

150 FERC ¶ 61,173  
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.

Public Service Electric and Gas Company

Docket No. EL15-40-000

v.

PJM Interconnection, L.L.C.

ORDER DENYING MOTION TO DISMISS COMPLAINT, REQUEST TO  
POSTPONE ANSWER DATE, AND MOTION FOR RECONSIDERATION

(Issued March 4, 2015)

1. On February 13, 2015, PJM Interconnection, L.L.C. (PJM) filed a motion to dismiss a complaint filed by Public Service Electric and Gas Company (PSEG) (Complaint) and to postpone the date upon which an answer to the complaint otherwise would be due (Motion to Dismiss). On February 24, 2015, the Commission's Office of the Secretary issued a notice of extension of time (Notice), granting PJM and other interested parties, until March 11, 2015, to submit answers, interventions, or comments in this proceeding. According to the Notice, the extension of time allows PJM additional time in order to offer substantive responses to the allegations raised in the Complaint.
2. On February 27, 2015, PJM filed a motion for reconsideration of the Notice, or in the alternative, PJM requests rehearing of the Notice (Motion for Reconsideration). PJM also requests that the Commission act on its Motion for Reconsideration by March 4, 2015.
3. For the reasons discussed below, the Commission denies PJM's Motion to Dismiss the Complaint and its request to postpone the date for filing answers. The Commission also denies the Motion for Reconsideration.

## **I. Background**

4. On January 29, 2015, PSEG filed a complaint alleging that PJM did not follow its Order No. 1000<sup>1</sup> compliant tariff when conducting a competitive transmission solicitation to resolve operational performance issues at Artificial Island. PSEG requested that the Commission order PJM to comply with its rules in this and all future transmission solicitations under Order No. 1000.<sup>2</sup>

5. In its Complaint, PSEG states that PJM did not follow its solicitation process in two fundamental ways. First, PSEG asserts that PJM violated its tariff by unilaterally modifying each proposal submitted to address the Artificial Island issues. Second, PSEG asserts that PJM violated its tariff by allowing a bidder to modify its proposal after the window for proposals to be submitted had been closed. PSEG argues that the competitive transmission process envisioned by Order No. 1000 cannot succeed if the regions do not follow their solicitation rules.<sup>3</sup>

## **II. PJM's Motions**

### **A. Motion to Dismiss Complaint and Postpone Answer Date**

#### **1. Motion**

6. In its Motion to Dismiss, PJM contends that PSEG's Complaint is flawed because it ignores that the Artificial Island solicitation commenced prior to the effective date of PJM's competitive solicitation tariff, and therefore, is being conducted under PJM's pre-Order No. 1000 planning process.<sup>4</sup> Furthermore, PJM states that even if the competitive solicitation tariff were applicable, PSEG's Complaint is premature as PJM is still in the process of evaluating the competing transmission proposals and no selection of any entity to build facilities has occurred to date.<sup>5</sup> PJM further argues that allowing

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<sup>1</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 and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

<sup>2</sup> PSEG Complaint at 1.

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

<sup>4</sup> PJM Motion to Dismiss at 2-8.

<sup>5</sup> *Id.* at 8-10.

prosecution of the Complaint would require a PJM response that could compromise the still pending solicitation process.<sup>6</sup>

7. PJM requests that the Commission postpone the due date for PJM's answer to the Complaint until after the Commission acts on PJM's Motion to Dismiss. PJM maintains that its answer would be rendered moot if the Commission grants PJM's Motion to Dismiss and postponing the answer due date would avoid the wasteful utilization of PJM and Commission resources.<sup>7</sup> Alternatively, if the Commission does not dismiss the Complaint, PJM requests that the Commission postpone the required answer date until after the Artificial Island solicitation process is completed. PJM argues that the final outcome of the solicitation process may materially impact elements of the Complaint or even render some issues moot.<sup>8</sup>

## 2. Comments and Responses

8. On February 18, 2015, American Electric Power Service Corporation (AEP) submitted comments in support of PJM's request to postpone the date for filing an answer to the Complaint until after the Commission has acted on PJM's Motion to Dismiss. AEP also requests that the deadline for comments and interventions regarding the Complaint be extended consistent with any extension granted to PJM.<sup>9</sup>

9. On February 18, 2015, as amended on February 19, 2015, Northeastern Transmission Development, LLC (Northeastern Transmission)<sup>10</sup> submitted a response in support of PJM's Motion to Dismiss the Complaint as premature. Northeastern Transmission concurs with PJM's assertion that PSEG's Complaint is premature until PJM has selected a project.<sup>11</sup> Furthermore, Northeastern Transmission argues PSEG has not established that it is impossible for PJM to ultimately make a final decision consistent with its Order No. 1000 tariff.<sup>12</sup> Northeastern Transmission further argues that the facts

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<sup>6</sup> *Id.* at 10-11.

