

150 FERC ¶ 61,038  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
Norman C. Bay, and Colette D. Honorable.

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| PJM Interconnection, L.L.C.  | Docket Nos. ER13-198-003<br>ER13-198-004 |
| Indicated PJM Transmission Owners                                      | ER13-195-002                             |
| PJM Interconnection, L.L.C.<br>Public Service Electric and Gas Company | ER13-90-003                              |
| PJM Interconnection, L.L.C.<br>Pennsylvania Electric Company           | ER13-90-004                              |

ORDER ON REHEARING AND COMPLIANCE

(Issued January 22, 2015)

1. On May 15, 2014, the Commission issued an order accepting,<sup>1</sup> subject to modifications, PJM Interconnection, L.L.C.'s (PJM) and the PJM Transmission Owners' second compliance filings. The second compliance filings were made to comply with a March 22, 2013 order<sup>2</sup> accepting, subjecting to modifications, the first compliance filings

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128 (2014) (Second Compliance Order).

<sup>2</sup> *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013) (First Compliance Order).

that PJM and the PJM Transmission Owners made to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000.<sup>3</sup>

2. On June 13, 2014, LS Power Transmission, LLC and LSP Transmission Holdings, LLC (together, LS Power) and the Illinois Commerce Commission submitted timely requests for rehearing of the Second Compliance Order.

3. On July 14, 2014, PJM and PJM Transmission Owners (collectively, PJM Parties) separately submitted, pursuant to section 206 of the Federal Power Act (FPA),<sup>4</sup> in Docket Nos. ER13-198-004 (PJM July 14, 2014 Compliance Filing) and ER13-90-004 (PJM Transmission Owners July 14, 2014 Compliance Filing) respectively, revisions to Schedule 6 of the PJM Operating Agreement (Operating Agreement) (Schedule 6) and Schedule 12 of the PJM Open Access Transmission Tariff (OATT) (Schedule 12), as well as conforming revisions to the Operating Agreement and the OATT, to comply with the Second Compliance Order.

4. For the reasons discussed below, we deny in part and grant in part the requests for rehearing and clarification. We also find that PJM Parties' respective compliance filings partially comply with the directives in the Second Compliance Order. We thus accept, subject to conditions, PJM Parties' respective proposed Operating Agreement and OATT revisions, and direct PJM Parties to submit, within 30 days of the date of issuance of this order, a further compliance filing, as discussed below.

## **I. Background**

5. In Order No. 1000, the Commission adopted a package of reforms addressing transmission planning and cost allocation that, taken together, are designed to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. In particular, regarding regional transmission planning, Order No. 1000 amended the transmission planning requirements of Order No. 890<sup>5</sup> to require that each public utility

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

<sup>4</sup> 16 U.S.C. § 824e (2012).

<sup>5</sup> *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

(continued...)

transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its OATT to describe procedures for the consideration of transmission needs driven by public policy requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; and (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities.

6. The regional cost allocation reforms in Order No. 1000 also required each public utility transmission provider to set forth in its OATT a method, or set of methods, for allocating the costs of new regional transmission facilities selected in a regional transmission plan for purposes of cost allocation. Order No. 1000 also required that each cost allocation method adhere to six cost allocation principles.

7. On October 11, 2012, PJM Transmission Owners submitted, in Docket No. ER13-90-000, revisions to Schedule 12 to comply with the regional cost allocation requirements of Order No. 1000. On October 25, 2012, PJM submitted, in Docket No. ER13-198-000, revisions to Schedule 6, as well as conforming revisions to the OATT, to comply with the local and regional transmission planning requirements of Order No. 1000. On March 22, 2013, in the First Compliance Order, the Commission accepted, subject to modifications, the compliance filings of PJM and PJM Transmission Owners.

8. On July 22, 2013, PJM and PJM Transmission Owners separately submitted, in Docket Nos. ER13-198-002 and ER13-90-002, respectively, revisions to Schedule 6 and Schedule 12, as well as conforming revisions to the Operating Agreement and OATT, to comply with the First Compliance Order. On May 15, 2014, in the Second Compliance Order, the Commission denied rehearing and accepted in part PJM Parties' respective proposed Operating Agreement and OATT revisions, subject to conditions.

9. On July 14, 2014, PJM and PJM Transmission Owners separately submitted, in Docket Nos. ER13-198-004 and ER13-90-004, respectively, revisions to Schedule 6 of the Operating Agreement and Schedule 12 of the PJM OATT, as well as conforming revisions to the Operating Agreement and the OATT, to comply with the Second Compliance Order. On September 12, 2014, in Docket Nos. ER13-198-004 and ER14-2426-000,<sup>6</sup> the Commission conditionally accepted the part of PJM Parties'

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Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>6</sup> PJM separately filed in Docket No. ER14-2426-000 a new *pro forma* Interconnection Coordination Agreement.

compliance filing related to the Designated Entity Agreement effective January 1, 2014, finding it partially complied with the directives of the Second Compliance Order, subject to further compliance filings as discussed in the September 12 Order.<sup>7</sup>

**II. Notice of Filings and Responsive Pleadings – Docket Nos. ER13-198-003, ER13-198-004, ER13-195-002, ER13-90-003, and ER13-90-004**

10. On July 13, 2014, the Illinois Commerce Commission and LS Power submitted timely requests for rehearing of the Second Compliance Order.

11. Notice of the PJM July 14, 2014 Compliance Filing and PJM Transmission Owners July 14, 2014 Compliance Filing was published in the *Federal Register*, 79 Fed. Reg. 42,782 (2014), with interventions and protests due on or before August 4, 2014. Atlantic Grid Holdings, LLC (Atlantic Grid),<sup>8</sup> LS Power, and Old Dominion Electric Cooperative (ODEC) filed timely protests to the PJM Parties' compliance filings. ITC Mid-Atlantic Development LLC filed an out-of-time motion to intervene on August 7, 2014. On August 22, 2014, PJM submitted an answer to the protests. On September 8, 2014, Atlantic Grid filed a reply to PJM's answer and ODEC filed a motion for leave to answer and answer to PJM's answer. On September 11, 2014, LS Power filed a response to PJM's answer. On October 3, 2014, American Electric Power (AEP) filed a motion for leave to answer and an answer to ODEC's protest and answer. On October 14, 2014, ODEC filed a motion for leave to answer and an answer to AEP's answer.

**III. Discussion**

**A. Procedural Matters**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant ITC Mid-Atlantic Development LLC's

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<sup>7</sup> *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187 (2014) (September 12 Order). On October 14, 2014, in Docket No. ER13-198-005, PJM filed revisions to its Designated Entity Agreement to comply with the September 12 Order. The Commission accepted the proposed revisions on November 18, 2014. *PJM Interconnection L.L.C.*, Docket No. ER13-198-005 (Nov. 18, 2014) (delegated letter order).

<sup>8</sup> Atlantic Grid filed a motion to intervene with its protest.

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.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

## **B. Substantive Matters**

14. As discussed below, we deny in part and grant in part the requests for rehearing and clarification.

15. As noted above, the Commission already accepted the part of PJM Parties' compliance filing regarding the Designated Entity Agreement.<sup>9</sup> Consequently, related protests from Atlantic Grid and LS Power and answers from Atlantic Grid, ODEC, and LS Power are addressed in that proceeding.

16. We find that PJM Parties' respective remaining parts of their compliance filings partially comply with the directives in the Second Compliance Order. Accordingly, we accept PJM's and PJM Transmission Owners' compliance filings to be effective January 1, 2014, and February 1, 2013, respectively, subject to further compliance filings, as discussed below. We direct PJM Parties to submit the further compliance filings within 30 days of the date of issuance of this order.

### **1. Consideration of Transmission Needs Driven by Public Policy Requirements**

17. In the Second Compliance Order, the Commission directed PJM to incorporate into its OATT changes proposed by the Maryland Public Service Commission, as modified by PJM, to make clear that the PJM OATT did not impose an obligation on the Independent State Agencies Committee to validate or assess and prioritize the public policies that individual states adopted.<sup>10</sup> In their compliance filing, PJM Parties propose revisions to make clear that the PJM OATT does not impose such obligations on the Independent State Agencies Committee.<sup>11</sup> We find that PJM Parties' proposed revisions comply with the directives in the Second Compliance Order.

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<sup>9</sup> *See supra* P 9.

<sup>10</sup> Second Compliance Order, 147 FERC ¶ 61,128 at P 70.

<sup>11</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.6(b).

## 2. Consideration of Local Transmission Needs Driven by Public Policy Requirements

### a. Second Compliance Order

18. In the Second Compliance Order, the Commission found that PJM's proposed revisions to the local transmission planning process partially complied with the directives in the First Compliance Order concerning the consideration of transmission needs driven by public policy requirements in the local transmission planning process.<sup>12</sup> The Commission determined that PJM complied with the requirement to describe processes that give all stakeholders the opportunity to provide input into what they believe are local transmission needs driven by public policy requirements.<sup>13</sup> However, to fully comply, the Commission directed PJM to: (1) describe the process by which transmission owners incorporate into their local transmission plans any comments from the Subregional RTEP Committees<sup>14</sup> on the criteria, assumptions and models used in the local planning process, as well as on any identified needs and proposed solutions, prior to finalizing the local transmission plans; (2) describe how it or transmission owners will communicate to stakeholders any modifications made to local transmission plans in response to comments from the Subregional RTEP Committees; (3) specify the procedures by which transmission owners will evaluate potential solutions to transmission needs driven by public policy requirements in the local transmission planning process; (4) describe how it or transmission owners will post on their respective websites an explanation of which transmission needs driven by public policy requirements will be evaluated for potential solutions in the local transmission planning process, as well as an explanation of why other suggested transmission needs will not be evaluated; and (5) revise Schedule 6, § 1.3(d) to make its meaning consistent with the Commission's interpretation of the provision in the Second Compliance Order.<sup>15</sup>

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<sup>12</sup> Second Compliance Order, 147 FERC ¶ 61,128 at P 77.

