

140 FERC ¶ 61,054
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Primary Power, LLC

v.

Docket No. EL12-69-000

PJM Interconnection, L.L.C.,

ORDER DENYING COMPLAINT

(Issued July 19, 2012)

1. In this order, the Commission denies the May 14, 2012 complaint (Complaint) filed by Primary Power, LLC (Primary Power) against PJM Interconnection, L.L.C. (PJM). We find that PJM acted in accordance with its current open access transmission tariff (Tariff) and Amended and Restated Operating Agreement (Operating Agreement) in designating construction responsibility for two projects described below, consisting of static var compensator (SVC) units,¹ to Virginia Electric and Power Company (Dominion) and FirstEnergy Corp. (FirstEnergy) in its 2011 Regional Transmission Expansion Plan (Regional Plan or RTEP).² Based on the facts in this proceeding, we find

¹ An SVC provides constant, fast-acting reactive power support controlled through the use of non-mechanical switches, called thyristors, to produce or absorb reactive power, designated in the International System of Units as vars, or volt-amperes reactive, *see* IEEE 100, the Authoritative Dictionary of IEEE Standards Terms (2000) (hereinafter referred to as VARs).

² *See* PJM, FERC Electric Tariff, Sixth Rev. Vol. No. 1 (Tariff) and Amended and Restated Operating Agreement, Rate Schedule FERC No. 24 (Operating Agreement), *available at*: <http://www.pjm.com/documents/~media/documents/agreements/oa.ashx>. The planning procedures are provided in Schedule 6 of the Operating Agreement: Regional Transmission Expansion Planning Protocol and PJM Manual 14B: PJM Regional Transmission Planning Process, *available at*: <http://www.pjm.com/~media/documents/manuals/m14b.ashx>.

that Primary Power fails to support its claims that PJM either acted in an unduly discriminatory manner or failed to follow the provisions in its Operating Agreement in its selection of projects proposed by incumbent transmission owners over Primary Power's proposed projects.

I. Background

A. Primary Power

2. Primary Power is a joint venture of Trans-Elect Development Company, LLC, an independent transmission company and transmission developer in the United States and Canada, and Tangibl LLC, an engineering, design and construction services company, focusing on electric transmission. Primary Power has obtained private equity funding from EIF Management, LLC, a participant in \$3.5 billion in power generation and transmission investments.

B. The 2011 PJM Planning Process

3. In early 2011, PJM held the Potomac-Appalachian Transmission Highline (PATH) transmission project in abeyance, due to lower load projections.³ This created a need for additional reactive power support for transmission facilities in the vicinity of Dominion's Mt. Storm generation station.

4. At issue in this proceeding, in September 2011 PJM identified multiple instances of voltage criteria violations in the Dominion and FirstEnergy service zones, as part of its annual reactive power needs analysis.⁴ The violations carried the risk of voltage collapse. While PJM was performing the required analysis, Primary Power was also performing studies on its own. Primary Power discussed its findings with PJM staff in confidential communications in August 2011, continuing through October. Primary Power revised its "Grid Plus" economic project proposal from an earlier proceeding, adding three sites, and presented this proposal to PJM staff to meet the system's reactive power needs. Primary Power proposed this "2011 Grid Plus" configuration for baseline

³ A summary of PJM's 2011 planning process is provided in PJM's April 2, 2012 Regional Plan Update. PJM Answer, App. 5.

⁴ PJM's analysis included generation retirements, updated load projections and light load analysis.

reliability projects in the PJM Regional Plan, not economic projects. Primary Power proposed to provide reactive support by installing nine SVCs at six sites.⁵

5. PJM staff only proposed to use SVCs at two sites included in Primary Power's revised proposal. At issue in this proceeding, Primary Power's proposal included SVCs at two locations, which were ultimately rejected, namely (a) the "Rio proposal," initially proposed as two 250 MVAR SVCs at a new substation to be located 24 miles from the Meadow Brook substation on the 500 kV Meadow Brook – Greenland Gap – Mt. Storm line,⁶ and (b) the "Petersburg proposal," a 250 MVAR SVC at a new substation located 19 miles from the bus of the 1600 MW Mt. Storm Power Station on the Mt. Storm – Valley line.⁷

6. Primary Power sought PJM staff's approval for its proposals through these confidential communications, and not through the normal reliability planning procedures, which typically rely on PJM staff to study anticipated system conditions, identify violations of reliability criteria and propose solutions in its recommended plan.⁸ Under the planning procedures, once PJM staff has made its findings, it generally provides the

⁵ See Complaint at 13 n.27. PJM provides Primary Power's November 18, 2011 presentation describing its proposals to the Advisory Committee. PJM Answer, App. 8 (Summary of Proposal: 2016 Regional Transmission Expansion Plan at 12 (Presentation)). In the Presentation, Primary Power refers to its proposal as Grid Plus. This "2011 Grid Plus" proposal is distinct from the Grid Plus proposal in *Primary Power, LLC*, 131 FERC ¶ 61,015, at P 65 (2010) (finding that section 1.5.6 of PJM Operating Agreement, Schedule 6 does not provide for reassignment of projects proposed by "other entities" to incumbent transmission owners), *reh'g denied*, 140 FERC ¶ 61,052 (2012) (*Primary Power Incentives Order*).

⁶ The Meadow Brook – Greenland Gap – Mt. Storm line is owned by Dominion and FirstEnergy subsidiary Potomac Edison, and is located in FirstEnergy's Allegheny Power transmission zone, adjacent to the 500 kV TrAIL line, owned by another FirstEnergy subsidiary, Trans-Allegheny Interstate Line Co. Complaint, Att. 9 (FirstEnergy Feb. 3, 2012 Letter to PJM Board).

⁷ Schedule 6 of the PJM Operating Agreement uses the word project for enhancements and expansions included in the Regional Plan. Consequently, we will refer to Primary Power's proposals as "proposals" because they were not included in the plan.

⁸ Operating Agreement, Schedule 6, § 1.5.2(a) (providing for PJM staff to initiate expansion and enhancement study process), § 1.5.6(a) (designating PJM staff as responsible for preparing recommended plan).

results of its analysis to the Transmission Expansion Advisory Committee (Advisory Committee) members and interested parties, and identifies any violations and proposed solutions. According to the planning procedures, Advisory Committee members and interested parties are given an opportunity to comment on violations, proposed solutions, and the recommended plan and submit alternative proposals for solutions (which are also subject to Advisory Committee and stakeholder review) before the recommended plan is presented to the Board for review and adoption.⁹

7. However, during the preparation of the 2011 Regional Plan, when PJM staff presented its voltage analysis results to the Advisory Committee on October 5, 2011, PJM staff indicated only that it was reviewing violations for 2016 and would finalize the location, magnitude and technology choices for upgrades to address the violations at the November 2011 Advisory Committee meeting.¹⁰ PJM staff identified Meadow Brook as a potential reactive power upgrade site. However, PJM staff neither discussed Rio, Petersburg or Mt. Storm as potential sites for reactive power support, nor did they disclose that Primary Power had submitted potential solutions.

8. Thus, when PJM staff presented a recommended plan update to the Advisory Committee on November 3, 2011, for the first time, it disclosed that it had considered Primary Power's proposals for reactive power support projects in response to the voltage criteria violations and that it planned to include two Primary Power projects, the two which are at issue in this proceeding, in the recommended plan to be presented for Board approval.¹¹

9. Specifically, PJM staff proposed that two SVC installations proposed by Primary Power be included in the recommended plan: (1) a 600 MVAR SVC to provide reactive

⁹ *Id.*, §§ 1.5.4(e) (Advisory Committee required to provide information to members to review any identified violations, potential solutions; and the proposed Regional Plan) and 1.5.6(b) (Advisory Committee required to provide opportunity for members and interested parties to collaborate and submit comments on recommended plan prepared by PJM staff); *see also* Manual 14B, section 2.3.14 (providing for PJM staff to submit recommendations for upgrades to address violations in the month prior to the Advisory Committee meeting).

¹⁰ Dominion Ex. No. DOM-3 at 8-9 (PJM staff Oct. 5, 2011 presentation to Advisory Committee).

¹¹ Complaint, Att. 3. PJM staff's full Nov. 3, 2011 Update is found in Dominion, Ex. No. DOM-4.

support “at Meadow Brook,” on the FirstEnergy system,¹² and (2) a 250 MVAR SVC at the proposed Petersburg substation to provide reactive power support in the vicinity of the Mt. Storm generation station on the Dominion system. In addition, PJM staff indicated that it intended to recommend that the Board designate Primary Power to build these upgrades. Due to the severity of the anticipated violations, PJM staff accelerated the in-service date to June 2014.