<sup>7</sup> *Id.* at 11-12.

<sup>8</sup> *Id.* at 12 n.32 (citing *Northern Indiana Pub. Serv. Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,256, at P 21 (2013)).

<sup>9</sup> AEP Response at 1.

<sup>10</sup> Northeastern Transmission is an affiliate of LSP Transmission Holdings, LLC.

<sup>11</sup> Northeastern Transmission Response at 14.

<sup>12</sup> *Id.* at 3.

underlying PSEG's Complaint do not support a tariff violation and questions the timing of the Complaint, particularly when PSEG had previously expressed support for PJM's execution of the new tariff provisions.<sup>13</sup> According to Northeastern Transmission, granting PSEG's Complaint will not benefit PJM, other proposal window participants, or ratepayers.<sup>14</sup>

10. On February 18, 2015, PSEG submitted an answer arguing that PJM's motion should be denied and the Commission should decline PJM's request to extend the deadline for PJM to submit its answer. According to PSEG, PJM's arguments that its Order No. 1000 planning process was not in effect at the time of the Artificial Island solicitation process fail because PJM committed to follow its Order No. 1000 rules, and because PJM's pre-Order No. 1000 planning process did not allow for any competitive transmission solicitation process.<sup>15</sup> Further, PSEG states that its Complaint challenges PJM's planning process, not the results, and therefore its Complaint is not premature.<sup>16</sup>

## **B. Motion for Reconsideration**

### **1. Motion**

11. In its Motion for Reconsideration, PJM argues that in the Notice, the Commission's Office of the Secretary mistakenly indicated that PJM requested the extension because it needs additional time to compose an answer.<sup>17</sup> PJM states that it asked the Commission to postpone the answer date until after the Commission acts on PJM's Motion to Dismiss because the need for an answer would be rendered moot if the Commission grants the Motion to Dismiss.<sup>18</sup> PJM asserts that requiring it to answer the Complaint before the Commission rules on PJM's Motion to Dismiss effectively prejudges the merits of PJM's Motion to Dismiss, without any rational explanation. PJM also maintains that requiring it to answer the Complaint during its consideration of the Artificial Island proposals will compel PJM to address and explain its views as to the merits and demerits of competing proposals, which would "seriously compromise, if not

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<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at 14.

<sup>15</sup> PSEG Response at 2-3.

<sup>16</sup> *Id.* at 4.

<sup>17</sup> PJM Motion for Reconsideration at 2.

<sup>18</sup> *Id.* at 2-3.

defeat outright, the still pending solicitation process.”<sup>19</sup> PJM adds that litigation of this matter at this point would potentially stop the transmission solicitation process and establish “a dangerous precedent, encouraging disruptive litigation over transmission planning.”<sup>20</sup> PJM states that the Commission should grant its Motion for Reconsideration, rescind its Notice, and grant PJM’s request to extend the time for submitting answers to the Complaint until after the Commission rules on PJM’s Motion to Dismiss.

12. Alternatively, if the Commission declines to reconsider the issuance of the Notice, PJM requests that the Commission grant rehearing on an expedited basis and rescind the Notice. PJM also states that the Commission should postpone the date for answers until the Commission has acted on the Motion to Dismiss.<sup>21</sup>

13. PJM further requests that the Commission act on its Motion for Reconsideration, or in the alternative, request for rehearing, by March 4, 2015, without waiting for answers to the motion. PJM asserts that failure of the Commission to act immediately on the motion would amount to its denial, as PJM will have to prepare and file an answer without the Commission considering its request.<sup>22</sup>

## 2. Answer

14. On March 2, 2015 PSEG submitted an answer to PJM’s Motion for Reconsideration arguing against a further delay in consideration of the Complaint, beyond the additional 21 days the Commission granted (Response to Motion for Reconsideration).<sup>23</sup> PSEG also disagrees with PJM’s claim that the Complaint is an attempt to drive a particular end result instead of a challenge to the process, not the results.<sup>24</sup>

15. PJM responded to PSEG’s Response to Motion for Reconsideration on March 2, 2015 reiterating that its commitment to evaluating the proposed projects under the new

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<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.* at 4.