<sup>13</sup> *Id.* P 79.

<sup>14</sup> The Subregional RTEP Committees are open to participation by (1) all Transmission Customers and applicants for transmission service; (2) any other entity proposing to provide Transmission Facilities to be integrated into the PJM Region; (3) all Members; (4) the electric utility regulatory agencies within the States in the PJM Region, the Independent State Agencies Committee, and the State Consumer Advocates; and (5) any other interested entities or persons. PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(e).

<sup>15</sup> Second Compliance Order, 147 FERC ¶ 61,128 at P 83.

**i. Summary of PJM Parties' Compliance Filing**

19. In its July 14, 2014 Compliance Filing, PJM reiterates a statement from its previous compliance filing that regional and local transmission planning are fully integrated in its transmission planning processes,<sup>16</sup> but notes that the existing tariff may not have fully communicated the integrated nature of its transmission planning process.<sup>17</sup> PJM proposes changes to its OATT to: (1) modify the definition of Local Plan;<sup>18</sup> (2) clarify what transmission owners bring to the Subregional RTEP Committees and what the Subregional RTEP Committees review;<sup>19</sup> and (3) remove the misperception that the Local Plan is developed by the transmission owners alone rather than being a product of the Subregional RTEP Committees.<sup>20</sup>

20. PJM states that transmission owners bring to the Subregional RTEP Committees their current local planning information, in varying forms, including all criteria, assumptions and models used, which the Subregional RTEP Committees review to develop and finalize the Local Plan.<sup>21</sup> PJM states that the Subregional RTEP Committees' Local Plans are then coordinated with the regional planning process, where they are integrated into the RTEP.<sup>22</sup> PJM proposes to modify its OATT to state that the Local Plan includes: (1) Subregional RTEP projects developed to comply with all applicable reliability criteria, including transmission owners' planning criteria, or based on market efficiency analysis and in consideration of public policy requirements; and

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<sup>16</sup> See PJM Compliance Filing, Docket No. ER13-198-002, at 15 (filed July 22, 2013).

<sup>17</sup> PJM July 14, 2014 Compliance Filing, Docket No. ER13-198-004, at 3.

<sup>18</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Definitions, § 1.18A.

<sup>19</sup> PJM July 14, 2014 Compliance Filing, Docket No. ER13-198-004, at 5 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§ 1.18A, 1.3(d)).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 4 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d)).

<sup>22</sup> *Id.* (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.3(d)).

(2) Supplemental Projects<sup>23</sup> as identified by the Transmission Owners in their respective zones.<sup>24</sup> In its transmittal letter, PJM notes that Supplemental Projects included in the Local Plan are vetted by the Subregional RTEP Committees.<sup>25</sup> PJM believes that these revisions clarify what the Subregional RTEP Committees review regarding the transmission owners' local planning activities and therefore comply with Order No. 1000.<sup>26</sup>

21. PJM asserts that the proposed changes address the compliance requirement to specify the procedures by which local transmission providers will evaluate potential solutions to transmission needs driven by public policy requirements in the local transmission planning process. Specifically, PJM states that transmission owners may propose to the Subregional RTEP Committees potential solutions to transmission needs driven by public policy requirements for consideration in development of the Local Plan, and that the Subregional RTEP Committees review these potential solutions before the Local Plan is finalized. These potential solutions for transmission needs driven by public policy requirements included in the Local Plan are then studied as part of the regional planning process.<sup>27</sup>

22. With regard to the posting requirement, PJM states that the existing procedures in its OATT, along with its proposed changes, satisfy this requirement.<sup>28</sup> Specifically, PJM asserts that Schedule 6 describes how PJM will determine, document and post the range of assumptions to be used in its studies and scenario analyses, including an explanation of the public policy requirements and public policy objectives to be used and an explanation

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<sup>23</sup> A Supplemental Project(s) is a Regional RTEP Project(s) or Subregional RTEP Project(s), which is not required for compliance with the following PJM criteria: system reliability, operational performance or economic criteria, pursuant to a determination by the Office of the Interconnection. *See* PJM, Intra-PJM Tariffs, Operating Agreement, Definitions, § 1.42A.02.

<sup>24</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Definitions, § 1.18A.

<sup>25</sup> PJM July 14, 2014 Compliance Filing, Docket No. ER13-198-004, at 5.

<sup>26</sup> *Id.* at 5 & n.19. PJM notes that it also proposes to revise sections 1.5.4(a) and (e) to conform with the changes in sections 1.18A and 1.3(d).

<sup>27</sup> PJM July 14, 2014 Compliance Filing, Docket No. ER13-198-004, at 5-6 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.6).

<sup>28</sup> *Id.* at 8.

of why others were not selected. PJM clarifies that this provision also applies to the Local Plan as finalized by the Subregional RTEP Committees and integrated into the RTEP.<sup>29</sup> PJM further asserts that Schedule 6 describes its process for posting on its website the transmission needs (including violations, system conditions, economic constraints, and public policy requirements) for which PJM will open a proposal window to gather project proposals. PJM clarifies that this posting does not distinguish public policy requirements that came from the Subregional RTEP Committees through the Local Plan.<sup>30</sup> Lastly, PJM states that, following the close of the proposal window, PJM posts on its website all project proposals submitted during the proposal window. All proposals addressing state public policy requirements are provided to the applicable state(s) for review and consideration as a Supplemental Project or a state public policy project.<sup>31</sup>

**ii. Protests/Comments**

23. ODEC states that PJM fails to comply with the Commission's direction in the Second Compliance Order related specifically to Supplemental Projects, which ODEC states are transmission projects developed by individual transmission owners outside the coordinated PJM RTEP planning process. ODEC asserts that PJM's changes to the definition of Local Plan fail to ensure that transmission owners will consider stakeholder input regarding Supplemental Projects because PJM proposes to redefine local transmission planning as limited to the activities of the three Subregional RTEP Committees.<sup>32</sup>

24. ODEC avers that the identification of Supplemental Projects is a major component of the PJM transmission owners' local transmission planning processes. ODEC reasons that offering the opportunity for meaningful stakeholder input related to Supplemental Projects is important because such projects constitute a significant portion of current construction activity in PJM, in terms of both the number and size of projects. As support, ODEC states that, at the time of filing, PJM's website listed 425 Supplemental Projects, with a cumulative cost of approximately \$5.2 billion, in various stages of

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<sup>29</sup> *Id.* at 7 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.6(b)).

<sup>30</sup> *Id.* (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§ 1.5.6(e), 1.5.8(c)).

<sup>31</sup> *Id.* at 7-8 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(d)).

<sup>32</sup> ODEC August 4, 2014 Protest at 1-2.

planning and construction. In addition, ODEC notes that Supplemental Projects are not limited to lower-voltage facilities, but can and do include extra-high voltage facilities.<sup>33</sup>

25. ODEC states that while it does not necessarily oppose PJM's revised definition of Local Plan, PJM's proposed revisions do not adequately describe the process by which transmission owners in PJM will incorporate into the Local Plans comments from the Subregional RTEP Committees regarding Supplemental Projects, including comments related to transmission needs driven by public policy requirements. Specifically, ODEC claims that PJM's proposed revisions to its OATT seemingly draw a distinction between Subregional Projects, which can be proposed to solve criteria violations and other planning criteria under the PJM Operating Agreement, and Supplemental Projects, which cannot. This alleged distinction, along with revisions that ODEC asserts limit stakeholder review of Supplemental Projects, leads ODEC to conclude that PJM's proposed revisions do not comply with the Commission's requirements. Specifically, ODEC states that, if the final sentence of revised section 1.3(d)<sup>34</sup> constitutes the sum total of the Subregional RTEP Committee's review process for Supplemental Projects, the proposed revisions are not compliant with the Second Compliance Order because they do not indicate whether transmission owners must actually consider or address any comments received.<sup>35</sup>

26. ODEC asserts that even under the existing rules, stakeholders do not have meaningful opportunity for stakeholder comment on Supplemental Projects; in fact, by the time stakeholders are made aware of Supplemental Projects in the Subregional RTEP Committee, the project is a "*fait accompli*." ODEC contends that PJM's proposed revisions create an even narrower process for Supplemental Projects.<sup>36</sup>

27. ODEC proposes revisions to the Operating Agreement to address its concerns. Specifically, ODEC believes requiring Transmission Owners to show that they have

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<sup>33</sup> *Id.* at 5-7.

<sup>34</sup> The final sentence states, "In addition, the Subregional RTEP Committees will provide sufficient opportunity to review and provide written comments to the Transmission Owners on any Supplemental Projects included in the Local Plan." *See* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d).

<sup>35</sup> ODEC August 4, 2014 Protest at 9-11 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d)).

