

127 FERC ¶ 61,166
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

PJM Interconnection, L.L.C.

Docket No. OA08-32-002

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued May 21, 2009)

1. On August 13, 2008, pursuant to the Commission's May 15 Order,¹ PJM Interconnection, L.L.C. (PJM) submitted revisions to its transmission planning process, as required by the May 15 Order and Order No. 890.² In this order, we accept PJM's compliance filing subject to further compliance filing as directed.³

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop a transmission

¹ *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163 (2008) (May 15 Order).

² *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 (2009).

³ PJM incorporated its planning provisions into existing Schedule 6 (Regional Transmission Expansion Plan (RTEP)) of the PJM Amended and Restated Operating Agreement (Operating Agreement), which contains its current transmission planning process. Throughout this order, however, the transmission planning process required by Order No. 890 is sometimes referred to generically as the "Attachment K process."

planning process that satisfies nine principles and to clearly describe that process in a new attachment to their OATT (Attachment K).

3. The nine planning principles each transmission provider was directed by Order No. 890 to address in its Attachment K planning process are: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability;⁴ (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation of and to build on transmission planning efforts and processes already underway in many regions of the country. The Commission also explained, however, that although Order No. 890 allows for flexibility, each transmission provider has a clear obligation to address each of the nine principles in its transmission planning process and all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules, as supplemented with web-posted business practices when appropriate,⁵ must be specific and clear in order to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.

4. As for Regional Transmission Organizations (RTO) and Independent System Operators (ISO) with Commission-approved transmission planning processes already on file, such as PJM, the Commission explained that when it initially approved these processes, they were found to be consistent with or superior to the existing *pro forma* OATT. However, because the *pro forma* OATT was being reformed by Order No. 890, the Commission found that it was necessary for each RTO and ISO either to reform its planning process or show that its planning process is consistent with or superior to the *pro forma* OATT, as modified by Order Nos. 890 and 890-A.⁶

5. On December 7, 2007, PJM filed revisions to Schedule 6 of its Operating Agreement to comply with the nine planning principles and other requirements in response to Order No. 890.

⁴ In Order No. 890-A, the Commission clarified that the comparability principle requires each transmission provider to identify, as part of its Attachment K planning process, how it will treat resources on a comparable basis and, therefore, how it will determine comparability for purposes of transmission planning. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55.

⁶ *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 439; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 174-75.

6. In the May 15 Order, the Commission accepted PJM's revisions to Schedule 6 of the Operating Agreement, effective December 7, 2007, subject to PJM: (i) addressing how PJM will determine comparability for purposes of transmission planning; (ii) clarifying that Supplemental Projects are not eligible for Schedule 12 cost allocation; (iii) providing more clarity, specificity, and transparency regarding how the PJM transmission owners' local planning processes fit into PJM's planning process; (iv) correcting the inconsistency between its transmittal letter and the Operating Agreement definition of Subregional RTEP Projects; and (v) verifying that its Business Practices Manuals (Manuals) have been updated to include descriptions of the Subregional RTEP Committee, Regional and Subregional RTEP Projects, and Supplemental Projects, and that the updated Manual(s) have been posted on the PJM website.

7. In developing its compliance filing, PJM states that it engaged its stakeholders via the Regional Planning Process Working Group, which reviewed and endorsed the proposed revisions to Schedule 6 of the Operating Agreement. These changes were then unanimously approved by the PJM Markets and Reliability Committee. In addition, PJM requests waiver of the Commission's notice requirement to permit an effective date of December 7, 2007, for its revisions to Schedule 6 of the Operating Agreement.

II. Notice of Filing and Responsive Pleadings

8. Notice of PJM's August 13, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 51,802 (2008), with interventions and protests due on or before September 9, 2008.

9. A notice of intervention, motion to intervene, comments, and request for clarification was filed by the North Carolina Utilities Commission (NC Commission), the Public Staff of the North Carolina Utilities Commission and the Attorney General of the State of North Carolina (collectively, the North Carolina Agencies).

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

11. We find that PJM's revised transmission planning process found at Schedule 6 of its Operating Agreement, with certain modifications, complies with the May 15 Order. Accordingly, we will accept PJM's compliance filing in Docket No. OA08-32-002, as

modified, to be effective December 7, 2007, as requested. We also direct PJM to file, within 60 days of the date of this order, a further compliance filing as discussed below.