<sup>21</sup> *Id.* at 4-5.

<sup>22</sup> *Id.* at 5.

<sup>23</sup> PSEG Response to Motion for Reconsideration at 2.

<sup>24</sup> *Id.* at 3.

Order No. 1000 rules was “to the extent feasible.”<sup>25</sup> PJM further argues that PSEG’s arguments are an untimely collateral attack on the Commission’s previous finding that PJM’s explanation of how it will transition to the revised regional transmission planning process was compliant.<sup>26</sup>

### III. Commission Determination

16. We deny PJM’s Motion to Dismiss. As discussed above, PJM requests that the Commission dismiss the Complaint due to PSEG’s failure to state a valid claim or dismiss the Complaint as premature because the competitive solicitation process is not yet complete. We do not find PJM’s arguments persuasive, and disagree that the Commission should deviate from its normal procedures for processing complaints by dismissing the Complaint.<sup>27</sup> We conclude that the Commission will benefit from a full record that addresses the allegations in the Complaint.

17. Second, PJM requests that, in the alternative, the Commission postpone the date for filing answers to the Complaint until thirty days after PJM has completed its evaluation and approved projects for inclusion in the RTEP to address the Artificial Island needs. We disagree that further postponing the date for filing answers, interventions, and comments with respect to the Complaint is necessary. PSEG’s Complaint alleges flaws in the process PJM has used in its Artificial Island competitive solicitation process, and we are not persuaded that deferring PJM’s answer to those allegations until PJM has completed the process is necessary.<sup>28</sup> Nonetheless, we recognize PJM’s concerns that, in responding to PSEG’s complaint, PJM could be

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<sup>25</sup> PJM Response to PSEG Response to Motion for Reconsideration at 3.

<sup>26</sup> *Id.* at 6 (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 30 (2013)).

<sup>27</sup> 18 C.F.R. § 385.206 (2014). We also note that that “[t]he Commission, like other agencies, is generally master of its own calendar and procedures.” *Stowers Oil and Gas Co.*, 27 FERC ¶ 61,001, at 61,001 (1984); *see also Pac. Gas and Elec. Co. v. FERC*, 746 F.2d 1383 (9th Cir. 1984) (“We must allow the FERC wide discretion in selecting its own procedures, and must defer to the FERC interpretation of its own rules, unless the interpretation is plainly erroneous.”); *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 98 U.S. 1197 (1978) (“Even apart from the Administrative Procedure Act this Court has for more than four decades emphasized that the formulation of procedures was basically to be left within the discretion of the agencies to which Congress had confided the responsibility for substantive judgments.”).

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

compelled to disclose information that would potentially compromise the ongoing Artificial Island competitive solicitation process. We note that the Commission's filing procedures allow parties to request that submissions be treated as privileged, protected, and/or Critical Energy Infrastructure Information, as appropriate.<sup>29</sup>

18. Finally, we affirm the Notice issued by the Office of the Secretary on February 24, 2015. Under the Commission's Rules of Practice and Procedure, unless otherwise ordered by the Commission, answers, interventions and comments must be filed within 20 days after the complaint is filed.<sup>30</sup> In this proceeding, the Office of the Secretary issued a notice of extension of time to submit answers, interventions and comments to March 11, 2015, 21 days after the original deadline of February 18, 2015. We affirm that extension and therefore deny PJM's Motion for Reconsideration. Having affirmed the Notice, PJM's alternative request for rehearing is denied.

19. We affirm that our decision to deny the Motion to Dismiss does not prejudice any future Commission decisions with respect to the matters at issue in this proceeding, including any selection by the PJM Board of a winning developer for the Artificial Island competitive solicitation process.

The Commission orders:

PJM's motion to dismiss the PSEG Complaint and postpone the answer date is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>29</sup> 18 C.F.R. § 388.112 (2014).

<sup>30</sup> 18 C.F.R. § 385.206(f).