM Region; (iii) all Members; (iv) the electric utility regulatory agencies within the States in the PJM Region and the State Consumer Advocates; and (v) any other interested entities or persons and shall provide technical advice and assistance to the Office of the Interconnection in all aspects of its regional planning functions. The Transmission Owners shall supply representatives to the Planning Committee, and other Members may provide representatives as they deem appropriate, to provide the data, information, and support necessary for the Office of the Interconnection to perform studies as required and to develop the Regional Transmission Expansion Plan.

(b) The Transmission Expansion Advisory Committee established by the Office of the Interconnection will meet periodically with representatives of the Office of the Interconnection to provide advice and recommendations to the Office of the Interconnection to aid in the development of the Regional Transmission Expansion Plan. The Transmission Expansion Advisory Committee participants shall be given an opportunity to provide advice and recommendations for consideration by the Office of the Interconnection regarding sensitivity studies, modeling assumption variations, scenario analyses, and Public Policy Objectives in the studies and analyses to be conducted by the Office of the Interconnection. The Transmission Expansion Advisory Committee participants shall be given the opportunity to review and provide advice and recommendations on the projects to be included in the Regional Transmission Expansion Plan. The Transmission Expansion Advisory Committee meetings shall include discussions addressing interregional planning issues, as required. The Transmission Expansion Advisory Committee shall be open to participation by: (i) all Transmission Customers, as that term is defined in the PJM Tariff, and applicants for transmission service; (ii) any other entity proposing to provide Transmission Facilities to be integrated into the PJM Region; (iii) all Members; (iv) the electric utility regulatory agencies within the States in the PJM Region, the Independent State Agencies Committee, and the State Consumer Advocates; and (v) any other interested entities or persons. The Transmission Expansion Advisory Committee shall be governed by the Transmission Expansion Advisory Committee rules and procedures set forth in the PJM Regional Planning Process Manual (PJM Manual M-14 series) and by the rules and procedures applicable to PJM committees.

(c) The Subregional RTEP Committees established by the Office of the Interconnection shall facilitate the development and review of the Local Plans~~Subregional RTEP Projects~~. The Subregional RTEP Committees will be responsible for the initial review of the Subregional RTEP Projects, and to provide recommendations to the Transmission Expansion Advisory

Committee concerning the Subregional RTEP Projects. A Subregional RTEP Committee may of its own accord or at the request of a Subregional RTEP Committee participant, also refer specific Subregional RTEP Projects to the Transmission Expansion Advisory Committee for further review, advice and recommendations.

(d) The Subregional RTEP Committees shall be responsible for the timely review of the criteria, assumptions and models used to identify reliability criteria violations, economic constraints, or to consider Public Policy Requirements, proposed solutions prior to finalizing the Local Plan, the coordination and integration of the Local Plans into the RTEP, and addressing any stakeholder issues unresolved in the Local Plan process. The Subregional RTEP Committees will be provided sufficient opportunity to review and provide written comments on the criteria, assumptions, and models used in local planning activities prior to finalizing. The Subregional RTEP Committees shall also be responsible for the timely review of the Transmission Owners' criteria, assumptions, and models used to identify Supplemental Projects that will be considered for inclusion in the Local Plan for each Subregional RTEP Committee. The Subregional RTEP Committees meetings shall include discussions addressing interregional planning issues, as required. Once finalized, the Subregional RTEP Committees will be provided sufficient opportunity to review and provide written comments on the Local Plans as integrated into the RTEP, prior to the submittal of the final Regional Transmission Expansion Plan to the PJM Board for approval. In addition, the Subregional RTEP Committees will provide sufficient opportunity to review and provide written comments to the Transmission Owners on any Supplemental Projects included in the Local Plan.

(e) The Subregional RTEP Committees shall be open to participation by: (i) all Transmission Customers, as that term is defined in the PJM Tariff, and applicants for transmission service; (ii) any other entity proposing to provide Transmission Facilities to be integrated into the PJM Region; (iii) all Members; (iv) the electric utility regulatory agencies within the States in the PJM Region, the Independent State Agencies Committee, and the State Consumer Advocates and (v) any other interested entities or persons.