12. Although the Commission accepts PJM's compliance filing below, subject to a further compliance filing to address certain discrete issues, the Commission remains interested in the development of transmission planning processes and will continue to examine the adequacy of the processes accepted to date. We reiterate the encouragement made in prior orders for further refinements and improvements to the planning processes as transmission providers, their customers, and other stakeholders gain more experience through actual implementation of the processes. As part of the Commission's ongoing evaluation of the implementation of the planning processes, the Commission intends to convene regional technical conferences later this year to determine if further refinements to these processes are necessary. The focus of the 2009 regional technical conferences will be to determine the progress and benefits realized by each transmission provider's transmission planning process, obtain customer and other stakeholder input, and discuss any areas that may need improvement. The conferences will examine whether existing transmission planning processes adequately consider needs and solutions on a regional or interconnection-wide basis to ensure adequate and reliable supplies at just and reasonable rates. The Commission will also explore whether existing processes are sufficient to meet emerging challenges to the transmission system, such as the development of interregional transmission facilities, the integration of large amounts of location-constrained generation, and the interconnection of distributed energy resources.

1. Comparability

a. May 15 Order

13. In the May 15 Order, the Commission found that the RTEP process accommodates inputs from all parties and that its process will lead to a transmission system plan that meets the service requests of its customers and otherwise treats similarly-situated customers comparably in the planning process. However, the Commission also found that, because Order No. 890-A was issued on December 28, 2007, after PJM and its transmission owners submitted their Order No. 890 Attachment K compliance filing, PJM did not have an opportunity to demonstrate that it complies with the comparability requirement of Order No. 890-A.⁷ Specifically, Order No. 890-A required that the transmission provider needs to identify as part of its Attachment K planning process "how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning."⁸ Therefore, the

⁷ *Id.*

⁸ *Id.* (citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216).

Commission directed PJM to make a compliance filing addressing the necessary demonstration required by Order No. 890-A.

b. PJM's Filing

14. PJM states that it treats resources on a comparable basis during each step of the RTEP transmission planning process. At the beginning of each planning cycle, the Subregional RTEP Committee and the Transmission Expansion Advisory Committee (TEAC), which makes recommendations to the PJM Board to aid in the development of the RTEP, will each facilitate a minimum of one initial assumptions-setting meeting at the beginning of the RTEP process. The purpose of the assumptions meeting includes the following: (i) establish the assumptions to be used in performing the evaluation and analysis of the potential enhancements and expansions to the transmission facilities; (ii) incorporate regulatory initiatives as appropriate, including state regulatory agency initiated programs; (iii) provide an open forum to review the impacts of regulatory actions, projected changes in load growth, demand response resources, generating capacity, market efficiency and other trends in the industry; and (iv) provide an open forum for the review of alternative scenarios proposed by Committee participants.⁹ Specifically, stakeholders may propose changes to these assumptions to reflect, among other things, load growth, demand response resources, generating capacity, market efficiency and other trends in the industry.

15. PJM will then identify the scope of enhancement and expansion studies necessary to identify existing and projected limitations on the transmission system's physical, economic and/or operational capability performance, as well as potential expansions and enhancements needed to mitigate those limitations, including evaluation of demand response programs and other alternative technologies. PJM will consult with the TEAC and Subregional RTEP Committee, as appropriate, in preparing the scope, assumptions and procedures for these studies. Among other things, PJM will identify the scope of and perform enhancement and expansion studies to evaluate potential development of demand response programs and other alternative technologies to maintain system reliability. Posting of study results and stakeholder review and consideration of alternative solutions is expected to occur about February through August of each year.¹⁰ With respect to each new economic-based transmission enhancement or expansion included in the RTEP, PJM will provide to the TEAC the level and type of new

⁹ Section 1.5.4(d) of Schedule 6 of the PJM Operating Agreement and PJM Manual 14B at 19.