<sup>36</sup> *Id.* at 11-12 (citing to PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d)).

already provided interested stakeholders with the opportunity for input on proposed Supplemental Projects before submitting them to the Subregional RTEP Committee would facilitate the Subregional RTEP Committee's review of such projects.<sup>37</sup>

Alternatively, ODEC argues that the Commission should direct PJM to revise its OATT to explain how transmission owners will consider input from the Subregional RTEP Committee and how any modifications made to Supplement Projects in response to such input will be communicated to stakeholders. As a minimum, however, ODEC states that the Commission should require PJM to revise its OATT to allow timely stakeholder input on Supplemental Projects.<sup>38</sup>

### iii. Answers

28. In its answer to ODEC's protest, PJM reasons that the distinction between Supplemental Projects and Subregional Projects is well-founded, stating that Supplemental Projects are developed by a transmission owner to meet its local needs and are not eligible for regional cost allocation, while Subregional Projects are included in the RTEP to ensure compliance with applicable reliability criteria violations, economic constraints, or to consider public policy requirements and are therefore subject to regional cost allocation. PJM states that these significant distinctions between the two project types result in their being evaluated differently under PJM's planning criteria, but that both projects types are vetted and reviewed as part of PJM's transmission planning process. PJM asserts that the Commission recognized this distinction in Order No. 1000 by stating that projects not included in the regional transmission plan for purposes of cost allocation will not be subject to the same evaluation of efficiency or cost-effectiveness in meeting regional transmission needs as will projects that are included for purposes of cost allocation. PJM asserts that the Second Compliance Order required it to describe the process by which transmission owners incorporate Subregional RTEP Committee comments into their Local Plans, and that its proposed revisions make clear that planning for all lower voltage transmission facilities will take place in an open and transparent

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<sup>37</sup> As an example, ODEC asserts that PJM's compliance with the Second Compliance Order should have included a proposal to institute stakeholder processes related to its local planning for Supplemental Projects similar to those adopted by Dominion pursuant to a Commission-approved settlement agreement. ODEC August 4, 2014 Protest at 13 (citing *Old Dominion Elec. Coop. & N.C. Elec. Membership Corp. v. Va. Elec. & Power Co.*, 139 FERC ¶ 61,137 (2012)).

<sup>38</sup> ODEC August 4, 2014 Protest at 12-15.

forum providing opportunity for stakeholder input prior to finalizing the Local Plans. PJM contends that ODEC's protest ignores this fact.<sup>39</sup>

29. In its answer to PJM's Answer, ODEC states that it is not seeking to expand the review of Supplemental Projects, but rather wants to ensure that Supplemental Projects are subject to the process dictated by Order No. 1000 and the Second Compliance Order, and to prevent further degradation of what it characterizes as an inadequate level of review of Supplemental Projects in transmission owners' local planning processes.<sup>40</sup> ODEC asserts that PJM's Answer—by conceding that there is a distinction between Subregional Projects and Supplemental Projects—only confirms ODEC's argument that the proposal reduces the transparency of subregional transmission planning and limits the opportunity for stakeholder review of Supplemental Projects. ODEC further asserts that PJM does not explain how the vetting of Supplemental Projects in the Subregional RTEP Process complies with the specific requirements of the Second Compliance Order. ODEC concludes that PJM's revisions suggest that Supplemental Projects have no meaningful review in the PJM transmission planning process.<sup>41</sup>

30. In its answer to ODEC's Protest and Answer, AEP disagrees that PJM's proposed changes restrict the opportunity for stakeholders to provide meaningful input regarding Supplemental Projects.<sup>42</sup> AEP states that Supplemental Projects, like all types of projects in the RTEP, are vetted at the meetings of either the Sub-Regional RTEP Committees or Transmission Expansion Advisory Committees, depending on the voltage of the project. Furthermore, according to AEP, such vetting includes the opportunity for stakeholders to review and provide input throughout the entire transmission planning process (from the assumptions stage through project selection).<sup>43</sup> AEP asserts that PJM's proposal, rather than narrowing the review of Supplemental Projects—as ODEC suggests—simply clarifies that opportunities to provide input on such projects are part of PJM's existing stakeholder processes for local planning.<sup>44</sup>

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<sup>39</sup> PJM August 22, 2014 Answer at 3-4 (citing Order No. 1000, FERC Stats & Regs ¶ 31,323 at P 64).

<sup>40</sup> ODEC September 8, 2014 Answer at 2.

<sup>41</sup> *Id.* at 3-7.

<sup>42</sup> AEP Answer at 2.

<sup>43</sup> *Id.* at 2-3.

<sup>44</sup> *Id.* at 3 (citing PJM Answer at 4).

31. AEP notes that the fact that stakeholders may not take advantage of existing opportunities to provide meaningful input on Supplemental Projects does not mean that PJM's stakeholder processes for Supplemental Projects are somehow deficient.<sup>45</sup> AEP states that ODEC's concern that stakeholders are not timely notified of Supplemental Projects does not comport with its experience, noting that it was prepared to consider comments on Supplemental Projects it proposed using PJM's existing stakeholder processes, but received only clarifying questions from stakeholders. AEP concludes that stakeholders should take advantage of existing opportunities to provide comments on Supplemental Projects, rather than seek an additional layer of review for Supplemental Projects.<sup>46</sup>

32. In an answer to AEP's Answer, ODEC disagrees with AEP's assertion that the Subregional RTEP Committee and Transmission Expansion Advisory Committee meetings include meaningful opportunity for stakeholders to provide input on Supplemental Projects throughout the entire project planning process.<sup>47</sup> As illustration, ODEC states that the September 24, 2014 meeting of the Mid-Atlantic Subregional RTEP Committee covered 71 projects (two baseline reliability upgrades and 69 Supplemental Projects) in two hours, asserting that this level of review is typically the sum total of the stakeholder process for Supplemental Projects.<sup>48</sup> ODEC reiterates that, in its experience, work on Supplemental Projects has often already begun by the time they are presented at the Subregional RTEP Committee meetings, making it impossible for stakeholders to provide meaningful input.<sup>49</sup> ODEC states that AEP's assertion that the stakeholder process for Supplemental Projects is the same as that for baseline projects ignores the fact that projects included in the RTEP for the purposes of cost allocation are evaluated by

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 4. AEP also requests that the Commission not impose on all PJM transmission zones a settlement similar to that Dominion has in place regarding planning for Supplemental Projects—as ODEC suggests—because settlements have no precedential effect and reflect the unique circumstances of the parties involved. *Id.* at 4-5.

<sup>47</sup> ODEC October 14, 2014 Answer at 2.

<sup>48</sup> *Id.* at 3.

<sup>49</sup> *Id.*

PJM using criteria publicly available to all stakeholders, while Supplemental Projects receive minimal or no review by PJM.<sup>50</sup>

**iv. Commission Determination**

33. We find that PJM partially complies with the requirements in the Second Compliance Order related to identifying transmission needs driven by public policy requirements in the local transmission planning process.

34. As an initial matter, PJM reiterates in its compliance filing that regional and local transmission planning are fully integrated in its transmission planning processes, and clarifies that the Local Plan is a product of the Subregional RTEP Committees rather than of the transmission owners alone.<sup>51</sup> Specifically, PJM proposes revisions to remove reference to the Local Plan as the plan developed by the transmission owners,<sup>52</sup> as the subject of the Subregional RTEP Committees' review,<sup>53</sup> and as an annual input to the Office of Interconnection to perform the RTEP.<sup>54</sup> We agree with PJM that these revisions clarify that the Local Plan is a product of the Subregional RTEP Committee rather than an independently existing local plan presented by the transmission owners to the Subregional RTEP Committee for review.

35. In the Second Compliance Order, the Commission required PJM to make several changes to comply with the requirements of Order No. 1000. First, the Commission required that PJM describe the process by which local Transmission Owners incorporate into their Local Plans any comments from the Subregional RTEP Committees on the criteria, assumptions and models used in the local planning process, as well as on any identified needs and proposed solutions, prior to finalizing the Local Plans. The Commission also required PJM to describe how it or local Transmission Owners will communicate to stakeholders any modifications made to Local Plans in response to comments from the Subregional RTEP Committees.<sup>55</sup>

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<sup>50</sup> *Id.* at 4 (citing PJM Answer at 3).

<sup>51</sup> PJM July 14, 2014 Compliance Filing, Docket No. ER13-198-000, at 5.

<sup>52</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.18A.

<sup>53</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d).

<sup>54</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§ 1.5.4(a), 1.5.4(e).

<sup>55</sup> Second Compliance Order, 147 FERC ¶ 61,128 at P 83.

36. In response, PJM proposed revisions to clarify that the Subregional RTEP Committees are responsible for the timely review of:

the criteria, assumptions, and models used to identify reliability criteria violations, economic constraints, or Public Policy Requirements, proposed solutions prior to finalizing the Local Plan, the coordination and integration of the Local Plan into the RTEP, and addressing any stakeholder issues unresolved in the Local Plan process.<sup>56</sup>

Furthermore, this provision states that the Subregional RTEP Committees will:

be provided sufficient opportunity to review and provide written comments on the criteria, assumptions, and models used in local planning activities prior to finalizing the Local Plan [...and] sufficient opportunity to review and provide written comments on the Local Plans as integrated into the RTEP, prior to submittal of the final [RTEP] to the PJM Board for Approval.<sup>57</sup>

37. We find that PJM's revisions partially make clear that the Local Plan is not a pre-existing plan developed solely by the PJM Transmission Owners, but is the result of the PJM transmission planning processes convened by the Subregional RTEP Committees. We also find that, subject to the compliance requirements we direct here, PJM's revisions clarify that it is the Subregional RTEP Committee, rather than an individual transmission owner, that incorporates feedback into the Local Plan, which is itself the end result of the Subregional RTEP Committee process.

38. Given these clarifications, we find that PJM has partially met the requirement to describe the process by which any comments from the Subregional RTEP Committees on the criteria, assumptions and models used in the local planning process, as well as on any identified needs and proposed solutions, are incorporated into the Local Plans prior to their being finalized. We also find that PJM's revisions comply with the requirement to describe how stakeholders will be made aware of any modifications to the Local Plan in response to comments from the Subregional RTEP Committees. We note, however, that the change made to § 1.3(d) removing the phrase "by the Transmission Owner" was not also made in § 1.3(f). Therefore, we require PJM to remove the phrase "by the

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<sup>56</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d).