(f) Each Subregional RTEP Committee shall schedule and facilitate a minimum of one Subregional RTEP Committee meeting to review the criteria, assumptions and models to identify reliability criteria violations, economic constraints, or to consider Public Policy Requirements. Each Subregional RTEP Committee shall schedule and facilitate an additional Subregional RTEP Committee meeting, per planning cycle, and as required to review the identified criteria violations and potential solutions. The Subregional RTEP Committees may facilitate additional meetings to incorporate more localized areas in the subregional planning process. At the discretion of the Office of the Interconnection, a designated Transmission Owner may facilitate Subregional RTEP Committee meeting(s), or the additional meetings incorporating the more localized areas.

(g) The Subregional RTEP Committees shall schedule and facilitate meetings regarding Supplemental Projects, as described in Attachment M-3 to the OATT.

~~(h)~~ (g) The Subregional RTEP Committees shall be governed by the Transmission Expansion

Advisory Committee rules and procedures set forth in the PJM Regional Planning Process Manual (Manual M-14 series) and by the rules and procedures applicable to PJM committees.

1.5 Procedure for Development of the Regional Transmission Expansion Plan.

1.5.4 Supply of Data.

(a) The Transmission Owners shall provide to the Office of the Interconnection on an annual or periodic basis as specified by the Office of the Interconnection, any information and data reasonably required by the Office of the Interconnection to perform the Regional Transmission Expansion Plan, including but not limited to the following: (i) a description of the total load to be served from each substation; (ii) the amount of any interruptible loads included in the total load (including conditions under which an interruption can be implemented and any limitations on the duration and frequency of interruptions); (iii) a description of all generation resources to be located in the geographic region encompassed by the Transmission Owner's transmission facilities, including unit sizes, VAR capability, operating restrictions, and any must-run unit designations required for system reliability or contract reasons; the (iv) current local planning information, including all criteria, assumptions and models used by the Transmission Owners, such as those used to develop Supplemental Projects. The data required under this Section shall be provided in the form and manner specified by the Office of the Interconnection.

(b) In addition to the foregoing, the Transmission Owners, those entities requesting transmission service and any other entities proposing to provide Transmission Facilities to be integrated into the PJM Region shall supply any other information and data reasonably required by the Office of the Interconnection to perform the enhancement and expansion study.

(c) The Office of the Interconnection also shall solicit from the Members, Transmission Customers and other interested parties, including but not limited to electric utility regulatory agencies within the States in the PJM Region, Independent State Agencies Committee, and the State Consumer Advocates, information required by, or anticipated to be useful to, the Office of the Interconnection in its preparation of the enhancement and expansion study, including information regarding potential sensitivity studies, modeling assumption variations, scenario analyses, and Public Policy Objectives that may be considered.

(d) The Office of the Interconnection shall supply to the Transmission Expansion Advisory Committee and the Subregional RTEP Committees reasonably required information and data utilized to develop the Regional Transmission Expansion Plan. Such information and data shall be provided pursuant to the appropriate protection of confidentiality provisions and Office of the Interconnection's CEII process.

(e) The Office of the Interconnection shall provide access through the PJM website, to the Transmission Owner's local planning information, including all criteria, assumptions, and models used by the Transmission Owners in their internal planning processes, including the development of Supplemental Projects ("Local Plan Information"). Local Plan Information shall be provided consistent with: (1) any applicable confidentiality provisions set forth in Section 18.17 of this Operating Agreement; (2) the Office of the Interconnection's CEII process; and (3) any applicable copyright limitations.

Notwithstanding the foregoing, the Office of the Interconnection may share with a third party Local Plan Information that has been designated as confidential, pursuant to the provisions for such designation as set forth in Section 18.17 of this Operating Agreement and subject to: (i) agreement by the disclosing Transmission Owner consistent with the process set forth in this Operating Agreement; and (ii) an appropriate non-disclosure agreement to be executed by PJM Interconnection, L.L.C., the Transmission Owner and the requesting third party. With the exception of confidential, CEII and copyright protected information, Local Plan Information will be provided for full review by the Planning Committee, the Transmission Expansion Advisory Committee, and the Subregional RTEP Committees.

1.5.6 Development of the Recommended Regional Transmission Expansion Plan.

(a) The Office of the Interconnection shall be responsible for the development of the Regional Transmission Expansion Plan and for conducting the studies, including sensitivity studies and scenario analyses on which the plan is based. The Regional Transmission Expansion Plan, including the Regional RTEP Projects, the Subregional RTEP Projects and the Supplemental Projects shall be developed through an open and collaborative process with opportunity for meaningful participation through the Transmission Expansion Advisory Committee and the Subregional RTEP Committees.