¹⁰ PJM Manual 14B at 19.

generation and demand response that could eliminate the need for the enhancement or expansion.¹¹

16. Upon completion of its studies and analysis, PJM prepares a recommended enhancement and expansion plan, which includes alternative projects or solutions as applicable, for review by the TEAC. Upon review of the recommended plan, any transmission owner or other participant in the TEAC may offer an alternative.¹² PJM will consider whether to adopt a proposed alternative based upon its review of the relative costs and benefits, the ability of the alternative to supply the required level of transmission service, and its impact on the reliability of the transmission facilities. If PJM declines to select the alternative, the affected transmission owner or TEAC participant may pursue dispute resolution.¹³

c. Commission Determination

17. We find that PJM has sufficiently described how it will treat resources on a comparable basis and identified how it will determine comparability for purposes of transmission planning. Specifically, we find that PJM's planning process indicates where and when in the planning process sponsors of transmission, generation, and demand resources have an opportunity to provide their input regarding the development of assumptions used by PJM in transmission planning activities and the potential solutions, including alternatives, being considered by PJM to address the physical, economic and/or operational limitations of its system. Schedule 6 (RTEP) of the Operating Agreement and Manual 14B indicate when and where in the planning process proponents of transmission, generation, and demand resources have an opportunity to provide their input regarding the development of base-line assumptions and the identification,

¹¹ Section 1.5.7(g) of Schedule 6 of the PJM Operating Agreement. *See*, for example, the PJM website at: <http://www.pjm.com/Media/committees-groups/committees/teac/20090414/20090414-market-efficiency-update.pdf> ; <http://www.pjm.com/Media/committees-groups/committees/teac/20081112-market-efficiency-update.pdf> and; <http://www.pjm.com/Media/committees-groups/committees/srtep-ma/2009-rtep-assumptions.pdf>.

¹² The TEAC is open to participation by transmission customers, PJM members, entities proposing to provide transmission facilities to be integrated into the PJM region, regulatory agencies, and other interested entities and persons. *See* section 1.3(b) of Schedule 6 of the Operating Agreement.

¹³ Section 1.5.6. (h) (h.01) (i) and (j) (Development of the Recommended Regional Transmission Expansion Plan) of the Operating Agreement.

evaluation and analysis of potential solutions to meet identified needs.¹⁴ In addition, Schedule 6 (RTEP) of the Operating Agreement and Manual 14B clearly indicate how PJM will select the preferred solution from competing alternatives such that all types of resources (i.e., transmission, generation, and demand resources) are considered on a comparable basis. We therefore find that PJM's planning process complies with the comparability requirements of the May 15 Order.

2. Cost Allocation

a. May 15 Order

18. In the May 15 Order, the Commission directed PJM to revise its tariff to clearly state that Supplemental Projects are not eligible for cost allocation under Schedule 12 of the tariff given that Supplemental Projects will be listed separately in the RTEP and will not be approved by the PJM Board of Managers.

b. PJM's Filing

19. PJM has amended section 1.6 (Approval of the Final Regional Transmission Expansion Plan) of the Operating Agreement to clearly state that Supplemental Projects will not be eligible for Schedule 12 cost allocation.

c. Commission Determination

20. The Commission accepts PJM's amendment to section 1.6 to make clear that Supplemental Projects are not eligible for cost allocation under Schedule 12 of the PJM tariff.

3. PJM Transmission Owner Local System Planning

a. May 15 Order

21. In the May 15 Order, the Commission found that PJM's initial compliance filing lacked sufficient clarity and specificity with respect to locally planned transmission projects and how they will fit into the PJM regional planning process. The Commission also found that PJM's local planning procedures may not allow stakeholders to participate at an early stage in the transmission planning associated with local plans. In order to comply with Order No. 890, the Commission directed PJM to modify its Operating Agreement to: (i) require each transmission owner's local plan to be made available on a website for review by the Planning Committee, the TEAC and the

¹⁴ Section 1.5.3 (Scope of Studies) Schedule 6 (RTEP) of the Operating Agreement and Manual 14B at 13 and 17.

Subregional RTEP Committee subject to CEII and existing Operating Agreement confidentiality provisions; (ii) provide links to each transmission owner's local plan on PJM's website; (iii) require transmission owners to post the planning criteria and assumptions used in their current local plans; (iv) provide links to each transmission owner's planning criteria and assumptions on PJM's website; and (v) require transmission owners to provide a reasonable opportunity for written comments after the posting of their local plan. The Commission also required PJM to update its manuals (e.g., Manual 14B Regional Planning Process) to include descriptions of the Subregional RTEP Committee, Regional and Subregional RTEP Projects and Supplemental Projects. Finally, the Commission directed PJM to revise the definition of Subregional RTEP Project to include "reliability," because the description in the Operating Agreement was inconsistent with language in PJM's transmittal letter.

b. PJM's Filing

22. To comply with the Commission's directive in the May 15 Order to explain how Supplemental Projects will fit into the regional planning process, PJM proposes to add a new definition for "Local Plan." PJM states that the new definition clarifies that a Local Plan means "the plan as developed by the PJM transmission owners" that "includes, at a minimum, Subregional RTEP Projects and Supplemental Projects as identified by the Transmission Owners within their zone."¹⁵ PJM states that this newly proposed term is inserted into several sections¹⁶ of the Operating Agreement to clarify how the transmission owner's Local Plan—and specifically, how a Supplemental Project—will fit into the PJM RTEP process.