10. Thereafter, the Board deferred consideration of the reactive power upgrades at Meadow Brook and Mt. Storm to provide for stakeholder review and input in response to concerns with PJM staff’s review of the Primary Power proposals. Specifically, Advisory Committee participants objected that they were denied an opportunity to review and comment on the proposals and propose alternative solutions before they were included in the recommended plan, and that PJM staff failed to consider alternatives to the proposals, as required by the planning procedures.¹³

11. In response, Primary Power, PJM staff, Dominion and FirstEnergy submitted additional proposals and supporting materials to the Advisory Committee through the end of March 2012. Notably, FirstEnergy initially took the opportunity to press its case that SVCs were not needed at Meadow Brook and a static capacitor solution would remedy the violations at substantially lower cost. PJM staff analyzed FirstEnergy’s static capacitor alternative, but found that it would not meet the applicable criteria and rejected this alternative at Meadow Brook. When it did so, PJM staff also clarified that the SVC it proposed as an upgrade “at Meadow Brook” actually referred to an SVC to be constructed at the new substation proposed at the Rio site. Thereafter, FirstEnergy proposed to build an SVC at the Meadow Brook substation as an alternative.

12. In the end, Dominion and FirstEnergy proposed to construct the needed reactive power upgrades at the Mt. Storm and Meadow Brook substations, respectively. The transmission owners maintained that their proposals addressed the reactive power concerns at a lower cost and with less environmental impact because they would not require new substations. Dominion estimated that building an SVC at the Mt. Storm substation would only cost \$36 million, compared to Primary Power’s \$45 million estimate.¹⁴ FirstEnergy predicted that it could build an SVC at its Meadow Brook

¹² PJM staff later clarified that it intended to adopt Primary Power’s Rio proposal. *See* PJM App. 2 (PJM staff Jan. 30, 2012 presentation to Advisory Committee). PJM staff modified Primary Power’s original proposal for two 250 MVAR SVCs at Rio to a single 600 MVAR SVC.

¹³ *E.g.*, Complaint, Att. 4 (Dominion Dec. 1, 2011 letter to PJM Board).

¹⁴ *See* PJM Answer, App. 5 (PJM staff Apr. 2, 2012 Reliability Plan Update at 13).

substation for \$52-60 million, compared to Primary Power's original estimate of \$100 million (potentially lowered to \$75 million if a simplified interconnection scheme could be employed).¹⁵

13. Also, the transmission owners argued that their proposals would face less risk of delay because they did not need to acquire land or receive regulatory approvals. In addition, the transmission owners cited operational benefits such as decreased losses and outages (because the SVCs would remain integrated following a contingency event), better coordination with existing resources, simplified protection, and the ability to provide increased reactive support by interconnecting to multiple lines at the substations (whereas Primary Power's proposed SVC projects would only provide reactive support in one direction, if half the line trips due to a fault).

14. The Board also considered a revised Rio proposal, submitted by Primary Power on February 29, 2012, featuring a simplified three-ring bus interconnection design, reducing the cost estimate for Rio to \$75 million. PJM staff also presented updates to the PJM Board comparing the Primary Power proposal and alternative to the incumbent transmission owner proposals.

15. Based on additional PJM staff analysis and on materials and analysis provided by the interested parties, PJM staff changed its recommendation and proposed the Dominion Mt. Storm and FirstEnergy Meadow Brook projects to the Board for inclusion in the Regional Plan. PJM staff presented its recommended plan to the Board for approval, and the Board approved the 2011 PJM Regional Plan, incorporating PJM staff's revised recommendations, on April 2, 2012. PJM consequently designated FirstEnergy to build an SVC at its Meadow Brook substation, and designated Dominion to build an SVC at its Mt. Storm substation.

II. Complaint

16. In its Complaint, Primary Power objects to PJM's approval of SVC installations at FirstEnergy's Meadow Brook substation and Dominion's Mt. Storm substation and claims that it should have been designated to construct these projects. Primary Power argues that PJM staff originally designated it to build the upgrades, but that PJM and the transmission owners subsequently reassigned its proposals during the stakeholder review process. Primary Power claims that the Commission's *Primary Power Incentives Order* held that PJM cannot reassign a project to an incumbent transmission owner and objects to PJM's actions, to relocate the projects and designate the transmission owners that own

¹⁵ *Id.*, App. 5 at 16.

the new sites to build, as employing a *de facto* right of first refusal, in violation of that order.¹⁶

17. Primary Power claims that the selected reliability upgrades are identical in all material respects (except for the interconnection point) to its Rio and Petersburg proposals. Primary Power asserts that the Regional Plan “unquestionably” includes two Primary Power SVC projects, referring to the 600 MVAR Meadow Brook SVC and the 250 MVAR Mt. Storm SVC. Primary Power suggests that PJM and the transmission owners acted together to take advantage of its independent development work.

18. Primary Power argues that the Tariff and Operating Agreement include criteria for selecting which projects will be included in the Regional Plan but do not provide any criteria for designating construction responsibility after a project is selected. Primary Power claims that it obtained the right and obligation to build the projects when PJM staff’s announced to the Advisory Committee on November 3, 2011 that it intended to include the Rio and Petersburg proposals in the recommended plan that it would present for Board approval.

19. Primary Power claims that PJM’s evaluation of the projects based on “relative performance with respect to reliability criteria, operational aspects and costs” should have been used for selecting which projects to include in the Regional Plan, but not for designating which entity will construct a project after it has been included.¹⁷ According to Primary Power, the Commission expressly found in the *Primary Power Incentives Order* that the PJM Tariff and Operating Agreement do not permit PJM to reassign a project.¹⁸ Primary Power further cites the Commission’s order for the proposition that PJM should designate the developer to construct its proposal if it was included in the Regional Plan or provide an adequate explanation why it was not.¹⁹ Primary Power further cites to *Primary Power Incentives Order* for the holding that there is no right of first refusal in the PJM Tariff or Operating Agreement, and claims that recognizing the transmission owners’ rights to build on the adjacent land would be unlawful and

¹⁶ *Primary Power Incentives Order*, 131 FERC ¶ 61,015 at P 65.

¹⁷ Complaint at 25 (citing Schedule 6 of the Operating Agreement, §§ 1.5.3, 1.5.6 and 1.5.7) and Att. 2 (PJM Apr. 5, 2012 Letter reporting the Board’s decision).

¹⁸ *Id.* at 30 (citing *Primary Power Incentives Order*, 131 FERC ¶ 61,015 at P 65).

¹⁹ *Id.* at 31.

contravene the Commission's decision.²⁰ Primary Power suggests that it should be awarded any SVC project to resolve the reliability concerns that were to be addressed by its proposals, based on a right of sponsorship.²¹ Primary Power argues that PJM cannot exercise unfettered discretion to choose and that its decisions cannot be made based on criteria that are not in the Tariff or Operating Agreement.²²

20. Primary Power argues that PJM and the incumbent transmission owners cannot create a *de facto* right of first refusal by moving the point of interconnection for the SVC projects to existing substations, where only the incumbent transmission owners have rights to build. Primary Power cites the generation interconnection procedures, under which PJM will study a customer's requested interconnection location, but will also consider alternative interconnection points. Primary Power asserts that under the interconnection procedures "it is still the same project."²³ According to Primary Power, moving the point of interconnection does not change the sponsor of a generator interconnection project or allow PJM to give the project over to another developer. By analogy, Primary Power asserts that it should not lose its right to build the project as a result of a change in location of an upgrade under the planning procedures.

21. Primary Power objects to the PJM Board making its determination in a closed meeting, with only a one sentence statement informing PJM stakeholders of its decision to adopt PJM staff's recommendation.²⁴ Primary Power argues that the closed door

²⁰ Citing *Primary Power Incentives Order*, 131 FERC ¶ 61,015; *Central Transmission, LLC v. PJM Interconnection, L.L.C.*, 131 FERC ¶ 61,243 (2010).

²¹ Complaint at 29 ("unless and until PJM files revisions to its Tariff or Operating Agreement authorizing it to [designate a project sponsor], it must designate the Primary Power SVC Projects to Primary Power," citing *Primary Power Incentives Order*, 131 FERC ¶ 61,015 at P 65).

²² *Id.* at 26-30 & n.69 (citing *Neptune Regional Transmission System, LLC v. PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,098, at P 25 (2005), as holding that the "silence" of the PJM tariff does not give PJM "sole, unreviewable discretion" and that the tariff provision must be construed with "some reasonable boundary" in light of the tariff provisions purposes and Commission policies).

²³ *Id.* at 36.