<sup>57</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d).

Transmission Owners” in § 1.3(f) to make the meaning of this provision consistent with the parallel change in § 1.3(d).

39. ODEC asserts that even under the existing rules, stakeholders do not have meaningful opportunity for comment on Supplemental Projects, and contends that PJM’s proposed revisions create an even narrower process for such projects. We disagree that the existing rules are deficient. In the First Compliance Order, the Commission noted its previous finding that PJM’s transmission planning process satisfied each of the transmission planning principles of Order No. 890, and stated that PJM’s Order No. 1000 compliance proceeding would focus on the incremental changes to the PJM regional transmission planning process developed to comply with the general regional transmission planning requirements of Order No. 1000.<sup>58</sup> We found that Supplemental Projects were part of the PJM transmission planning process that the Commission found complies with Order No. 890. In addition, PJM proposes changes clarifying that the Subregional RTEP Committee process includes Supplemental Projects,<sup>59</sup> and therefore, comments from the Subregional RTEP Committee on both Supplemental and Subregional RTEP Projects will be included in the local planning process prior to finalizing the Local Plans.

40. Therefore, we find that PJM’s proposed revisions make explicit the opportunity for review and comment on such projects in the Subregional RTEP Committees.<sup>60</sup> Furthermore, given that the Commission found that PJM’s transmission planning process complies with Order No. 890, combined with the compliance directives we order here, we decline to require Transmission Owners to prove that they have provided stakeholders an opportunity to comment on Supplemental Projects prior to the Subregional RTEP Committee process.

41. The Second Compliance Order also required that PJM specify the procedures by which local transmission providers will evaluate potential solutions to transmission needs driven by public policy requirements in the local transmission planning process. The Second Compliance Order further required PJM to describe how it or local transmission owners will post on their respective websites an explanation of which transmission needs

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<sup>58</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 52.

<sup>59</sup> PJM proposes to add language stating that the Subregional RTEP Committees will provide sufficient opportunity to review and provide written comments to the Transmission Owners on any Supplemental Projects included in the Local Plan. PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d).

<sup>60</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d).

driven by public policy requirements will be evaluated for potential solutions in the local transmission planning process, as well as an explanation of why other suggested transmission needs will not be evaluated.

42. Under PJM's transmission planning process, after the finalized Local Plan is integrated into the RTEP, potential solutions to transmission needs driven by public policy requirements in the local transmission planning process will be evaluated alongside transmission needs driven by other public policy requirements in the regional planning process.<sup>61</sup> However, it is unclear how a "finalized Local Plan" would have included, prior to finalization, a posting of which transmission needs driven by public policy requirements would be evaluated for potential solutions in the *local* transmission planning process, as well as why other suggested transmission needs would not be evaluated, as required by the Second Compliance Order. PJM states that its existing tariff describes the procedures by which it will post on its website the range of assumptions it will use in its transmission studies and scenario analyses, including an explanation of which public policy requirements and objectives will be used to perform the studies and an explanation of why others will not be used. PJM asserts that this provision applies to the Local Plan as well as the RTEP, because the Local Plan as finalized by the Subregional RTEP Committees is coordinated and integrated into the RTEP.<sup>62</sup>

43. However, PJM's Operating Agreement provisions do not provide for a posting of transmission needs driven by public policy requirements that will be evaluated in *local* planning process *prior* to evaluation in the Local Plan. PJM states that the posting requirement in the regional planning process "doesn't distinguish those public policy requirements that came up from the Subregional RTEP Committees through the local plan."<sup>63</sup> Yet PJM does not explain how this posting will be done *before* transmission needs driven by public policy requirements are evaluated for inclusion in the Local Plan.<sup>64</sup>

The purpose of the assumptions meeting shall be to provide an open forum to discuss the following: [...] (ii) Public Policy Requirements identified by the states for consideration in the

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<sup>61</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.6.

<sup>62</sup> PJM July 14, 2014 Compliance Filing at 5 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§ 1.5.6(b), 1.3(d)).

<sup>63</sup> *Id.* at 7.

<sup>64</sup> *Id.*

Office of Interconnection’s transmission planning analyses; (iii) Public Policy Objectives identified by stakeholders for consideration in the Office of Interconnection’s transmission planning analyses; [...].<sup>65</sup> Prior to the initial assumptions meeting, Committee participants will be afforded the opportunity to provide input and submit suggestions regarding the information identified in items (i) through (iv) of this subsection. *Following the assumptions meeting and prior to performing the evaluation and analyses, the Office of Interconnection shall determine the range of assumptions to be used in the studies and scenario analyses [and] shall document and publicly post its determination for review. Such posting shall include an explanation of those Public Policy Requirements and Public Policy Objectives adopted at the assumptions phase to be used in performing the evaluation and analyses of the potential enhancements and expansions to the Transmission System and an explanation of why other Public Policy Requirements and Public Policy Objectives introduced by stakeholders at the assumptions stage were not adopted.*<sup>66</sup>

44. PJM further explains that this posting is intended to “provide entities an opportunity to submit project proposals in a proposal window as described in [the regional transmission project proposal window process] section 1.5.8(c) to address potential violations, system conditions, economic constraints and public policy requirements.” Again, this explanation further highlights that this posting is intended to be done prior to evaluation in the *regional* transmission planning process. It fails to provide for a posting that will be done before transmission needs driven by public policy requirements are evaluated in the *local* transmission planning process (i.e., before the Subregional RTEP Committees finalize the Local Plans and incorporate them into the RTEP). Therefore, consistent with the Second Compliance Order’s directive that this posting be done prior to the evaluation stage of the local planning process, we require PJM or the Transmission Owners to submit, within 30 days of the date of issuance of this

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<sup>65</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.6(b). The Commission notes a non-substantive correction with respect to this section- there are duplicative “(iii)” headers.

<sup>66</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.6(b) (emphasis added).

order, a further compliance filing revising Schedule 6 to provide for this posting before the evaluation stage of the local planning process.

45. After PJM completes its studies and analyses, PJM makes a secondary posting which includes the system conditions, economic constraints, and public policy requirements to allow entities to submit transmission project proposals to address them.<sup>67</sup> PJM states that “this posting does not distinguish those public policy requirements that came up from the Subregional RTEP Committees through the local plan.”<sup>68</sup> The Operating Agreement defines these “Transmission System Needs” as “violations, system conditions, and economic constraints, and Public Policy Requirements, *including* (i) federal Public Policy Requirements; (ii) state Public Policy Requirements identified or agreed-to by the states in the PJM Region, which could be addressed by potential Short-term Projects, Long-lead projects or projects determined pursuant to the State Agreement Approach in Section 1.5.9 of this Schedule 6, as applicable.”<sup>69</sup> We find that this language in the RTEP procedures does not preclude the consideration of local public policy requirements beyond the state Public Policy Requirements determined pursuant to the State Agreement Approach in the local planning process. We find that the term “including” is most reasonably interpreted to be inclusive of public policy requirements not explicitly stated in the list, rather than exclusive.

46. Finally, we find that the revisions to Schedule 6, § 1.3(d) make its meaning consistent with the Commission’s interpretation of the provision in the Second Compliance Order.<sup>70</sup>

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<sup>67</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.6(e).

<sup>68</sup> PJM July 14, 2014 Compliance Filing at 7.

<sup>69</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(b) (emphasis added).

<sup>70</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d) (“Establishment of Committees”).

### 3. Nonincumbent Transmission Developer Reforms

#### a. Existing Federal Right of First Refusal and Exceptions to the Requirement to Eliminate the Federal Right of First Refusal

##### i. Requests for Rehearing or Clarification

##### (a) Second Compliance Order

47. In the Second Compliance Order, the Commission granted rehearing and reversed its earlier finding that PJM's proposal to designate a transmission project to the incumbent transmission owner when required by state law, regulation, or administrative agency did not comply with Order No. 1000. The Commission found, upon further consideration, that the provision requiring PJM to designate an incumbent transmission owner to build a transmission project when (a) required by state law with regard to enhancements or expansions located within the state, or (b) the project will be located on a Transmission Owner's existing right of way and would alter the Transmission Owner's use and control of that right of way under state law merely acknowledges state law and do not create a federal right of first refusal.<sup>71</sup>

48. The Commission continued to require the elimination of federal rights of first refusal from Commission-jurisdictional tariffs or agreements. Here, however, the Commission found that it was addressing the question of whether it should appropriately prohibit PJM from recognizing state or local laws or regulations when designating the developer for a transmission project selected in the regional transmission plan for purposes of cost allocation. The Commission concluded that, on balance, it should not prohibit PJM from recognizing state or local laws or regulations as a threshold issue to the consideration of transmission projects in PJM's regional transmission planning process, since even if a nonincumbent transmission developer might otherwise be designated to develop a transmission project, some state laws or regulations might prohibit a nonincumbent transmission developer from developing a particular transmission project in that state.<sup>72</sup>

49. The Commission found that requiring PJM to remove the provision from its tariff would result in a regional transmission planning process that does not efficiently account for the existence of state or local laws or regulations that impact the siting, permitting,

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<sup>71</sup> Second Compliance Order, 147 FERC ¶ 61,128 at P 130.