23. In the May 15 Order, the Commission also directed PJM to revise its Operating Agreement language to ensure stakeholder participation can occur at the early stages of local transmission planning. To comply with this directive, PJM proposes to add subsection 1.3(d) to Schedule 6 of the Operating Agreement to incorporate stakeholder input during the early development stages of the local planning processes. This proposed section includes language providing stakeholders with the opportunity to review the transmission owner's Local Plan and to submit written comments prior to submittal of the final RTEP to the PJM Board for approval. In addition, PJM proposes subsection 1.5.4(g) to provide access via the PJM website to each transmission owner's Local Plan. PJM explains that it also proposes to amend section 1.5.4(a) to require that each

¹⁵ Schedule 6 of the PJM Operating Agreement, proposed section 1.18A (Local Plan).

¹⁶ Section 1.5.4(a) (Supply of Data) and proposed sections 1.2(f) (Conformity with NERC and other Applicable Reliability Criteria), 1.3(d) (Establishment of Committees) and 1.5.4(g) (Supply of Data) of Schedule 6 (RTEP) to the Operating Agreement.

transmission owner must provide to PJM on an annual or periodic basis, as directed, its current Local Plan, as well as all criteria and assumptions used in its Local Plan. Additionally, PJM explains that this subsection also provides for review by PJM's Planning Committee, TEAC and Subregional RTEP Committee. PJM states that it has amended the definition of Subregional RTEP Projects to include "reliability" in order to comply with the May 15 Order.¹⁷

24. Finally, PJM states that it has updated Manual 14B—its Regional Transmission Planning Process Manual—to include descriptions of the Subregional RTEP Committee and the Regional and Subregional RTEP Projects, as well as Supplemental Projects. These changes were reviewed and approved by the stakeholders, and the revised Manual is available on the PJM website.¹⁸

c. Comments

25. The North Carolina Agencies contend that PJM's compliance filing and related Commission-jurisdictional agreement might be deemed to raise questions with regard to whether federal jurisdiction will be asserted over the determination of the need for transmission lines and transmission improvements related to the provision of bundled service. The North Carolina Agencies state that North Carolina General Statutes § 62-100, *et seq.* requires public utilities to secure a certificate of public convenience and necessity from the NC Commission prior to constructing a transmission line of more than 161 kV in North Carolina and that in reviewing such an application, the NC Commission is to consider whether "the proposed transmission line is necessary to satisfy the reasonable needs of the public for an adequate and reliable supply of electric energy."¹⁹ In addition, according to the North Carolina Agencies, the NC Commission's integrated resource planning rules require the inclusion and consideration of transmission improvements and the construction of such facilities in the utilities' planning processes.

26. The North Carolina Agencies assert that Congress has enacted no law that disrupts state authority over a regulated utility's need for new transmission lines or transmission improvements to serve bundled retail load and request that the Commission clarify that its requirement that PJM submit a compliance filing with respect to how the transmission owners' individual planning processes fit into PJM's process was not intended to have

¹⁷ May 15 Order, 123 FERC ¶ 61,163 at n. 100.

¹⁸ See PJM Manual 14B (PJM Regional Transmission Planning Process) Revision 12, (Aug. 8, 2008), *available at*: www.pjm.com/contributions/pjm-manuals/pdf/m14b.pdf.

¹⁹ *Citing* North Carolina General Statutes § 62-105(a)(1).

any impact on existing state jurisdiction with respect to the transmission owners' planning processes.