²⁴ *Id.* at 31, Att. 2 (PJM Board letter stating that the PJM Board "considered a range of factors including the relative performance with respect to reliability criteria, operational aspects and cost" and approved the recommendations of PJM staff to approve

(continued...)

meeting and terse disclosure are inconsistent with transparency requirements in Order No. 1000, Order No. 890 and the Operating Agreement, Schedule 6.²⁵

22. Primary Power claims that PJM found the performance of Mt. Storm SVC to be technically inferior to its Petersburg proposal, but acknowledged that Mt. Storm would be workable and perhaps less expensive.²⁶ Primary Power claims that its proposals follow established practice to site SVCs in the middle of transmission lines to better offset reactive power consumption as load increases. Primary Power faults the Board's determination for failing to address these issues.

23. Primary Power challenges the Dominion and FirstEnergy claims of lower cost and avoiding duplication of facilities as lacking technical analysis and development work. Primary Power claims that neither Dominion nor FirstEnergy proposed any SVC projects in the Meadow Brook or Mt. Storm areas prior to the November 2011 Advisory Committee meeting and notes that FirstEnergy initially objected to installing an SVC at Meadow Brook, favoring a static capacitor-based alternative.²⁷ Primary Power notes that it committed to the PJM Board that it had "plenty of time" to obtain a certificate of public convenience and necessity and complete construction before the June 1, 2014 in-service deadline.²⁸ Primary Power challenges FirstEnergy's cost estimate, noting that FirstEnergy exceeded its estimate when it built the Black Oak SVC.

the SVC installations and assign construction responsibility to Dominion and FirstEnergy).

²⁵ *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 (2012); *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), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

²⁶ Complaint at 36.

²⁷ *See id.* at 34. Static capacitors, unlike SVCs, do not absorb VARs and do not provide a range in output, but may only be switched on or off.

²⁸ *Id.*, Att. 7 at 7 (Primary Power Feb. 7, 2012 letter to Board defending Rio and Petersburg proposals).

24. Primary Power also argues that its sponsorship rights are consistent with the Commission's policies established under Order No. 1000.²⁹ Primary Power distinguishes its SVC proposals from the upgrades to existing facilities discussed in Order No. 1000 for which a right of first refusal may be permissible because no SVC currently exists at the Meadow Brook or Mt. Storm substations, and that the SVC projects would provide reactive power, not the transmission service provided via the substations. Furthermore, Primary Power points to the Commission's determination in *Primary Power Incentives Order* that the facilities warranted rate incentives as "new infrastructure" as demonstrating that the facilities are new facilities, and not routine upgrades to existing facilities. Also, Primary Power reasons that, because the SVCs interconnect to the transmission system in a manner similar to generators, then, like generators, they are not upgrades to the transmission system.³⁰

25. Primary Power argues that failure to award it the responsibility to construct the SVC projects will block participation by independent developers and shut down new innovation, creativity and investment. Primary Power highlights its efforts, investing \$5 million in developing and promoting an "integrated array" of SVC projects, of which the Meadow Brook and Mt. Storm SVCs are a part.³¹ Primary Power disparages the input of the incumbent transmission owners in developing the projects, claiming they have "not spent a dime." Primary Power reiterates that it would be unfair and discourage innovation if the incumbent transmission owners construct the projects. Primary Power asserts that it is not free riding on the efforts of others, citing its \$5 million investment.³²

26. Primary Power requests that the Commission (1) find that PJM's designations of FirstEnergy to build the Meadow Brook SVC and Dominion to build the Mt. Storm SVC are invalid; and (2) direct PJM to designate Primary Power, as the project sponsor, to construct the SVCs. In addition, Primary Power asks the Commission to confirm that Primary Power has qualified for the transmission rate incentives that were conditionally

²⁹ *Id.* at 37.

³⁰ *Id.* at 40-42.

³¹ *Id.* at 46.

³² *Id.* at 38, 47 (citing the claims made by certain PJM transmission owners in their request for rehearing filed in Docket Nos. ER10-253-001, *et al.* (at 31), that independent developers could cherry pick the most profitable projects, while leaving incumbent transmission owners as the builder of last resort for remaining, more difficult reliability projects). Primary Power updates its report of expenses incurred in promoting SVC development, reporting \$5 million spent in developing and sponsoring its SVC projects.

granted in *Primary Power Incentives Order*. Primary Power states that it satisfied the only precondition for these rate incentives, namely, that the projects have been selected in the PJM Regional Plan. Primary Power asks for expedited action, requesting the Commission issue an order by July 13, 2012, because the upgrades are urgently needed for reliability by June 1, 2014 and Primary Power is ready to start construction now.

III. Notice, Interventions and Responsive Pleadings

27. Notice of the Complaint was published in the Federal Register with answers and interventions due June 4, 2012.³³ PJM filed its answer (PJM Answer).

28. The Maryland Public Service Commission filed a Notice of Intervention and the Pennsylvania Public Utility Commission (Pennsylvania Commission) filed a Notice of Intervention and Comments. American Electric Power Service Corporation (AEP),³⁴ American Municipal Power, Inc., Anbaric Holding, LLC, The Dayton Power and Light Co., Duke Energy Corp.,³⁵ Monitoring Analytics, LLC (PJM Market Monitor), North Carolina Electric Membership Corp., Old Dominion Electric Coop., Pepco Holdings, Inc., Potomac Electric Power Co., Delmarva Power & Light Co., and Atlantic City Electric Co., and Public Service Electric and Gas Co., PSEG Power LLC and PSEG Energy Resources & Trade LLC (PSEG) filed timely motions to intervene.

29. Atlantic Grid Development, LLC (Atlantic Grid), Exelon Corp., LSP Transmission Holdings, LLC (LS Power), Dominion, and Western Independent Transmission Group (Western Transmission) filed timely motions to intervene and comments. Southwestern Power Group filed comments. Potomac Edison Company and Trans-Allegheny Interstate Line Company (collectively FirstEnergy), and PPL PJM

³³ 77 Fed. Reg. 30,002 (May 21, 2012).

³⁴ On behalf of its affiliates, Appalachian Power Co., Indiana Michigan Power Co., Kentucky Power Co., Kingsport Power Co., Ohio Power Co. and Wheeling Power Co., AEP Appalachian Transmission Co. Inc., AEP Indiana Michigan Transmission Co. Inc., AEP Kentucky Transmission Co. Inc., AEP Ohio Transmission Co. Inc., and AEP West Virginia Transmission Co.

³⁵ On behalf of Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., Duke Energy Carolinas, LLC, Duke Energy Commercial Asset Management, Inc., Duke Energy Retail Sales, LLC, and Duke Energy Business Services, LLC.

Companies³⁶ filed timely motions to intervene and protests. Duquesne Light Co. filed a late intervention.

30. On June 20, 2012, Primary Power filed an answer to the PJM Answer, and on June 22, PJM Market Monitor filed an answer to the PJM Answer. On June 26, 2012, Dominion filed an answer to these answers and on July 3, 2012 PJM submitted an additional answer. On July 10, Primary Power submitted an answer to the latter PJM answer, and PJM submitted an answer to that answer on July 12, 2012.

A. PJM Answer

31. PJM denies the allegations in the Complaint and asserts that it reviewed alternative proposals by Dominion, FirstEnergy and Primary Power and chose the Dominion and FirstEnergy alternatives based on valid cost and operational factors consistent with the planning procedures. According to PJM, the planning procedures prescribe a comprehensive planning process carried out by PJM staff, with stakeholder participation. Under the procedures, PJM staff prepares a recommended plan that identifies projects for the Regional Plan and the entities to build them and the proposed cost allocation. However, PJM asserts, only the Board has authority to approve the final Regional Plan.³⁷

32. PJM states that the issue in this proceeding is whether PJM's independent Board acted within its authority to include new SVC installations at two existing substations, rather than two new substations and designated the respective owners of the substations, rather than Primary Power, to build the SVCs. According to PJM, the Board decision complied with the planning procedures and was not unduly discriminatory.

33. PJM defends its review of the reactive power proposals, citing the Operating Agreement, Schedule 6, section 1.5.6(a) as stating that the planning process must be "an open and collaborative process with opportunity for meaningful participation." PJM indicates the plan development process included thorough review and collaborative input by the Advisory Committee, PJM staff, and interested parties providing additional input.

³⁶ PPL Electric Utilities Corp. filed on behalf of PPL Ironwood, LLC; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL New Jersey Solar, LLC; PPL New Jersey Biogas, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; PPL University Park, LLC and Lower Mount Bethel Energy, LLC (PPL).

³⁷ PJM Answer at 12; Operating Agreement, Schedule 6, § 1.6(a) ("Based on the studies and analyses performed by the Office of Interconnection under this Schedule 6, the PJM Board shall approve the Regional Transmission Expansion Plan").