(b) The Transmission Expansion Advisory Committee and the Subregional RTEP Committees shall each facilitate a minimum of one initial assumptions meeting to be scheduled at the commencement of the Regional Transmission Expansion Plan process. The purpose of the assumptions meeting shall be to provide an open forum to discuss the following: (i) the assumptions to be used in performing the evaluation and analysis of the potential enhancements and expansions to the Transmission Facilities; (ii) Public Policy Requirements identified by the states for consideration in the Office of the Interconnection's transmission planning analyses; (iii) Public Policy Objectives identified by stakeholders for consideration in the Office of the Interconnection's transmission planning analyses; (iv) the impacts of regulatory actions, projected changes in load growth, demand response resources, energy efficiency programs, price responsive demand, generating additions and retirements, market efficiency and other trends in the industry; and (v) alternative sensitivity studies, modeling assumptions and scenario analyses proposed by the Committee participants. Prior to the initial assumptions meeting, the Transmission Expansion Advisory Committee and Subregional RTEP Committees participants will be afforded the opportunity to provide input and submit suggestions regarding the information identified in items (i) through (v) of this subsection. Following the assumptions meeting and prior to performing the evaluation and analyses of transmission needs, the Office of the Interconnection shall determine the range of assumptions to be used in the studies and scenario analyses, based on the advice and recommendations of the Transmission Expansion Advisory Committee and Subregional RTEP Committees and, through the Independent State Agencies, the statement of Public Policy Requirements provided individually by the state and any state member's assessment or prioritization of Public Policy Objectives proposed by other stakeholders. The Office of the Interconnection shall document and publicly post its determination for review. Such posting shall include an explanation of those Public Policy Requirements and Public Policy Objectives adopted at the assumptions stage to be used in performing the evaluation and

analysis of transmission needs. Following the identification of transmission needs and prior to evaluating potential enhancements and expansions to the Transmission System the Office of Interconnection shall publicly post all transmission need information identified as described further in section 1.5.8(b) herein to support the role of Transmission Expansion Advisory Committee in the development of the Regional Transmission Expansion Plan. The Office of Interconnection shall also post an explanation of why other Public Policy Requirements and Public Policy Objectives introduced by stakeholders at the assumptions stage were not adopted.

(c) The Subregional RTEP Committees shall also schedule and facilitate meetings related to Supplemental Projects, as described in Attachment M-3 to the OATT.

(~~d~~e) After the assumptions meeting(s), the Transmission Expansion Advisory Committee and the Subregional RTEP Committees shall facilitate additional meetings and shall post all communications required to provide early opportunity for the committee participants (as defined in Sections 1.3(b) and 1.3(c) of this Schedule 6) to review and evaluate the following arising from the studies performed by the Office of the Interconnection, including sensitivity studies and scenario analyses: (i) any identified violations of reliability criteria and analyses of the market efficiency and operational performance of the Transmission System; (ii) potential transmission solutions, including any acceleration, deceleration or modifications of a potential expansion or enhancement based on the results of sensitivities studies and scenario analyses; and (iii) the proposed Regional Transmission Expansion Plan. These meetings will be scheduled as deemed necessary by the Office of the Interconnection or upon the request of the Transmission Expansion Advisory Committee or the Subregional RTEP Committees. The Office of the Interconnection will provide updates on the status of the development of the Regional Transmission Expansion Plan at these meetings or at the regularly scheduled meetings of the Planning Committee.

(~~d~~e) In addition, the Office of the Interconnection shall facilitate periodic meetings with the Independent State Agencies Committee to discuss: (i) the assumptions to be used in performing the evaluation and analysis of the potential enhancements and expansions to the Transmission Facilities; (ii) regulatory initiatives, as appropriate, including state regulatory agency initiated programs, and other Public Policy Objectives, to consider including in the Office of the Interconnection's transmission planning analyses; (iii) the impacts of regulatory actions, projected changes in load growth, demand response resources, energy efficiency programs, generating capacity, market efficiency and other trends in the industry; and (iv) alternative sensitivity studies, modeling assumptions and scenario analyses proposed by Independent State Agencies Committee. At such meetings, the Office of the Interconnection also shall discuss the current status of the enhancement and expansion study process. The Independent State Agencies Committee may request that the Office of Interconnection schedule additional meetings as necessary. The Office of the Interconnection shall inform the Transmission Expansion Advisory Committee and the Subregional RTEP Committees, as appropriate, of the input of the Independent State Agencies Committee and shall consider such input in developing the range of assumptions to be used in the studies and scenario analyses described in Section (b), above.