<sup>72</sup> *Id.* P 132.

and construction of transmission facilities, and would require PJM's regional transmission planning process to expend time and resources to evaluate potential transmission developers for transmission projects that, under state or local laws or regulations, ultimately must be assigned to the incumbent transmission developer. The Commission found that requiring such consideration would create unnecessary inefficiencies and delays. Therefore, it granted rehearing and found that PJM may retain the provision that recognizes state or local laws or regulations as a threshold matter in the regional transmission planning process.<sup>73</sup>

50. The Commission denied Illinois Commerce Commission's request for rehearing of the finding that transmission projects subject to state rights of first refusal may still be eligible for regional cost allocation. It stated that, while Order No. 1000 addressed disincentives created by *federal* rights of first refusal that may deter nonincumbent transmission developers, it recognized that the Order No. 1000 reforms did not address all possible disincentives to competition to develop transmission projects selected in the regional transmission plan for purposes of cost allocation, and that there may be restrictions on the construction of transmission facilities by nonincumbent transmission providers under state or local laws or regulations.<sup>74</sup>

51. The Commission further noted that its decision to focus on federal (not state) right of first refusal provisions in Commission-jurisdictional tariffs was "designed to ensure that its nonincumbent transmission developer reforms do not result in the regulation of matters reserved to the states."<sup>75</sup> Finally, the Commission pointed out that even if a transmission project was subject to a state right of first refusal, the regional transmission planning process still results in the selection of transmission projects that are more efficient or cost-effective than would have been developed but for such processes.<sup>76</sup>

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<sup>73</sup> *Id.* P 133 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(l)(iv) (Transmission Owners Required to be the Designated Entity) (3.0.0)).

<sup>74</sup> *Id.* P 136 n.265 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 287).

<sup>75</sup> *Id.* P 137.

<sup>76</sup> *Id.* P 138.

(b) **Summary of Requests for Rehearing or Clarification**

52. Illinois Commerce Commission and LS Power request rehearing of the Commission's decision to allow PJM to retain the provision that requires it to designate a transmission project selected in the regional transmission plan for purposes of cost allocation to the incumbent transmission owner when (1) required by state law, regulation, or administrative agency order or (2) when the transmission project is proposed to be located on a transmission owner's existing right of way and the project would alter the transmission owner's use and control of its existing right of way under state law.<sup>77</sup> Illinois Commerce Commission asserts that, contrary to the Commission's finding in the Second Compliance Order, the First Compliance Order did not pre-empt state laws or prohibit PJM from recognizing state or local laws or regulations; rather, the Commission simply provided a process for PJM to exercise authority under its OATT and for states to exercise authority under state laws.<sup>78</sup> In addition, LS Power argues that no party sought rehearing of the Commission's finding on rights of way and the Commission's reversal of the First Compliance Order on this issue is therefore arbitrary and capricious.<sup>79</sup>

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<sup>77</sup> Illinois Commerce Commission Request for Rehearing at 7; LS Power Request for Rehearing at 12-14; *see* Second Compliance Order, 147 FERC ¶ 61,128 at P 132.

<sup>78</sup> Illinois Commerce Commission Request for Rehearing at 7-8, 9-11, 11 n.27 (citing First Compliance Order, 142 FERC ¶ 61,214 at P 232, and asserting that the Commission simply required that transmission projects proceed through the competitive selection process, even in cases where the project is subject to a state right of first refusal).

<sup>79</sup> LS Power Request for Rehearing and Clarification at 11-12. In addition, Illinois Commerce Commission notes certain legal and policy arguments provided by Commissioner Norris, and states that it agrees with and echoes these arguments. Illinois Commerce Commission Request for Rehearing at 13-14 (citing Second Compliance Order, 147 FERC ¶ 61,128 (Norris, Comm'r, Dissenting, at 1-3)). Commissioner Norris noted that from a policy perspective, providing an open and fair opportunity for all stakeholders to participate fully in the regional transmission planning process will ensure that the planning process provides transparency regarding all reasonable alternatives to meet identified transmission needs, and that without such an opportunity, PJM cannot identify the more efficient or cost-effective transmission solutions, the results being a failure to ensure just and reasonable rates (citing Second Compliance Order, 147 FERC ¶ 61,128 (Norris, Comm'r, Dissenting)). Commissioner Norris additionally noted that

(continued...)

53. LS Power contends that the Commission erred by relying on language and analysis that does not apply to PJM's transmission planning process.<sup>80</sup> LS Power points out that PJM's transmission planning process considers state rights of first refusal at the end of the evaluation process, when PJM designates a transmission project to a transmission developer. LS Power maintains that there are no efficiencies to be gained or delays to be avoided in PJM's transmission planning process by considering state laws or regulations as a threshold matter.<sup>81</sup> LS Power argues that if PJM is concerned about delays that may be caused if it is ultimately determined that a state right of first refusal does exist, the appropriate mechanism for PJM to deal with the issue is through the milestone requirements in the Designated Entity Agreement.<sup>82</sup> Similarly, Illinois Commerce Commission argues that, rather than allow PJM to retain the provision, the Commission could have addressed arguments regarding inefficiency, delay, and reliability by providing PJM with guidance and direction on what to do when a transmission project or developer selected by PJM is prohibited from constructing the transmission project under state law.<sup>83</sup> Illinois Commerce Commission adds that reliability concerns are already addressed through PJM's Immediate-Need Reliability Projects development process.<sup>84</sup>

54. In addition, LS Power asserts that the Commission must clarify that nothing in the Second Compliance Order or the provision regarding state law prevents a nonincumbent transmission developer from proposing a transmission project for inclusion in the

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incumbent transmission developers may lack innovation or be more interested in preserving the *status quo* and insulating themselves from competition than nonincumbents (citing Second Compliance Order, 147 FERC ¶ 61,128 (Norris, Comm'r, Dissenting)).

<sup>80</sup> LS Power Request for Rehearing and Clarification at 4, 9-10.

<sup>81</sup> *Id.* at 10.

<sup>82</sup> *Id.* at 3.

<sup>83</sup> Illinois Commerce Commission Request for Rehearing at 7-8. Additionally, the Illinois Commerce Commission argues that, to avoid potential cost inefficiency in the process, the Commission need only clarify that developers that voluntarily choose to participate in the competitive selection process, including incumbent transmission owners, must bear some reasonable portion of PJM's costs of operating that process. If no nonincumbents choose to participate, PJM may select the incumbent, provided that the incumbent meets all qualification standards. *Id.* at 12.

<sup>84</sup> *Id.*

regional transmission plan, even if a portion of the project is in a state with a state law creating a right of first refusal.<sup>85</sup> LS Power asserts that ruling otherwise would give incumbent transmission developers in states with such laws an unfair advantage and would turn the state right of first refusal into a federal right of first refusal.<sup>86</sup> LS Power adds that if a project sponsor affirmatively challenges the applicability of a state right of first refusal, PJM should designate the qualified sponsoring entity to develop the transmission project rather than the incumbent transmission owner. Further, LS Power argues, PJM should designate the nonincumbent sponsor of a transmission project to develop any portion of the project in a state without a limiting law.<sup>87</sup>

55. LS Power requests that the Commission require PJM to identify, in a supplemental compliance filing, any state laws, regulations, or administrative agency orders that would affirmatively require PJM to designate an incumbent transmission owner for a transmission project selected in the regional transmission plan for purposes of cost allocation pursuant the provision at issue.<sup>88</sup> LS Power contends that PJM also must post on its website, and maintain in updated form, the names of the states in which PJM contends it is required to designate transmission projects to an incumbent transmission owner.<sup>89</sup> LS Power argues that, absent such clarification, the provision would turn PJM into the arbiter of these issues through its sponsor-selection decision.<sup>90</sup> LS Power asserts that PJM has not established that it is qualified or even wants to make such determinations. If PJM were to make any determinations under this provision, LS Power

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<sup>85</sup> LS Power Request for Rehearing and Clarification at 5.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 5-6 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8 (1)).

<sup>88</sup> *Id.* at 4.

<sup>89</sup> *Id.* (stating that, given that PJM anticipates a large Long-Lead Time Project window will be open in late 2014, PJM should post this information immediately).

<sup>90</sup> *Id.* at 2-3, 14, 25 (citing Second Compliance Order, 147 FERC ¶ 61,128 at P 137). LS Power argues that the provision requires PJM to determine the application of state law to individual property rights, because PJM must decide to designate an incumbent transmission owner to develop a transmission project before a state makes its final siting or construction decisions. *Id.* at 12.

claims, the Commission would become the appellate panel for PJM's determination of state property law.<sup>91</sup>

56. Illinois Commerce Commission requests rehearing of the Commission's decision to allow transmission projects selected in the regional transmission plan for purposes of cost allocation to be eligible for regional cost allocation, even if assigned to an incumbent transmission owner pursuant to state law, without requiring adjustments to the regional cost allocation method.<sup>92</sup> Illinois Commerce Commission adds that a regional transmission planning process is not a substitute for having and applying an effective competitive selection process.<sup>93</sup> Illinois Commerce Commission argues that such a competitive selection process is necessary to ensure the transmission rates for such projects will be just and reasonable;<sup>94</sup> otherwise, states with right of first refusals may shift the costs that may result from having a right of first refusal for incumbent transmission developers to ratepayers in other states.<sup>95</sup> LS Power notes that it does not seek rehearing on this issue, but agrees with Illinois Commerce Commission that the reasoning underlying Order No. 1000's requirement that public utility transmission providers eliminate federal rights of first refusal from Commission-jurisdictional tariffs and agreements also applies to state right of first refusal laws.<sup>96</sup> However, LS Power requests that the Commission strike from the Second Compliance Order the finding that "even if a transmission project is subject to a state right of right refusal, the regional transmission planning process still results in the selection for planning and cost allocation purposes of transmission projects that are more efficient or cost-effective than would have been developed but for such purposes," arguing that there is no factual support in the record for this conclusion.<sup>97</sup>

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<sup>91</sup> *Id.* at 13.