PJM asserts that the PJM staff and the Advisory Committee properly reviewed the Dominion and FirstEnergy alternatives, consistent with the planning procedure, section 1.5.6(h), which permits any transmission owner to offer an alternative to a proposed solution in the recommended plan and section 1.5.6(h.01) requires it to submit an alternative to the Advisory Committee for review. PJM points out that section 1.5.6(i) directs it to consider proposed alternatives, providing that PJM staff may adopt an alternative “based on its review of the relative costs and benefits.”

34. PJM asserts the Board’s exercise of judgment is consistent with the factors to be considered under the planning process.³⁸ PJM defends its role as the independent decision maker, noting that establishing a comprehensive Regional Plan for a large area inevitably involves difficult choices among projects and stakeholders. PJM states that it acted appropriately, seeking more technical analysis when confronted with a dispute, provided for additional stakeholder input, and considered alternatives thoroughly and honestly. PJM notes that the Federal Power Act does not invest the Commission with authority to select among competing projects. PJM states that, because this case does not suggest that it failed to fairly consider alternatives through an open process, the facts do not even come close to supporting an extraordinary second guessing of the Board’s independent judgment by the Commission as Primary Power advocates. According to PJM, the Commission’s deliberation should end with a determination that PJM staff and the Board adhered to the open planning process prescribed by the planning procedures and applied the required criteria for selecting Regional Plan projects. Consequently, PJM requests that the Commission deny the Complaint and dismiss it with prejudice. PJM states that there is no basis for the Commission to upset the Board’s determination.³⁹

³⁸ Citing Operating Agreement, Schedule 6, § 1.4(d):

The Regional Transmission Expansion Plan shall (i) avoid unnecessary duplication of facilities; (ii) avoid the imposition of unreasonable costs on any Transmission Owner or any user of Transmission Facilities; (iii) take into account the legal and contractual rights and obligations of the Transmission Owners; (iv) provide, if appropriate, alternative means for meeting transmission needs in the PJM Region; (v) strive to maintain and, when appropriate, to enhance the economic and operational efficiency of wholesale electric service markets in the PJM region; (vi) provide for coordination with existing transmission systems and with appropriate interregional and local expansion plans; and (vii) strive for consistency in planning data and assumptions that may relieve transmission congestion across multiple regions.

³⁹ PJM Answer at 15.

35. PJM rejects the suggestion that the Board may have relied on a right of first refusal for incumbent transmission owners as speculative and erroneous. The Board stated that it selected the Dominion and FirstEnergy proposals because they were operationally more advantageous, more cost effective, and had less risk for delay since the SVCs would be installed at existing substations.⁴⁰ According to PJM, its staff and the Board weighed only the merits of the proposed projects. PJM states that the Board based its decision on objective factors discussed above, and cites a lack of evidence in the Complaint suggesting preferential treatment.

36. PJM cites a January 30, 2012 PJM staff presentation to the Advisory Committee, finding the Mt. Storm site is superior on six of nine factors evaluated, including 20% lower costs, no new land and no need for a certificate of public convenience and necessity.⁴¹ PJM notes that based on this comparison, PJM staff changed its recommendation to propose Dominion to build its alternative solution at Mt. Storm, instead of the Petersburg site.

37. As for the Meadow Brook proposals, in the Jan. 30, 2012 Presentation PJM staff rejected FirstEnergy's static capacitor-based solution and clarified that it intended to designate Primary Power to build the SVC at the new Rio substation, not Meadow Brook. PJM notes that FirstEnergy responded with its proposal to construct the SVC at Meadow Brook,⁴² which, in turn, prompted Primary Power to propose its alternative proposal featuring a simplified interconnection scheme, reducing the Rio cost estimate to \$75 million.⁴³ PJM cites a three-way comparison of Primary Power's Rio proposal and its alternative to FirstEnergy's Meadow Brook proposal that PJM staff presented to the Board on March 12, 2012.⁴⁴ According to the comparison, all of the SVC proposals met the voltage criteria, but Primary Power's alternative risked operating radially in the event of a contingency, and both of Primary Power's proposals would require new land and

⁴⁰ *Id.*, App. 6 (PJM Board April 2, 2012 meeting minutes). On May 2, 2012 in Docket No. ER12-1700-000, PJM filed a Regional Plan Update containing cost allocation information reflecting its designation of Dominion and FirstEnergy to build two SVC projects at the existing Mt. Storm and Meadow Brook substations.

⁴¹ PJM Answer at 7 & App. 2.

⁴² *See* Complaint, Att. 9 (FirstEnergy Feb. 3, 2012 letter to PJM Board).

⁴³ PJM Answer at 9; Complaint Att. 10 (Primary Power Feb. 29 letter to Board proposing simplified three-ring bus interconnection design).

⁴⁴ PJM Answer, App. 4 (PJM staff Mar. 12, 2012 staff presentation to Board).

rights-of-way, and were estimated to cost \$75 million to \$100 million, compared to \$52-60 million for FirstEnergy's proposal. PJM notes that Primary Power provided comments to the PJM Board supporting its proposals and criticizing the alternatives on February 7 and February 29, 2012.

38. PJM defends its choice of the Mt. Storm and Meadow Brook projects, based on the above-described information. PJM states that the electrical performance the Meadow Brook and Mt. Storm SVCs is comparable to the alternative proposals at Petersburg and Rio. The Mt. Storm and Meadow Brook projects are estimated to cost substantially less (with a combined estimated cost of \$88 – 96 million) than the Petersburg and Rio alternatives with a combined estimated cost of \$120 to \$145 million). PJM also notes that PJM staff found that the Meadow Brook and Mt. Storm projects face less risk of delay because they do not need a certificate of public convenience and necessity.⁴⁵ PJM cites PJM staff findings that the Mt. Storm and Meadow Brook projects provide greater operational flexibility than the Petersburg and Rio proposals due to the configuration of facilities.⁴⁶

39. PJM rebuts Primary Power's claim that SVCs should typically be located at new substations, pointing out that the new substations are not needed to meet the voltage criteria and that the Operating Agreement, Schedule 6 says to avoid unnecessary duplication of facilities. Furthermore, PJM cites recent SVC installations, all of which were constructed at existing, not new, substations.⁴⁷ Because the SVCs are to be built at incumbent transmission owners' existing substations, PJM concludes that it is reasonable and consistent with Order No. 1000 to designate the owners of the substations to build the projects.⁴⁸

40. PJM states that the preparation of the 2011 Regional Plan is consistent with requirements to prepare a plan to meet regional transmission needs "on a reliable, economic and environmentally acceptable basis."⁴⁹ PJM states that selecting the Dominion and FirstEnergy projects is consistent with the criteria established in the Operating Agreement, Schedule 6, section 1.4(d) because the projects avoid unnecessary

⁴⁵ Building the SVCs at existing substations is covered by existing certificates.

⁴⁶ PJM Answer at 11; *see also* App. 5 (PJM staff's Apr. 2, 2012 Update).

⁴⁷ *Id.* at 21.

⁴⁸ *Id.* at 11 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319).

⁴⁹ *Id.* at 13; Operating Agreement, Schedule 6, §§ 1.1 and 1.2.

duplication of facilities by avoiding construction of new substations, and avoid unreasonable costs, citing the land for new substations, which it states are not needed to obtain the required reactive capacity. PJM says the choices take account of the transmission owner's property rights, by acknowledging ownership of the existing substations. PJM indicates that the Dominion and FirstEnergy projects are the most operationally efficient of the proposed alternatives, including Primary Power's alternative proposal.⁵⁰

41. PJM responds to Primary Power's objection to its closed meeting, noting that all Board meetings are closed. In addition, PJM disputes the importance of the fact that the transmission owners did not perform any of the technical studies. PJM states that, under the Operating Agreement, Schedule 6, PJM independently evaluates every reasonable alternative project, regardless of who suggests it. PJM states that it is responsible for the technical studies, and there is no requirement that development work precede the submission of a project for consideration.⁵¹

42. PJM describes the decision to designate Dominion and FirstEnergy to build the projects as following logically with the decision to site the upgrades at the existing substations. PJM notes that Primary Power has no rights to construct facilities on property owned by Dominion or FirstEnergy, and no rights on adjacent properties. PJM disputes Primary Power's characterization of its actions as granting transmission owners a preference for any facility that connects to its facilities, noting that the choice to locate the SVC installations at the existing substations involves more than just interconnecting new facilities.

43. PJM asserts that the projects it selected are not the projects proposed by Primary Power, noting that it did not choose to locate the upgrades at new substations. In addition, PJM notes that Primary Power's Rio proposal originally consisted of two 250 MVAR SVCs, while the Meadow Brook project consists of a single, 600 MVAR SVC. PJM downplays the similarity of the Primary Power Grid Plus proposals to the reliability projects that were included in the Regional Plan because the size of the reactive upgrades needed was determined by the nature and magnitude of the criteria violations to be addressed. PJM also notes that SVCs are standardized pieces of equipment.