(~~f~~e) Upon completion of its studies and analysis, including sensitivity studies and scenario analyses the Office of the Interconnection shall post on the PJM website the violations, system conditions, economic constraints, and Public Policy Requirements as detailed in Section 1.5.8(b) of this Schedule 6 to afford entities an opportunity to submit proposed enhancements or expansions to address the posted violations, system conditions, economic constraints and Public Policy Requirements as provided for in Section 1.5.8(c) of this Schedule 6. Following the close of a proposal window, the Office of the Interconnection shall: (i) post all proposals submitted pursuant to Section 1.5.8(c) of this Schedule 6; (ii) consider proposals submitted during the proposal windows consistent with Section 1.5.8(d) of this Schedule 6 and develop a recommended plan. Following review by the Transmission Expansion Advisory Committee of proposals, the Office of the Interconnection, based on identified needs and the timing of such needs, and taking into account the sensitivity studies, modeling assumption variations and scenario analyses considered pursuant to Section 1.5.3 of this Schedule 6, shall determine, which more efficient or cost-effective enhancements and expansions shall be included in the recommended plan, including solutions identified as a result of the sensitivity studies, modeling assumption variations, and scenario analyses, that may accelerate, decelerate or modify a potential reliability, market efficiency or operational performance expansion or enhancement identified as a result of the sensitivity studies, modeling assumption variations and scenario analyses, shall be included in the recommended plan. The Office of the Interconnection shall post the proposed recommended plan for review and comment by the Transmission Expansion Advisory Committee. The Transmission Expansion Advisory Committee shall facilitate open meetings and communications as necessary to provide opportunity for the Transmission Expansion Advisory Committee participants to collaborate on the preparation of the recommended enhancement and expansion plan. The Office of the Interconnection also shall invite interested parties to submit comments on the plan to the Transmission Expansion Advisory Committee and to the Office of the Interconnection before submitting the recommended plan to the PJM Board for approval.

(~~g~~f) The recommended plan shall separately identify enhancements and expansions for the three PJM subregions, the PJM Mid-Atlantic Region, the PJM West Region, and the PJM South Region, and shall incorporate recommendations from the Subregional RTEP Committees.

(~~h~~g) The recommended plan shall separately identify enhancements and expansions that are classified as Supplemental Projects.

(~~i~~h) The recommended plan shall identify enhancements and expansions that relieve transmission constraints and which, in the judgment of the Office of the Interconnection, are economically justified. Such economic expansions and enhancements shall be developed in accordance with the procedures, criteria and analyses described in Sections 1.5.7 and 1.5.8 of this Schedule 6.

(~~j~~i) The recommended plan shall identify enhancements and expansions proposed by a state or states pursuant to Section 1.5.9 of this Schedule 6.

(kj) The recommended plan shall include proposed Merchant Transmission Facilities within the PJM Region and any other enhancement or expansion of the Transmission System requested by any participant which the Office of the Interconnection finds to be compatible with the Transmission System, though not required pursuant to Section 1.1, provided that (1) the requestor has complied, to the extent applicable, with the procedures and other requirements of Parts IV and VI of the PJM Tariff; (2) the proposed enhancement or expansion is consistent with applicable reliability standards, operating criteria and the purposes and objectives of the regional planning protocol; (3) the requestor shall be responsible for all costs of such enhancement or expansion (including, but not necessarily limited to, costs of siting, designing, financing, constructing, operating and maintaining the pertinent facilities), and (4) except as otherwise provided by Parts IV and VI of the PJM Tariff with respect to Merchant Network Upgrades, the requestor shall accept responsibility for ownership, construction, operation and maintenance of the enhancement or expansion through an undertaking satisfactory to the Office of the Interconnection.