<sup>92</sup> Illinois Commerce Commission Request for Rehearing at 4-5.

<sup>93</sup> *Id.* at 18-19.

<sup>94</sup> *Id.* at 8-9.

<sup>95</sup> *Id.* at 15-16.

<sup>96</sup> *Id.*; *see* Illinois Commerce Commission Request for Rehearing at 14-17.

<sup>97</sup> LS Power Request for Rehearing and Clarification at 15 (referring to Second Compliance Order, 147 FERC ¶ 61,128 at P 138).

(c) **Commission Determination**

57. On rehearing, petitioners argue that the Commission erred in allowing PJM to retain the provision that requires it to designate an incumbent transmission owner to build a transmission project “when required by state law, regulation, or administrative order with regard to enhancements or expansions or portions of such enhancements or expansions located within the state” and when a transmission project is “proposed to be located on a Transmission Owner’s existing right of way and the project would alter the Transmission Owner’s use and control of its existing right of way under state law.”<sup>98</sup> Further, Illinois Commerce Commission requests rehearing of the Commission’s decision to allow transmission projects selected in the regional transmission plan for purposes of cost allocation that are assigned to an incumbent transmission owner pursuant to state law to be eligible for regional cost allocation, without requiring adjustments to the regional cost allocation method. For the reasons discussed below, the Commission denies petitioners’ requests for rehearing.

58. In denying rehearing, we confirm the Commission’s finding in the Second Compliance Order that it is appropriate for PJM to recognize state or local laws or regulations as a threshold matter in the regional transmission planning process.<sup>99</sup> As the Commission stated in the Second Compliance Order and we reiterate here, Order No. 1000’s focus is on federal right of first refusal provisions in Commission-jurisdictional tariffs and Order No. 1000 does not require removal from Commission-jurisdictional tariffs or agreements of references to state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities.<sup>100</sup> In the Second Compliance Order, the Commission found that the provision requiring PJM to designate an incumbent transmission owner to build a transmission project when required by state law, regulation, or administrative agency order with regard to enhancements or expansions or portions of such enhancements or expansions located within the state or when the transmission project is proposed to be located on a transmission owner’s existing right of way, “merely acknowledge[s] state law and do not create a federal right of first refusal.”<sup>101</sup> The

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<sup>98</sup> See PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8 (l).

<sup>99</sup> Second Compliance Order, 147 FERC ¶ 61,128 at P 132.

<sup>100</sup> *Id.* PP 132, 137; see Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 253 & n.231, 377.

<sup>101</sup> Second Compliance Order, 147 FERC ¶ 61,128 at P 130 & n.251; see PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(l)(iv).

Commission explained that “[n]othing has changed the Commission’s view that Order No. 1000’s requirement to remove federal rights of first refusal is in the public interest,” and stated that it continues “to require the elimination of federal rights of first refusal from Commission-jurisdictional tariffs or agreements.”<sup>102</sup> Nevertheless, the Commission explained, Order No. 1000 was not intended to “limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities.”<sup>103</sup> Therefore, Order No. 1000 “does not require removal of references to such state or local laws or regulations from Commission-approved tariffs or agreements.”<sup>104</sup>

59. We disagree with Illinois Commerce Commission and LS Power that the Commission erred by basing its decision in the Second Compliance Order primarily on the fact that it found compelling the arguments about inefficiencies and delays that may occur if PJM must remove the provisions concerning state law and existing rights of way under state law.<sup>105</sup> While the Commission considered these arguments persuasive, the rationale for its decision in the Second Compliance Order was its findings that PJM’s proposed provision was not a federal right of first refusal and that, regardless of whether state or local laws or regulations are expressly referenced in the PJM Tariff, some such laws or regulations may independently prohibit a nonincumbent transmission developer from developing a particular transmission project in a particular state, even if the nonincumbent transmission developer would otherwise be designated to develop the transmission project under PJM’s regional transmission planning process.<sup>106</sup> The

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<sup>102</sup> Second Compliance Order, 147 FERC ¶ 61,128 at PP 131-132.

<sup>103</sup> *Id.* P 132; *see also* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 253 n.231, 319 (finding that “[n]othing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities. This Final Rule does not require removal of references to such state or local laws or regulations from Commission-approved tariffs or agreements. . . .” and “. . . our reforms are not intended to alter an incumbent transmission provider’s use and control of its existing rights-of-way. . . . The retention, modification, or transfer of rights-of-way remain subject to relevant law or regulation granting the rights-of-way.”).

<sup>104</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 253 n.231, 319; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 427.

<sup>105</sup> Illinois Commerce Commission at 9-12; LS Power Request for Rehearing and Clarification at 4, 9-10.

<sup>106</sup> Second Compliance Order, 147 FERC ¶ 61,128 at P 132 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 381).

Commission explained that it would not prohibit PJM from recognizing state or local laws or regulations when designating the transmission developer for a transmission project selected in the regional transmission plan for purposes of cost allocation, as Order No. 1000 was not intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities.<sup>107</sup> We therefore find that it is unnecessary to clarify what actions PJM and transmission developers should take to address concerns related to inefficiencies and delays that could occur if PJM were required to remove its proposed provision, such as specifying a process for selecting a replacement transmission developer or transmission project in circumstances where state law requires a different outcome.

60. In Order No. 1000, the Commission found that removing federal rights of first refusal from Commission-jurisdictional tariffs and agreements would provide nonincumbent transmission providers with the opportunity to propose and construct transmission projects, consistent with state or local laws or regulations.<sup>108</sup> In this way, the Commission struck a balance between removing barriers to participation by potential transmission providers in the regional transmission planning process and ensuring the nonincumbent transmission developer reforms do not result in the regulation of matters reserved to the states.<sup>109</sup> In the Second Compliance Order, the Commission explained that its “decision to focus on *federal* (not state) right of first refusal provisions in Commission-jurisdictional tariffs was an exercise of remedial discretion designed to ensure that its nonincumbent transmission developer reforms do not result in the regulation of matters reserved to the states.”<sup>110</sup>

61. The Commission found that, in evaluating PJM’s tariff provision, the issue is whether it is appropriate for the Commission to prohibit PJM from recognizing state or local laws or regulations when designating the developer for a transmission project selected in the regional transmission plan for purposes of cost allocation.<sup>111</sup> The Commission was called on to consider whether the provision creates a federal right of first refusal or merely references existing state or local laws or regulations with respect to construction, siting, or permitting of transmission facilities, in determining whether PJM

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<sup>107</sup> *Id.*

<sup>108</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 259.

<sup>109</sup> *See id.* PP 43-47, 107.

<sup>110</sup> *See id.*

<sup>111</sup> Second Compliance Order, 147 FERC ¶ 61,128 at P 132.

must eliminate the provisions from its Commission-jurisdictional tariffs and agreements. The Commission carefully considered petitioners' arguments in determining whether it is appropriate to prohibit PJM from recognizing state or local laws or regulations when designating the developer for a transmission project selected in the regional transmission plan for purposes of cost allocation. The Commission found that PJM may retain the provision because "it is appropriate for PJM to recognize state or local laws or regulations as a threshold matter in the regional transmission planning process."<sup>112</sup>

62. The requests for rehearing, by contrast, seek to expand the reach of Order No. 1000's reforms, by prohibiting PJM from recognizing state or local laws or regulations when designating the transmission developer for a transmission project selected in the regional transmission plan for purposes of cost allocation. Order No. 1000 defines the phrase "federal right of first refusal" to refer to rights of first refusal that are created by provisions in Commission-jurisdictional tariffs or agreements.<sup>113</sup> In particular, Order No. 1000 explained that a federal right of first refusal in a region's Commission-jurisdictional tariffs or agreements would operate, at the federal level, to "prevent [nonincumbent] entities from constructing and owning new transmission facilities located in that region."<sup>114</sup> In contrast, state or local laws or regulations providing an incumbent transmission owner with a right of first refusal to develop a transmission project located within the state are created at the state and local level.<sup>115</sup> Petitioners have not

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<sup>112</sup> *Id.* P 133 (quoting PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(l)(iv)).

<sup>113</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 415.

<sup>114</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 261.

<sup>115</sup> *See* Second Compliance Order, 147 FERC ¶ 61,128 at P 132 ("Regardless of whether state or local laws or regulations are expressly referenced in the PJM tariff, some such laws or regulations may independently prohibit a nonincumbent transmission developer from developing a particular transmission project in a particular state, even if the nonincumbent transmission developer would otherwise be designated to develop the transmission project under PJM's regional transmission planning process."); Order No. 1000-A, 139 FERC ¶ 61,132 at P 381 (A right of first refusal "based on a state or local law or regulation would still exist under state or local law even if removed from the Commission-jurisdictional tariff or agreement and nothing in Order No. 1000 changes that law or regulation, for Order No. 1000 is clear that nothing therein is 'intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities.'").

demonstrated how PJM's provision goes beyond what the Commission found as permissible references to state or local laws or regulations.

63. In response to LS Power, we grant in part its request for clarification and note that neither the Commission's decision in the Second Compliance Order nor section 1.5.8(l) of PJM's Operating Agreement prevents a nonincumbent transmission developer from proposing transmission projects for consideration in the regional transmission planning process for purposes of cost allocation, even if a portion of the project is in a state with a state law creating a right of first refusal. Rather than governing or limiting the entities that may propose transmission solutions, including multi-state transmission solutions where a portion of the solution is in a state with a right of first refusal, the provision simply describes the circumstances under which PJM shall determine that the incumbent transmission owner is the appropriate Designated Entity for a transmission project or a portion of a transmission project selected in the regional transmission plan for purposes of cost allocation. Therefore, pursuant to PJM's regional transmission planning process, qualified transmission developers may propose a transmission solution for selection in the regional transmission plan for purposes of cost allocation, even if the solution or a portion of the solution is proposed to be located in a state with a state right of first refusal.