44. PJM contests the applicability of Primary Power's claim that PJM cannot modify designation of construction responsibility. PJM points out that it did not exercise any modification authority, but instead evaluated and alternatives based on Advisory

⁵⁰ PJM Answer at 14.

⁵¹ *Id.* at 22 n.66.

Committee and PJM staff input, consistent with the Operating Agreement, Schedule 6, section 1.5.6(h), (h.01) and (i).

45. PJM contests Primary Power's reliance on the change provisions in the generator interconnection procedures because the planning process evaluates system needs to determine the transmission upgrades to best maintain reliable service. PJM distinguishes the generator interconnection process as aimed at reliably connecting each proposed generator, without regard for system needs. Finally, PJM notes that the changes at issue involve a change in location, not a mere change to the point of interconnection.⁵²

46. PJM disputes that the *Primary Power Incentives Order* dictates that it designate Primary Power to construct any SVC that is included in the Regional Plan in the area affected by Primary Power's proposals.⁵³ Because the Primary Power proposals are not included in the Regional Plan, PJM contests the applicability of the prescription in *Primary Power Incentives Order* – that PJM must adequately justify designating another entity to construct a Primary Power-proposed project if it is included in the Regional Plan.⁵⁴ In addition, PJM asserts that since Primary Power's proposed projects were never approved by the PJM Board for inclusion in the Regional Plan, the projects do not meet the condition for incentives as required in the *Primary Power Incentives Order*.

47. PJM defends the Board's decision as consistent with the Order No. 1000 ruling that incumbent transmission owners may retain the right to construct additions and upgrades to their own facilities.⁵⁵ Furthermore, PJM cites the Commission's reservation noting that the Commission's rules and policies do not provide transmission developers "the ability to use rights-of-way held by other entities, even if transmission facilities associated with such upgrades or uses of existing rights-of-way are selected in the regional transmission plan."⁵⁶

⁵² *Id.* at 20.

⁵³ *Id.* at 2 (citing *Primary Power Incentives Order*, 131 FERC ¶ 61,015 at P 71, "we are not requiring PJM to designate Primary Power").

⁵⁴ *Id.* at 19 (citing *Primary Power Incentives Order*, 131 FERC ¶ 61,015 at P 66).

⁵⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 382 ("We acknowledge that a decision made to select a new transmission facility in the regional plan . . . may affect which entity ultimately constructs and owns transmission facilities").

⁵⁶ PJM Answer at 22 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319).

B. Transmission Owners Supporting PJM

48. Dominion and FirstEnergy support PJM's position pointing to a voluminous record of analysis and deliberations as justifying PJM's decision and demonstrating that it followed an open process.⁵⁷ They state that while they initially had concerns with the confidential treatment of Primary Power's proposal, which served to frustrate stakeholder input required by the planning procedures, any lapse in the open planning process was remedied in subsequent review and deliberations.⁵⁸ Dominion contests Primary Power's suggestion that Dominion is "free riding on Primary Power's development efforts" arguing that the confidential status of Primary Power's proposals prevented anyone from appropriating its efforts.⁵⁹ Dominion states that it proposed to rely on SVCs at several locations, including at Mt. Storm when it proposed alternatives to the PATH project to the Advisory Committee in June 2010, well before Primary Power's November 3, 2011 proposal.⁶⁰

49. FirstEnergy and Dominion reject reliance on a "sponsorship model" in the PJM planning process, as converting PJM's open, iterative process into a closed process where any sponsor of a project gets credit for similar projects proposed by other stakeholders. They state that the Commission has rejected this model in Order No. 1000.⁶¹

⁵⁷ Dominion filed several hundred pages of supporting data and planning materials from Dominion, FirstEnergy, Primary Power and PJM staff presentations to the Advisory Committee and Board.

⁵⁸ PPL also supports dismissing the Complaint, arguing that the Complaint seeks to impermissibly limit PJM's discretion in the planning process.

⁵⁹ Dominion Comments at 18 (citing Primary Power's Complaint at 38).

⁶⁰ *Id.* at 10, Ex. No. DOM-1 at 5-8 (2010 presentation describing four proposed alternatives, which included four configurations of line upgrades or additions, SVCs and other reactive support, to replace the PATH project, one including an SVC at Mt. Storm).

⁶¹ FirstEnergy Protest at 17-18; Dominion Comments at 10 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at 339-340 Order No. 1000-A, 139 FERC ¶ 61,132 at P 456, "The Proposed Rule also sought comment on whether to... allow a transmission developer to maintain for a defined period of time its right to build and own a transmission project that it proposed but that is not selected." The Commission declined to adopt this option, noting that it "could adversely impact the transmission planning process, potentially leading to transmission developers submitting a multitude of possible transmission projects simply to acquire future development rights").

50. Dominion and FirstEnergy emphasize the technical and operational differences distinguishing their projects from Primary Power's proposals. Dominion details certain technical and economic advantages, stating that the Mt. Storm SVC (1) can be coordinated with existing generator controls and capacitor banks, (2) will increase the bus voltage from 500 kV to 525 kV increasing reliability and generation stability; and (3) will avoid duplicative facilities such as breakers, use of existing rights-of-way and take advantage of cost efficiencies associated with the construction of other reliability projects.⁶²

51. FirstEnergy states that the Meadow Brook SVC: (1) will be located at an existing substation, where it can make use of existing facilities, while Primary Power's proposal requires new land and the installation of new equipment; (2) is estimated to cost \$52 to \$60 million, compared to \$75 to \$100 million for Rio;⁶³ (3) will not need a state certificate of public convenience and necessity for siting because it will be built at an existing substation; and (4) is proposed in a different location, approximately 25 miles away from the proposed Rio SVC and in a different state.⁶⁴ FirstEnergy objects to Primary Power's suggestion that it be designated to build an SVC on FirstEnergy's property because that would have failed to "take into account the legal and contractual rights and obligations of the Transmission Owners" as required by the Operating Agreement.⁶⁵

52. FirstEnergy disputes Primary Power's claim that upgrades to the Meadow Brook SVC are new facilities because FirstEnergy already has existing equipment at Meadow Brook substation that provides both transmission and reactive support.⁶⁶ FirstEnergy states that the Commission emphasized in *Primary Power Incentives Order* that it is promoting independent transmission in order to foster competition, for the ultimate

⁶² Dominion Comments at 22-25; Ex. No. DOM-7 at 2; Ex. No. DOM-8 at 2; Ex. No. DOM-13 at 12.

⁶³ Although Primary Power challenges FirstEnergy's cost estimate, FirstEnergy reports that it is based on its experience constructing a comparable SVC installation. Primary Power cites cost overruns as compared to initial estimates, but FirstEnergy explains that the overages were not caused by poor budgeting, but were largely due to enhancements that PJM required, resulting in increased cost. Protest at 14 n.36.

⁶⁴ FirstEnergy Protest at 13-14.

⁶⁵ *Id.* at 22 (citing Operating Agreement, Schedule 6, § 1.4(d)(iii)).

⁶⁶ *Id.* at 28.

benefit of transmission customers in the form of lower rates. FirstEnergy states that requiring PJM to select Primary Power's project when there is a superior, more economical alternative accomplishes the opposite result.⁶⁷

53. FirstEnergy contests Primary Power's assertion that the planning procedures lack criteria for assigning construction responsibility, citing the criteria in the Operating Agreement, Schedule 6, section 1.4(d). FirstEnergy explains that the Operating Agreement, Schedule 6 does not require projects to have sponsors, and so there are no criteria for designating an entity other than a sponsor. Instead, PJM may recommend unsponsored projects to meet identified needs.⁶⁸

54. Dominion and FirstEnergy argue that the absence of specific designation criteria for every scenario does not violate the filed rate doctrine because PJM is not required to file each and every criterion and process it uses to make its planning decisions, as confirmed by application of the Commission's rule of reason in *Pennsylvania-New Jersey-Maryland Interconnection*.⁶⁹ Further, Dominion contests the claim that PJM used unfiled criteria to designate an entity other than the project sponsor because PJM designated Dominion, the proponent of the Mt. Storm alternative.⁷⁰ FirstEnergy notes that the Commission has previously approved the planning procedures in the Operating Agreement as just and reasonable, and thus has already determined that the criteria and processes are sufficient under the rule of reason doctrine.⁷¹

⁶⁷ *Id.* at 32.

⁶⁸ *Id.* at 3, 24.

⁶⁹ *Pennsylvania- New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257, at 62,267 (1997) ("There is an infinitude of practices affecting rates and service. The statutory directive of section 205(c) must reasonably be read to require the recitation of only those practices that affect rates and services significantly, that are realistically susceptible of specification, and that are not so generally understood as to render recitation superfluous" (edits omitted)); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,988 (1993); *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985).