(lk) For each enhancement or expansion that is included in the recommended plan, the plan shall consider, based on the planning analysis: other input from participants, including any indications of a willingness to bear cost responsibility for such enhancement or expansion; and, when applicable, relevant projects being undertaken to ensure the simultaneous feasibility of Stage 1A ARRs, to facilitate Incremental ARRs pursuant to the provisions of Section 7.8 of Schedule 1 of this Agreement, or to facilitate upgrades pursuant to Parts II, III, or VI of the PJM Tariff, and designate one or more Transmission Owners or other entities to construct, own and, unless otherwise provided, finance the recommended transmission enhancement or expansion. Any designation under this paragraph of one or more entities to construct, own and/or finance a recommended transmission enhancement or expansion shall also include a designation of partial responsibility among them. Nothing herein shall prevent any Transmission Owner or other entity designated to construct, own and/or finance a recommended transmission enhancement or expansion from agreeing to undertake its responsibilities under such designation jointly with other Transmission Owners or other entities.

(ml) Based on the planning analysis and other input from participants, including any indications of a willingness to bear cost responsibility for an enhancement or expansion, the recommended plan shall, for any enhancement or expansion that is included in the plan, designate (1) the Market Participant(s) in one or more Zones, or any other party that has agreed to fully fund upgrades pursuant to this Agreement or the PJM Tariff, that will bear cost responsibility for such enhancement or expansion, as and to the extent provided by any provision of the PJM Tariff or this Agreement, (2) in the event and to the extent that no provision of the PJM Tariff or this Agreement assigns cost responsibility, the Market Participant(s) in one or more Zones from which the cost of such enhancement or expansion shall be recovered through charges established pursuant to Schedule 12 of the Tariff, and (3) in the event and to the extent that the Coordinated System Plan developed under the Joint Operating Agreement Between the Midwest Independent System Operator, Inc. and PJM Interconnection, L.L.C. assigns cost responsibility, the Market Participant(s) in one or more Zones from which the cost of such enhancement or expansion shall be recovered.

Any designation under clause (2) of the preceding sentence (A) shall further be based on the Office of the Interconnection's assessment of the contributions to the need for, and benefits expected to be derived from, the pertinent enhancement or expansion by affected Market Participants and, (B) subject to FERC review and approval, shall be incorporated in any amendment to Schedule 12 of the PJM Tariff that establishes a Transmission Enhancement Charge Rate in connection with an economic expansion or enhancement developed under Sections 1.5.6(h) and 1.5.7 of this Schedule 6, (C) the costs associated with expansions and enhancements required to ensure the simultaneous feasibility of stage 1A Auction Revenue Rights allocated pursuant to Section 7 of Schedule 1 of this Agreement shall (1) be allocated across transmission zones based on each zone's stage 1A eligible Auction Revenue Rights flow contribution to the total stage 1A eligible Auction Revenue Rights flow on the facility that limits stage 1A ARR feasibility and (2) within each transmission zone the Network Service Users and Transmission Customers that are eligible to receive stage 1A Auction Revenue Rights shall be the Responsible Customers under Section (b) of Schedule 12 of the PJM Tariff for all expansions and enhancements included in the Regional Transmission Expansion Plan to ensure the simultaneous feasibility of stage 1A Auction Revenue Rights, and (D) the costs associated with expansions and enhancements required to reduce to zero the Locational Price Adder for LDAs as described in Section 15 of Attachment DD of OATT shall (1) be allocated across Zones based on each Zone's pro rata share of load in such LDA and (2) within each Zone, to all LSEs serving load in such LDA pro rata based on such load. Any designation under clause (3), above, (A) shall further be based on the Office of the Interconnection's assessment of the contributions to the need for, and benefits expected to be derived from, the pertinent enhancement or expansion by affected Market Participants, and (B), subject to FERC review and approval, shall be incorporated in an amendment to a Schedule of the PJM Tariff which establishes a charge in connection with the pertinent enhancement or expansion. Before designating fewer than all customers using Point-to-Point Transmission Service or Network Integration Transmission Service within a Zone as customers from which the costs of a particular enhancement or expansion may be recovered, Transmission Provider shall consult, in a manner and to the extent that it reasonably determines to be appropriate in each such instance, with affected state utility regulatory authorities and stakeholders. When the plan designates more than one responsible Market Participant, it shall also designate the proportional responsibility among them. Notwithstanding the foregoing, with respect to any facilities that the Regional Transmission Expansion Plan designates to be owned by an entity other than a Transmission Owner, the plan shall designate that entity as responsible for the costs of such facilities.

(n) Certain Regional RTEP Project(s) and Subregional RTEP Project(s) may not be required for compliance with the following PJM criteria: system reliability, market efficiency or operational performance, pursuant to a determination by the Office of the Interconnection. These Supplemental Projects shall be separately identified in the RTEP and are not subject to approval by the PJM Board.