64. We disagree with LS Power's assertion that the Commission erred in granting rehearing and determining that PJM may retain the provision concerning transmission owners' existing rights of way under state law because the requests for rehearing of the First Compliance Order did not specifically cite this aspect of PJM's provision. Contrary to LS Power's argument, the arguments raised on rehearing of the First Compliance Order, which the Commission found persuasive, are sufficiently broad to encompass both sections of the provision concerning state laws that would require PJM ultimately to designate an incumbent transmission owner to construct a transmission facility selected in the regional transmission plan for purposes of cost allocation in a particular state under the applicable state law. Both sections of the provision concern laws enacted by states that govern the construction, siting, and permitting of transmission facilities. Therefore, the Commission's findings in the Second Compliance Order and decision to grant rehearing properly apply to the provision requiring PJM to designate an incumbent transmission owner if a transmission project is proposed to be located on a Transmission Owner's existing right of way and the project would alter the Transmission Owner's use and control of its existing right of way under state law.

65. Regarding LS Powers' argument that PJM's proposal places PJM and the Commission in the position of arbiters of state or local law, we acknowledge that while PJM will be responsible for the transmission planning decisions, we expect the states will provide input regarding their state or local laws or regulations. As the Commission stated in Order No. 1000-A, "our expectation is that state regulators should play a strong role and that public utility transmission providers will consult closely with state regulators to

ensure that their respective transmission planning processes are consistent with state requirements.”<sup>116</sup> Similarly, we deny LS Power’s request to require PJM to identify, in a supplemental compliance filing, any state laws, regulations, or administrative agency order that PJM currently believes require it to designate an incumbent transmission owner for expansions or portions of such expansions located within that state and to post on its website the names of the states that so require PJM to designate a transmission project to the incumbent transmission owner.<sup>117</sup> We anticipate that PJM will work closely with the states throughout the transmission planning process and that PJM’s procedures will provide transparency regarding any state or local laws or regulations it uses in its decision-making process.

66. Finally, we deny Illinois Commerce Commission’s request for rehearing concerning regional cost allocation for transmission projects selected in the regional transmission plan for purposes of cost allocation that also are subject to a state right of first refusal. While Order No. 1000 addressed some disincentives that may deter nonincumbent transmission developers, the Commission recognized that the Order No. 1000 reforms did not address all disincentives to competition to develop transmission projects selected in the regional transmission plan for purposes of cost allocation.<sup>118</sup> For example, the Commission acknowledged that “there may be restrictions on the construction of transmission facilities by nonincumbent transmission providers under rules or regulations enforced by other jurisdictions.”<sup>119</sup> While the competitive processes required in Order No. 1000 are a part of selecting the more efficient or cost-effective transmission solutions in the regional transmission plan for purposes of cost allocation, the regional transmission planning process is also an important tool for accomplishing this goal.<sup>120</sup> We continue to “recognize that, even if a transmission project is subject to a state right of first refusal, the regional transmission planning process still results in the selection for planning and cost allocation purposes of transmission projects that are more efficient or cost-effective than would have been developed but for such processes.”<sup>121</sup> Thus, we deny Illinois Commission’s request for rehearing.

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<sup>116</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 338.

<sup>117</sup> See LS Power Request for Rehearing and Clarification at 4.

<sup>118</sup> Second Compliance Order, 147 FERC ¶ 61,128 at P 136.

<sup>119</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 287.

<sup>120</sup> Second Compliance Order, 147 FERC ¶ 61,127 at P 138.

<sup>121</sup> *Id.*

67. Similarly, we disagree with LS Power that the Commission should strike, as unsupported, its finding that “even if a transmission project is subject to a state right of first refusal, the regional transmission planning process still results in the selection for planning purposes of transmission projects that are more efficient or cost-effective than would have been developed but for such processes.”<sup>122</sup> In Order No. 1000, the Commission determined that by ensuring a robust process is in place to identify and consider regional transmission solutions to regional transmission needs, public utility transmission providers will have processes available to identify more efficient or cost-effective solutions than may have been the case without Order No. 1000’s reforms.<sup>123</sup> The Commission’s finding in Order No. 1000 was based on its careful consideration of the record and the arguments presented in favor of and against the reforms.<sup>124</sup> Based on this review, the Commission exercised its independent judgment and expertise in this area. We reiterate that, while Order No. 1000 sought to remove barriers to competition in regional transmission planning processes, it did not purport to address every barrier to

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<sup>122</sup> Compare LS Power Request for Rehearing and Clarification at 15 (asserting that insufficient record exists to support the Commission’s finding), and Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 53 (concluding that the reforms adopted in Order No. 1000 are “justified sufficiently by the ‘theoretical threat’ identified”), and Order No. 1000-A, 139 FERC ¶ 61,132 at P 71 (noting that “the substantial evidence standard . . . only requires evidence that a ‘reasonable mind might accept’ as ‘adequate to support a conclusion’” and “[i]n the context of rulemakings that involve legislative facts and generic factual predictions, the relevant criterion is whether the agency has provided a reasonable explanation of the problem presented and its solution to it”) (citing *Dickenson v. Zurko*, 527 U.S. 150, 155 (1999) and *Federal Communications Commission v. Nat’l Citizens Comm. for Broadcasting*, 436 U.S. 755, 814 (1978)).

<sup>123</sup> Second Compliance Order, 147 FERC ¶ 61,128 at P 136; Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 315, *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 179.

<sup>124</sup> See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 42-62, 78-84 *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 57 (“The Commission justified the need for the reforms in Order No. 1000 based on [a theoretical] threat created by the inadequacy of existing transmission planning and cost allocation requirements to meet the anticipated challenges facing the industry, a threat whose existence was illustrated by actual problems that the Commission noted in the order, but that are not necessary to justify its response to the threat.”) (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 53).

participation by nonincumbent transmission developers and did not address all disincentives to competition in the regional transmission planning process.<sup>125</sup>

**ii. Compliance**

**(a) Second Compliance Order**

68. In the Second Compliance Order the Commission found that, given its decision to grant rehearing, PJM's proposal to delete the provisions regarding PJM's references to state laws or regulations and rights of way when designating a transmission developer to build a transmission project selected in the regional transmission plan for purposes of cost allocation was moot. Accordingly, the Commission directed PJM to restore the relevant provision as proposed in its October 25, 2012 Compliance Filing.<sup>126</sup>

**(b) Summary of PJM Parties' Compliance Filing**

69. In response to the Commission's Second Compliance Order directive, PJM Parties restored the relevant language to its OATT.<sup>127</sup>

**(c) Commission Determination**

70. We find that PJM Parties' proposed revisions comply with the directives in the Second Compliance Order to resubmit previously removed language regarding references to state laws or regulations and rights of way when designating a transmission developer to build a transmission project selected in the regional transmission plan for purposes of cost allocation.

**b. Time-Based Transmission Project Proposal Process**

**i. Second Compliance Order**

71. In the Second Compliance Order, the Commission found that PJM Parties had to make additional revisions to make clear that PJM will use the same proposal process for Economic-Based Enhancements and Expansions as for Long-lead Projects. Specifically, the Commission found that the OATT did not state that PJM would apply, to Economic-Based Enhancements or Expansions, the criteria PJM uses to (1) evaluate a transmission

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<sup>125</sup> Second Compliance Order, 147 FERC ¶ 61,128 at PP 135-136.

<sup>126</sup> *Id.* P 145.

<sup>127</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(I)(iv).

project for selection in the regional transmission plan for purposes of cost allocation and (2) to determine the Designated Entity for a transmission project.<sup>128</sup> Furthermore, in the Second Compliance Order, the Commission found that PJM Parties did not propose to separately identify and post in advance reliability violations and system conditions driving a time-sensitive need for Immediate-need Reliability Projects when PJM does not anticipate opening a proposal window, in the same way as when PJM intends to open a proposal window. The Commission directed PJM to revise Schedule 6 to provide an advance posting for review and comment of the reliability violations and system conditions that PJM identifies as needing to be addressed by Immediate-need Reliability Projects.<sup>129</sup>

**ii. Summary of PJM Parties' Compliance Filing**

72. PJM Parties propose to add to their OATT references to “Economic-Based Enhancements or Expansions” to make clear that the same criteria apply to Economic-based Enhancements and Expansions as to Short-term Projects and Long-lead Projects.<sup>130</sup>

73. PJM does not propose any revisions to comply with the directive to separately identify and post in advance reliability violations and system conditions driving a time-sensitive need for Immediate-need Reliability Projects where PJM does not intend to open a proposal window. PJM Parties explain that the OATT already sets forth the criteria PJM will consider to determine whether it is feasible to open a proposal window for an Immediate-need Project and already provides that PJM will post on the PJM website for review and comment by the Transmission Expansion Advisory Committee and other stakeholders a description of the Immediate-need reliability projects for which a proposal window is infeasible.<sup>131</sup>

**iii. Commission Determination**

74. The Commission finds that PJM Parties partially comply with the directives of the Second Compliance Order. While we find that PJM Parties' proposed revisions to make clear that the same criteria apply to Economic-based Enhancements and Expansions as to

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<sup>128</sup> Second Compliance Order, 147 FERC ¶ 61,128 at P 188.