⁷⁰ Dominion Comments at 29-30 (citing Primary Power Complaint at 24-31); FirstEnergy Protest at 25-26.

⁷¹ FirstEnergy Protest at 25-26.

55. Dominion rejects Primary Power's claim that an adverse decision will prevent independent developers from participating in the planning process, stating that nothing in the PJM review process that resulted in the selection of Dominion's and FirstEnergy's projects indicates that non-incumbents cannot obtain PJM's approval of proposals to construct transmission facilities in the plan. Dominion states that nothing in the PJM review indicated that PJM based its decision on incumbency. Instead of signaling that non-incumbents can never get approval for their proposed projects, Dominion argues that PJM's review process demonstrated that PJM approves the best projects for inclusion in the RTEP regardless of who the sponsor is.⁷²

56. Dominion argues that PJM did not use any *de facto* "right of first refusal," nor did Dominion's land rights and ownership of the Mt. Storm substation impose a discriminatory barrier to entry. Instead, Dominion characterizes Primary Power's chosen location as "ill-suited." Dominion defends its reliance on any inherent advantage in building on existing property as not unduly discriminatory, because such use reflects a valid factual difference between Primary Power and Dominion.⁷³

57. Dominion argues that Primary Power's objection to the PJM Board's determination as "black box" process as misleading because Primary Power asked that its own project be evaluated confidentially.⁷⁴ Dominion defends the planning process as consistent with the requirements in the Operating Agreement, Schedule 6 that the Advisory Committee facilitate meetings and post communications to obtain comment on reliability violations, potential enhancements and expansions, including alternatives, and the proposed recommended plan.⁷⁵ In addition, sections 1.5.6(j) and (k) of Schedule 6 of the Operating Agreement provide for the resolution of disputes on what projects were included or excluded in the RTEP.⁷⁶ Dominion avers that section 2.3.14 of PJM's Manual 14B provides for at least two subregional planning committee reviews: one to present studies and parameters, and the other for input from stakeholders on proposed

⁷² Dominion Comments at 31-32.

⁷³ Dominion asserts that discrimination is undue only when there is a difference between rates or services among similarly situated customers that is not justified by some legitimate factor. Dominion Comments at 27-28 (citing 16 U.S.C. § 824d(b) (2006); *Town of Norwood, Massachusetts v. FERC*, 727 F.2d 1131, 1139 (1984) and similar cases).

⁷⁴ Dominion Comments at 26.

⁷⁵ *Id.* at 12-13; Operating Agreement, Schedule 6, § 1.5.6(b).

⁷⁶ Dominion Comments at 12-13.

solutions, including alternative proposals. Further, Dominion states the Manual 14B, section 2.3.14 provides a month for written comment on the recommended Regional Plan, after which the PJM Board will consider the final Regional Plan for approval.⁷⁷

C. Comments Supporting Complaint

58. Atlantic Grid, LS Power, Southwestern and Western Transmission support the Complaint, generally objecting to application of a right of first refusal and the potential for lost investment if an independent developer's proposal is not selected. The Pennsylvania Commission filed comments in support of the Complaint, stating that PJM should file tariff revisions to provide objective criteria for project selection. While Exelon disputes Primary Power's position that it is entitled to develop the two projects, it does not believe that PJM provided sufficient information concerning its decision.

59. LS Power requests that the Commission reject the presumption that only an incumbent transmission owner can construct and own an SVC at an existing substation. LS Power and Atlantic Grid ask the Commission to find that the SVCs at issue are new facilities not upgrades to existing equipment. LS Power claims that ownership of an SVC installation should remain with the developer whether the SVCs are placed in the existing substation or adjacent thereto, similar to new transmission line or generator interconnections. LS Power cautions the Commission to be mindful of attempts to broaden the scope of facilities to which a right of first refusal may apply.⁷⁸

60. Pennsylvania Commission argues that PJM has too much discretion under the tariff in selecting between competing transmission upgrade proposals. In addition, Pennsylvania Commission states that PJM's selection should be conducted in an open and transparent process, to prevent complaints and encourage investment. Pennsylvania Commission cites transmission owner incentives to favor affiliated generation. Pennsylvania Commission and Exelon ask the Commission to direct PJM to submit all studies, records, simulations, documents, notes and discussions relating to the Primary Power project processing, to ensure that PJM acted in accordance with its authority and permit review and comment on its deliberations. Exelon argues that PJM's exercise of discretion needs greater transparency. Exelon seeks information for the period between the January 30 Advisory Committee meeting and the PJM Board's April 2, 2012 decision.

⁷⁷ *Id.* at 13-14 Ex. No. DOM-20. The Operating Agreement, Schedule 6, § 1.3(b), states that the Advisory Committee shall be governed by the Advisory Committee rules and procedures in Manual 14B.

⁷⁸ LS Power Comments at 6-7.

61. Exelon and the Pennsylvania Commission request that the Commission direct PJM to file objective transmission project selection standards and procedures and establish a transparent process. These parties note that PJM is working with stakeholders to develop processes to comply with Order No. 1000.⁷⁹ Exelon states that “PJM has not violated the law, the Commission’s precedent, or its Tariff, but PJM must supply justifications for its designations.”⁸⁰ Exelon states that in the future, PJM should submit language clarifying PJM’s process for designating projects as part of its Order No. 1000 Compliance Filing, but notes that the facts of this particular case precede application of Order No. 1000 and PJM’s compliance filing.⁸¹ In the interim, Exelon argues that PJM must use expertise within a “reasonable boundary” and in a non-discriminatory manner, and it must justify its decisions, including the decision at issue in the Complaint.

62. Atlantic Grid, LS Power, Southwestern and Western Transmission support Primary Power’s position that PJM violated the *Primary Power Incentives Order*. LS Power asserts that PJM did not provide adequate justification, because it did not provide the full basis for its decision to stakeholders in writing.⁸² According to LS Power, stakeholders should not be forced to resort to litigation to understand the decisions made in the “transparent” planning process.⁸³

63. The parties supporting the Complaint echo concerns that upholding PJM’s decision will provide incumbent transmission owners a way to block new entrants, discourage the development of efficient and innovative projects, and ultimately result in stifled competition within transmission markets.⁸⁴ Western Transmission objects to what it views as the incumbents’ ability to appropriate Primary Power’s proposals, making only minor changes as stifling developers’ efforts.⁸⁵ LS Power suggests that if PJM’s

⁷⁹ Western Transmission Comments at 8. Atlantic Grid Comments, at 3. Pennsylvania Commission Comments at 2; *accord* Southwestern at 2.

⁸⁰ Exelon Comments at 4-5.

⁸¹ *Id.* at 5-6.

⁸² LS Power Comments at 4.

⁸³ *Id.* at 7.

⁸⁴ LS Power Comments at 2 and 7. *See also* Southwestern at 2; Pennsylvania Commission at 2. Atlantic Grid at 3. Western Transmission at 5.

⁸⁵ Western Transmission Comments at 2; *accord* Southwestern at 2 (raising takings issues).

decision is upheld, it will provide an avenue through which non-incumbents may be blocked from participating in transmission markets even *after* Order 1000 has been implemented.⁸⁶

D. Additional Answers

64. Primary Power submits an answer summarizing the various arguments and an affidavit asserting that it can meet PJM's construction deadlines. PJM Market Monitor submits an answer asserting that it does not take a position on how the issues should be decided, but nevertheless claiming that PJM has not adequately justified its decision and that the competing parties did not provide a fully satisfying competition based rationale for designating either one to construct and own the SVC projects.⁸⁷ PJM Market Monitor cites ambiguities in the current formulation of the applicable rules, including (1) sponsorship rights, (2) new versus revised projects, and (3) definition of the exceptions for projects that involve upgrades to existing facilities. PJM Market Monitor states that Order No. 1000 does not require or prohibit sponsorship rights and asserts that, if sponsorship rights are not adopted, then every project should be assigned to be constructed by an "investor owner" based on competition, emphasizing cost. If, on the other hand, sponsorship rights are adopted, then they should be precisely defined and what constitutes a discrete project should also be defined. PJM Market Monitor faults the PJM analysis because it is not clear at all what if any competition occurred between the potential owner investors, i.e., Primary Power, Dominion and FirstEnergy, despite the economic and technical evaluation of the proposals. PJM Market Monitor asserts that there does not appear to have been a process permitting direct competition between Primary Power and the incumbent transmission owners. PJM Market Monitor also states that it does not appear that there was any competitive consideration of whether Dominion, FirstEnergy, Primary Power or any other parties should have the opportunity to compete to be designated the investor once PJM determined to select the projects proposed by Dominion and FirstEnergy. PJM Market Monitor questions the reliability of the cost estimates, and suggests that the Commission consider whether transmission developers should be required to provide firm, enforceable cost estimates. PJM Market Monitor concludes that rules to foster competitive transmission development must clearly separate the process to identify projects included in a regional transmission plan from the process through which developers compete on a cost basis to build projects.⁸⁸

⁸⁶ LS Power Comments at 6.