d. Commission Determination

27. We find that, with the modifications discussed herein, PJM's compliance filing provides sufficient clarity and specificity with respect to locally planned transmission projects and how they will fit into the PJM regional planning process. Consistent with the May 15 Order, PJM clearly states how Supplemental Projects will fit into the regional planning process. PJM adds a new term "Local Plan" to clarify that a local plan is the plan developed by a PJM transmission owner that includes, at a minimum, Subregional RTEP Projects (i.e., a transmission expansion or enhancement rated below 230 kV which is required for compliance with system reliability, operational performance, or economic criteria) and Supplemental Projects (i.e., a Regional or Subregional RTEP Project which is not required for compliance with system reliability, operational performance, or economic criteria) identified by the transmission owner within its respective zone.²⁰ The local plans will also include projects that are developed to comply with the transmission owner planning criteria. Additionally, PJM revises the Operating Agreement to provide: (a) that each transmission owner must provide to PJM on an annual or periodic basis, as directed, its current local plan, as well as all criteria and assumptions used in its local plan;²¹ and (b) access via the PJM website to each transmission owner's local plan as well as the assumptions and criteria that will be available for review by the Planning Committee and the TEAC and Subregional RTEP Committees.²² It does not appear, however, that PJM requires transmission owners to provide the models used in developing the Local Plan. PJM must make a compliance filing within 60 days of the date of this order to provide that the models each transmission owner uses in its planning process will be made available, consistent with confidentiality restrictions or copyright limitations, in addition to the criteria and assumptions the transmission owner uses in its local planning.

28. With respect to the Commission's directive to revise the Operating Agreement language to ensure stakeholder participation at the early stages of local planning, PJM states that a new subsection 1.3(d) provides the opportunity for stakeholders to review the

²⁰ Section 1.18A (Local Plan) Schedule 6 (RTEP) of the Operating Agreement.

²¹ Section 1.5.4(a) (Supply of Data) Schedule 6 (RTEP) of the Operating Agreement.

²² Section 1.2(f) (Conformity with NERC and Other Applicable Reliability Criteria) Schedule 6 (RTEP) of the Operating Agreement; section 1.5.4(g) (Supply of Data) Schedule 6 (RTEP) of the Operating Agreement.

Local Plans and provide written comments to the transmission owners, prior to the submittal of the final RTEP to the PJM Board for approval.²³ That provision, however, merely states that the Subregional RTEP Committee will be responsible for the “timely review” of the Local Plan and the coordination and integration of the Local Plans into the RTEP. While this contemplates stakeholder review and comment on the Local Plan after it is submitted to PJM, it does not allow for stakeholder participation at an early stage in the transmission planning associated with these local plans, as required by the May 15 Order. As the Commission explained there, customers must not be excluded from the development of aspects of what eventually will become the regional plan implemented by the RTO or ISO. We therefore direct PJM to file within 60 days of the issuance of this order a further compliance filing to provide the opportunity for stakeholders to review and comment on the criteria, assumptions and models used in local planning activities prior to finalization of the Local Plan and on the Local Plan prior to it being submitted to the Subregional RTEP Committee.

29. We remind PJM, however, that ultimately it has the responsibility to ensure that stakeholder issues are addressed. Therefore, we would expect that stakeholders that have unresolved issues at the local level can raise them at the Subregional RTEP Committee and that PJM will ensure that stakeholder issues are addressed.

30. As to the North Carolina Agencies’ concerns that the local planning requirement that ensures stakeholder participation at the early stages of local transmission planning might impact existing state jurisdiction, we clarify here that in accepting PJM’s local planning provisions, with the modifications discussed herein, the Commission does not intend to exercise jurisdiction over the substantive determination of which resources, if any, are needed to satisfy service requirements under state law.

31. In the May 15 Order, the Commission required PJM to revise the definition of Subregional RTEP Project to include “reliability,” because the description in the Operating Agreement was inconsistent with the transmittal letter.²⁴ We find that,

²³ We note that the initial assumptions-setting meeting, among other things, provides an open forum for the review of alternative scenarios proposed by the Committee participants. *See* section 1.5.4(d) (Supply of Data) Schedule 6 (RTEP) of the Operating Agreement. *See* PJM Manual 14B (PJM Regional Transmission Planning Process) Revision 12, (Aug. 8, 2008) at 19.

²⁴ *See* section 1.42A.01 (Subregional RTEP Project) Schedule 6 (RTEP) of the PJM Operating Agreement.

consistent with our directive, PJM has revised the definition of Subregional RTEP Projects in the Operating Agreement to include “reliability.”²⁵

The Commission orders:

(A) PJM’s compliance filing is hereby accepted, subject to further compliance filing, effective December 7, 2007, as discussed in the body of this order.

(B) PJM is hereby directed to submit a compliance filing, within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁵ We note that consistent with the May 15 Order PJM has updated its manuals (e.g., Manual 14B Regional Planning Process) to include descriptions of the Subregional RTEP Committee, Regional and Subregional RTEP Projects and Supplemental Projects.