<sup>129</sup> *Id.* P 196.

<sup>130</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§1.5.8(e), 1.5.8(f).

<sup>131</sup> PJM July 14, 2014 Compliance Filing, Docket No. ER13-198-004, at 10-11 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1)).

Short-term Projects and Long-lead Projects comply with the Second Compliance Order, we do not find that PJM Parties comply with the posting requirements for time-sensitive Immediate-need Reliability Projects for which PJM does not intend to open a proposal window. PJM correctly states that the OATT lists the factors PJM will use to decide whether it will open a proposal window for an Immediate-need Reliability Project and requires PJM to post a description of an Immediate-need Reliability Project for which it will not open a proposal window.<sup>132</sup> However, as the Commission found in the Second Compliance Order, PJM must separately identify and post in advance for review and comment the reliability violations and system conditions that drive the time-sensitive need, not just the transmission project meant to address the time-sensitive need. The OATT does not include the necessary requirement for PJM to post for review and comment in advance the reliability violations and system conditions which drove the need for that Immediate-need Reliability Project. Instead, when PJM does not intend to open a proposal window, the OATT states that PJM will post for review and comment an explanation of the time-sensitive need for an Immediate-need Reliability Projects at the same time that it posts the actual Immediate-need Reliability Project.<sup>133</sup> Thus, PJM does not comply with the requirement to separately identify and then post an explanation, whether or not it intends to provide for a proposal window, of the reliability violations and system conditions in advance for which there is a time-sensitive need. We therefore direct PJM to submit, within 30 days of the date of issuance of this order, a further compliance filing revising Schedule 6 to clearly state that for instances when PJM does not intend to open a proposal window, PJM will post for review and comment by the Transmission Expansion Advisory Committee and other stakeholders the reliability violations and system conditions that PJM identifies that need to be addressed by Immediate-need Reliability Projects before it posts the Immediate-need Reliability Project for review and comment.

**4. Cost Allocation for Transmission Facilities Selected in the Regional Transmission Plan for Purposes of Cost Allocation**

**a. Second Compliance Order**

75. In order to provide consistency between Schedule 6 and Schedule 12 of the Operating Agreement in PJM's OATT, the Commission directed PJM to make an affirmation in the Operating Agreement that nothing in Schedule 6 of the Operating Agreement shall prevent an entity that undertakes to construct and own and/or finance a

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<sup>132</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1).

<sup>133</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1).

Required Transmission Enhancement pursuant to a designation in the Regional Plan from recovering the costs of such Required Transmission Enhancement through Schedule 12.<sup>134</sup>

76. In addition, the Commission directed PJM to add the term “Designated Entities” to sections 1.6(a) and 1.7(a) of Schedule 6 to make clear that those provisions applied to both PJM transmission owners and Designated Entities.<sup>135</sup>

77. Finally, to avoid any potential for confusion, the Commission directed PJM Transmission Owners to remove language in Schedule 12, which stated, “In compliance with FERC’s Order on Compliance Filing issued in PJM Interconnection, L.L.C., Docket No. ER13-198-000, *et al.*, on March 22, 2013.”<sup>136</sup>

**b. Summary of PJM Parties’ Compliance Filing**

78. PJM Transmission Owners’ propose to remove the phrase, “In compliance with FERC’s Order on Compliance Filing issued in PJM Interconnection, L.L.C., Docket No. ER13-198-000, *et al.*, on March 22, 2013” from Schedule 12.<sup>137</sup>

**c. Commission Determination**

79. We find that PJM Transmission Owners partially comply with the directives of the Second Compliance Order. As directed, PJM Transmission Owners removed the relevant language from Schedule 12. However, PJM Transmission Owners did not propose the required revisions to Schedule 6.<sup>138</sup> We therefore direct PJM Transmission Owners to submit, within 30 days of the date of issuance of this order, a further compliance filing that (1) includes the phrase “or Designated Entity” in sections 1.6(a) and 1.7(a) of Schedule 6 of the Operating Agreement in PJM’s OATT<sup>139</sup> and (2) revises Schedule 6 of the Operating Agreement in PJM’s OATT to state that that nothing in Schedule 6 of the Operating Agreement shall prevent an entity that undertakes to construct and own and/or

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<sup>134</sup> Second Compliance Order, 147 FERC ¶ 61,128 at P 301.

<sup>135</sup> LS Power Protest, Docket No. ER13-198-002, at 5.

<sup>136</sup> Second Compliance Order, 147 FERC ¶ 61,128 at P 305.

<sup>137</sup> PJM July 14, 2014 Compliance Filing, Docket No. ER13-198-004, at 5-6.

<sup>138</sup> Second Compliance Order, 147 FERC ¶ 61,128 at PP 301, 311.

<sup>139</sup> *Id.* P 311.

finance a Required Transmission Enhancement pursuant to a designation in the Regional Plan to construct and own and/or finance such Required Transmission Enhancement from recovering the costs of such Required Transmission Enhancement through Schedule 12.<sup>140</sup>

## 5. Voltage and Other Requirements for Regional Cost Allocation

80. In the Second Compliance Order, the Commission directed PJM to revise Schedule 12 of the Operating Agreement in PJM's OATT to: (1) specify that direct current (DC) facilities that operate below  $\pm 433\text{kV}$  DC (or  $\pm 298\text{ kV}$  DC for double-circuit DC Required Transmission Enhancements) that must be constructed or strengthened to support new Regional Facilities may qualify as a Necessary Lower Voltage Facility; and (2) remove the 345 kV low side phase-to-phase voltage threshold for transformers connected to DC Regional Facilities.<sup>141</sup> In response, PJM Transmission Owners propose to revise Schedule 12 so that DC facilities that operate below  $\pm 433\text{kV}$  DC (or  $\pm 298\text{ kV}$  DC for double-circuit DC Required Transmission Enhancements) that must be constructed or strengthened to support new Regional Facilities may qualify as a Necessary Lower Voltage Facility.<sup>142</sup> PJM Transmission Owners also removed the 345 kV low side phase-to-phase threshold language.<sup>143</sup> With these revisions, we find that PJM Transmission Owners comply with the directives in the Second Compliance Order regarding DC transmission facilities.

### The Commission orders:

(A) The requests for rehearing and clarification are hereby denied in part and granted in part, as discussed in the body of this order.

(B) PJM Parties' respective compliance filings are hereby accepted, effective on the dates proposed, subject to further compliance filings, as discussed in the body of this order.

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<sup>140</sup> *Id.* P 301.

<sup>141</sup> *Id.* P 382.

<sup>142</sup> PJM OATT, Operating Agreement, Schedule 12, § (b)(1).

<sup>143</sup> PJM OATT, Operating Agreement, Schedule 12, § (b)(i)(B)(1).

(C) PJM Parties are hereby directed to submit further compliance filings, within 30 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission. Commissioner Bay is concurring with a separate statement attached.

Commissioner Honorable is voting present.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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| PJM Interconnection, L.L.C.  | Docket Nos. ER13-198-003<br>ER13-198-004 |
| Indicated PJM Transmission Owners                                      | ER13-195-002                             |
| PJM Interconnection, L.L.C.<br>Public Service Electric and Gas Company | ER13-90-003                              |
| PJM Interconnection, L.L.C.<br>Pennsylvania Electric Company           | ER13-90-004                              |

(Issued January 22, 2015)

BAY, Commissioner, *concurring*:

In Order No. 1000, the Commission determined that “federal rights of first refusal in favor of incumbent transmission providers deprive customers of the benefits of competition in transmission development, and associated potential savings” and therefore ordered that they be removed from Commission-approved tariffs.<sup>1</sup> The Commission noted, however, that Order No. 1000 was not “intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities.”<sup>2</sup>

In a series of orders issued today, the Commission finds that Order No. 1000 does not compel the removal of tariff provisions that permit, in the transmission planning process, the recognition of state laws and regulations that grant a right of first refusal with respect to the construction of transmission facilities or the use of existing rights of way.<sup>3</sup> While I concur in the result of these orders, I write separately to note that the Constitution limits the ability of states to erect barriers to interstate commerce.<sup>4</sup> State laws that discriminate against interstate commerce – that protect or favor in-state enterprise at the

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<sup>1</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 285.

<sup>2</sup> *Id.* at P 287.

<sup>3</sup> *See also South Carolina Electric & Gas Company*, 150 FERC ¶ 61,036 (2015); *Midwest Independent Transmission System Operator, Inc.*, 150 FERC ¶ 61,037 (2015).

<sup>4</sup> *South-Central Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 87 (1984) (the Commerce Clause “has long been recognized as a self-executing limitation on the power of the States to enact laws imposing substantial burdens on such commerce”).

expense of out-of-state competition – may run afoul of the dormant commerce clause.<sup>5</sup> The Commission’s order today does not determine the constitutionality of any particular state right-of-first-refusal law. That determination, if it is made, lies with a different forum, whether state or federal court.

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Norman C. Bay  
Commissioner

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<sup>5</sup> See *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 394 (1994) (“State and local governments may not use their regulatory power to favor local enterprise by prohibiting patronage of out-of-state competitors or their facilities.”); *New England Power Co. v. New Hampshire*, 455 U.S. 331, 339 (1982) (“The order of the New Hampshire Commission, prohibiting New England Power from selling its hydroelectric energy outside the State of New Hampshire, is precisely the sort of protectionist regulation that the Commerce Clause declares off-limits to the states.”); *Hunt v. Washington State Apple Adver. Comm’n*, 432 U.S. 333, 352 (1977) (invalidating a state law that “offers the . . . [in-state] industry the very sort of protection against competing out-of-state products that the Commerce Clause was designed to prohibit”).