⁸⁷ PJM Market Monitor Jun. 22, 2012 Answer at 3.

⁸⁸ *Id.* at 5.

65. Dominion submits an answer to the Primary Power and PJM Market Monitor answers objecting to PJM Market Monitor's suggestion that PJM should incorporate a competitive bidding process into its planning procedures as outside of the scope of this proceeding. According to Dominion, the PJM planning procedures at issue do not provide for such a process. Dominion claims that the policy questions introduced by PJM Market Monitor are beyond the scope of these proceedings and would be more appropriately addressed in PJM's Order No. 1000 compliance filing.⁸⁹ Dominion asserts that Primary Power's arguments in its answer are irrelevant because the issue is not who submitted their SVC proposal first, but rather, which proposal is the most efficient and economical project to meet the identified reliability need, and whether it was done through an open and transparent process.⁹⁰ Dominion objects to Primary Power's suggestion in its answer that it should have been aware that Primary Power was pursuing an SVC project based on an earlier merchant project proposal, as that proposal was withdrawn prior to the October Advisory Committee meeting where PJM staff identified the voltage issues to be addressed in 2011.⁹¹

66. PJM's July 3, 2012 answer highlights a Commission order as agreeing with the regional planner's decision to select the projects proposed by an incumbent transmission owner because the projects were the most prudent and cost-effective reliability solutions.⁹² Primary Power's July 10, 2012 answer disputes whether PJM used a sponsorship model and the *California ISO Order* applies.⁹³ In addition, Primary Power argues against use of the cost information in the record, arguing that its cost to construct SVCs will be virtually the same as Dominion's and FirstEnergy's costs.⁹⁴ In its July 12, 2012 answer, PJM contests the relevance of the cost claim, noting that Primary Power's proposals would cost more because additional substations must be constructed.

⁸⁹ Dominion Answer at 3-4.

⁹⁰ *Id.* at 2-3.

⁹¹ Dominion makes a similar point in its Comments at 14-15.

⁹² Citing *Transmission Technology Solutions, LLC v. California Independent System Operator Corp.*, 135 FERC ¶ 61,077, at PP 83-84 (2011) (*California ISO Order*).

⁹³ Primary Power July 20, 2012 Answer at 7 (citing differences in tariff language and scope of the alternatives considered and arguing that the *California ISO Order* reflects authority to select projects rather than designate construction responsibility).

⁹⁴ *Id.* at 8 (supporting PJM Market Monitor assertion that costs are not dependent on the party constructing the facilities).

IV. Procedural Matters

67. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the notices of intervention and timely, unopposed motions to intervene serve to make the persons that filed them parties to this proceeding.⁹⁵ Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, the Commission will grant Duquesne'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.⁹⁶

68. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to an answer or a protest unless otherwise ordered by the decisional authority.⁹⁷ We will accept the answers filed by Primary Power, PJM Market Monitor, Dominion and PJM because they have provided information that assisted us in our decision-making process.

V. Commission Determination

A. PJM Followed its Existing Planning Procedures

69. The Commission denies Primary Power's Complaint, finding that PJM acted in accordance with its current Operating Agreement in selecting the alternative projects. Under the Operating Agreement, PJM is required to have open meetings and to consider alternative proposals that are put forward. For example, the Operating Agreement states:

Upon completion of its studies and analysis, including sensitivity studies and scenario analyses the Office of the Interconnection shall prepare a recommended enhancement and expansion plan, which shall include alternative projects or solutions as applicable, for review 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

⁹⁵ 18 C.F.R. § 385.214 (2012).

⁹⁶ 18 C.F.R. § 385.214(d) (2012).

⁹⁷ 18 C.F.R. § 385.213(a)(2) (2012).

to collaborate on the preparation of the recommended enhancement and expansion plan.⁹⁸

Similarly, section 1.5.6(h) establishes a procedure for considering alternative projects. This section specifically provides that “any Transmission Owner and other participants on the Transmission Expansion Advisory Committee may offer an alternative.” It also provides that the alternative project should be reviewed based upon its “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.”⁹⁹

70. Primary Power bases most of its Complaint on the preliminary determination of PJM staff in November 2011 to recommend including the Primary Power projects in the Regional Plan. PJM staff’s initial selection of the Primary Power Projects was based on confidential information and communications between PJM staff and Primary Power that had not been disclosed to the rest of the Advisory Committee or other PJM stakeholders. Under the Operating Agreement, PJM staff’s initial selection was not a final selection, but a tentative proposed solution.¹⁰⁰ Any initial PJM staff selection of a project must go through an open review by the Advisory Committee.¹⁰¹

71. Indeed, a number of parties objected to the process leading to the PJM staff’s initial selection on the grounds that they were denied the opportunity to review and comment on the proposals and submit alternatives.¹⁰² The PJM Board reasonably determined to defer any final selection of projects until the provisions of the Operating Agreement were satisfied, including the ability to submit alternative projects.¹⁰³ The

⁹⁸ See Operating Agreement, Schedule 6, Article 1.5, Procedure for Development of the Regional Transmission Expansion Plan, § 1.5.6(b) (emphasis added) ([OA Schedule 6.1.5, ver. 2.0.0](#)).

⁹⁹ *Id.*, § 1.5.6(h) and (i).

¹⁰⁰ Operating Agreement, Schedule 6, § 1.6, Approval of the Final Regional Transmission Expansion Plan ([OA Schedule 6.1.6, ver. 1.0.0](#)).

¹⁰¹ *Id.*, § 1.5.6(b) (requiring Advisory Committee to facilitate open meetings to review the recommended plan, including alternatives), § 1.5.6(h.01) (requiring PJM staff to present valid alternatives to Advisory Committee).

¹⁰² See PJM Answer, App. 7 (letters from stakeholders).

¹⁰³ *Id.*, App. 3 (Feb. 14, 2012 letter from PJM inviting all affected parties (incl. Primary Power) to comment on outstanding proposals).

Dominion and FirstEnergy proposed alternative solutions were themselves likewise subject to review and comment.¹⁰⁴ PJM staff evaluated all solutions under the criteria stated in Schedule 6 of the Operating Agreement and ultimately recommended the adoption of the alternative proposals as less expensive and more efficient. In response, the PJM Board adopted a Regional Plan that included the alternative projects.¹⁰⁵

72. When all the alternative projects were considered, PJM's Board chose projects that it determined were the most cost effective for PJM ratepayers. The alternatives selected were estimated to save ratepayers \$24 to \$57 million in aggregate.¹⁰⁶ While Primary Power maintains its cost estimates are more accurate than the estimates for the alternative projects, we cannot find that it presented sufficient information to the PJM Board such that the Board's reliance on its PJM staff's estimates was unreasonable.¹⁰⁷

73. In addition, PJM staff identified disadvantages of Primary Power's proposals as compared to the alternatives. PJM staff found that Dominion's Mt. Storm proposal will: (1) allow control of the SVC to be coordinated with the existing generator controls, so that the operation of the capacitor banks, generators and SVC at Mt. Storm will be integrated and create additional efficiencies when responding to system events; and (2) increase the bus voltage at Mt. Storm from 500 kV to 525 kV, resulting in greater voltage range, increased operational reliability, and generation stability for Mt. Storm and the

¹⁰⁴ Complaint, Att. 5.

¹⁰⁵ We reject Primary Power's attempt to question the validity of the PJM Board decision because it was made in closed session. PJM explained that all Board meetings are closed. Under the accepted planning procedures in the Operating Agreement, transparency and openness are provided through the Advisory Committee review process that is used to develop PJM staff's recommended plan and updates, which, if approved, provides justification for the Board's decision.

¹⁰⁶ PJM staff's recommendations are provided in its Apr. 2 and March 12, 2012 presentations to the Board. PJM Answer, App. 5 and App. 4.

¹⁰⁷ In response to the PJM Market Monitor's assertion that the cost to construct SVCs would be the same regardless of who is designated to build them, we note PJM's clarification that Primary Power's additional costs were attributed to the need to construct new substations, not due to differences in the costs of the SVC units. PJM July 12, 2012 Answer at 2.

Warren County Power station currently under construction.¹⁰⁸ PJM staff also pointed out that the alternatives require fewer siting approvals than Primary Power's proposal, because they are located at existing substations. PJM staff's comparison noted that Primary Power's alternative proposal carried the risk of radial operation after a contingency.¹⁰⁹ Thus, PJM's decision was based on significant factors weighing in favor of the Dominion and FirstEnergy projects. We address below the remaining arguments by Primary Power.

B. Effect of Commission's Primary Power Incentives Order

74. Primary Power alleges that the *Primary Power Incentives Order* required PJM to select Primary Power's projects.¹¹⁰ We disagree.

75. First, the *Primary Power Incentives Order* did not require PJM to select even the Primary Power project at issue in that case. In the *Primary Power Incentives Order* proceeding, Primary Power requested assurances that it would be designated to build its proposed "Grid Plus" transmission project as a cost-of service economic project if the project was included in the Regional Plan, as well as requesting a determination that it could receive incentives.¹¹¹ In response, the Commission declined to grant the relief requested by Primary Power, i.e., that the Commission find that PJM must designate Primary Power to build Grid Plus if it is included in the Regional Plan. The Commission found instead that Schedule 6 of the PJM Operating Agreement permitted, "but does not require," PJM to designate an entity other than an incumbent transmission owner, such as Primary Power, to build a project that is included in the Regional Plan as a baseline

¹⁰⁸ See Dominion Comments at 22-23 (citing Advisory Committee materials, Ex. No. DOM-7 at 2; Ex. No. DOM-8 at 2; Ex. No. DOM-13 at 12 (Jan. 30 PJM staff presentation)).

¹⁰⁹ Primary Power claims that PJM staff found its proposal at one site to be technically superior (Complaint at 36), apparently taking into consideration that less of the SVC capacity would be used to meet the voltage criteria for the majority of contingencies studied. However, PJM staff ultimately concluded that the competing proposals all resolved the voltage criteria and performed comparably. Primary Power fails to demonstrate why this one factor outweighs the factors relied on by PJM in terms of cost and operational flexibility.

¹¹⁰ See *supra* note 5.

¹¹¹ *Primary Power Incentives Order*, 131 FERC ¶ 61,015 at P 49.

reliability project or economic project.¹¹² The Commission stated that PJM should administer the planning procedures in Schedule 6 in a not unduly discriminatory manner; should handle the study of Primary Power's application no differently than that of any other application proposing to build a project, be it an existing transmission owner or an "other entity," and would need to adequately justify its action if it denied the sponsor of the project the right to construct that project and receive the economic benefit of its project.¹¹³ For the reasons discussed above, we find that PJM has adequately justified its actions in choosing alternative projects which lower costs and provide other benefits to ratepayers.

76. Second, the facilities proposed in this case are not the same ones as discussed in the *Primary Power Incentives Order*.¹¹⁴ Grid Plus was presented as an integrated array of four 500 MVAR SVC installations to be simultaneously deployed as an economic enhancement in the franchised service territories of Allegheny Power Systems (Allegheny Power or FirstEnergy) and PPL Electric Utilities transmission zones. Specifically, Primary Power proposed two SVC installations for Jacks Mountain in Mifflin County, Pennsylvania, one SVC for the Juniata substation in Perry County, Pennsylvania, and one 500 MVAR SVC installation on the Meadow Brook 500 kV line in Hardy County, West Virginia.

77. In contrast, other than the use of SVCs, the projects proposed here are at different locations and respond to different reliability violations. Only one of the project sites discussed in Primary Power's earlier request for a declaratory order is at issue in this Complaint proceeding, namely, the proposed Rio substation on the Meadow Brook – Greenland Gap – Mt. Storm line, and, we note, Primary Power no longer seeks to build an SVC there as part of an integrated array. Thus, there is, at best, a single overlap between the Grid Plus proposal and the projects under consideration by PJM following the November 2011 Advisory Committee meeting. This single overlap is not sufficient for us to consider Primary Power's current proposals to be the same as the SVCs that were proposed to be part of the integrated array under consideration in the *Primary Power Incentives Order*.

¹¹² *Id.* P 62.

¹¹³ *Id.*

¹¹⁴ Indeed, such differences would mean that the incentives granted in the *Primary Power Incentives Order* would not apply to these facilities.

C. Similarity of Proposals

78. Primary Power maintains that the alternate proposals by Dominion and FirstEnergy were identical to its proposal and that Dominion and FirstEnergy should not be permitted to reassign its proposal. The use of SVCs, however, is not unique and other parties have used them in the past.¹¹⁵ We also agree with the parties that the Dominion and FirstEnergy alternatives feature significant differences from the Primary Power proposals, including the design and operation of the facilities, the point of interconnection, the voltage ratings used, differences in operational flexibility, simpler construction, the use of existing infrastructure, and coordination with other available resources. It was these features that resulted in substantial cost and performance differences that differentiate them from Primary Power's proposals.

79. We reject Primary Power's argument that moving the location of its proposal is no different than moving a point of interconnection for a generation interconnection request under the Tariff interconnection procedures. Primary Power claims that a change in the point of interconnection would not authorize PJM to reassign a proposed generation project to another developer or transmission owner, and that the change in location at issue here should likewise not permit reassignment of its project.¹¹⁶ This contention is inapposite to this proceeding because the Tariff interconnection procedures do not apply to review of Primary Power's reliability project proposal. Proposed reliability upgrades are reviewed instead under the PJM RTEP reliability planning procedures in Schedule 6 of the Operating Agreement.¹¹⁷ Unlike the Tariff interconnection procedures for generation and merchant transmission, the RTEP reliability planning procedures in the Operating Agreement have neither a queue procedure, nor a stated or implied first-in-time benefit. Under the current RTEP reliability planning procedures, parties are free to submit alternatives and PJM must review those alternatives "no differently" than any other upgrade proposal, including Primary Power's earlier submitted proposal.¹¹⁸

¹¹⁵ See PJM Answer at 21 n.64 (listing past use of SVC installations).

¹¹⁶ Complaint at 36.

¹¹⁷ See PJM Manual 14B at 7-8 (explaining that the four planning paths that flow into the PJM Regional Plan: reliability planning, economic planning, interconnection planning and local planning).

¹¹⁸ *Primary Power Incentives Order*, 131 FERC ¶ 61,015 at P 65.

D. Criticism of PJM's Planning Process

80. A number of parties, including the PJM Market Monitor, call for greater scrutiny of PJM's planning process to ensure that it is competitive, open, and transparent and meets the requirements of Order No. 1000.

81. We make no findings here as to whether PJM's existing rules would comply with the requirements adopted in Order No. 1000. Nonetheless, we agree with Dominion, Exelon and the Pennsylvania Commission that some issues raised in this proceeding are more appropriately addressed in PJM's development of its Order No. 1000 compliance filing.

82. We note that in Order No. 1000 the Commission required each public utility transmission provider to revise its open access transmission tariff to identify the information that must be submitted by a prospective transmission developer in support of a transmission project that it proposes in the regional transmission planning process, as well as the date by which such information must be submitted to be considered in a given planning cycle.¹¹⁹ The Commission disagreed with commenters that argued that requiring the identification of such a date undermined the iterative nature of transmission planning, and the Commission clarified that each region may determine for itself what deadline is appropriate, including potentially using rolling or flexible dates to reflect the iterative nature of its transmission planning process.¹²⁰

83. The Commission also stated in Order No. 1000 that the public utility transmission providers in a region may, but are not required to, use competitive solicitation to solicit project or project developers to meet regional needs.¹²¹ The Commission declined to adopt suggestions to mandate a competitive bidding process. The Commission explained that while it agrees that a competitive process can provide benefits to consumers, it continues to allow public utility transmission providers within each region to determine for themselves, in consultation with stakeholders, what mechanisms are most appropriate to evaluate and select potential transmission solutions to regional needs.¹²²

¹¹⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 325.

¹²⁰ *Id.* P 327.

¹²¹ *Id.* P 259.

¹²² *Id.* P 321, n.302.

84. In addition, the Commission in Order No. 1000 required each public utility transmission provider to amend its open access transmission tariff to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation.¹²³ The Commission further stated that this evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected.¹²⁴ By requiring an open and transparent transmission planning process that produces a regional transmission plan, “Order No. 1000 will provide the Commission and interested parties with a record that we believe will be able to highlight whether public utility transmission providers are engaging in undue discrimination against others.”¹²⁵

85. PJM is required to submit an Order No. 1000 compliance filing by October, 11 2012. In light of that timetable, and the possible consideration of issues raised here in the stakeholder process on the development of PJM’s Order No. 1000 compliance filing, we decline to examine these issues in this proceeding.

The Commission orders:

Primary Power’s May 14, 2012 Complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹²³ PJM describes here factors to be considered under its current transmission planning process. *E.g.*, Operating Agreement, Schedule 6, § 1.4(d), *et seq.*; *supra* PP 34 n.38, 40. Consideration of such factors in developing an Order No. 1000 compliance filing may include their function within the required transparent and not unduly discriminatory process noted above.

¹²⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328.

¹²⁵ Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.