

151 FERC ¶ 61,229
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Public Service Electric and Gas Company

Docket No. EL15-40-000

v.

PJM Interconnection, L.L.C.

ORDER DENYING COMPLAINT

(Issued June 16, 2015)

1. On January 29, 2015, Public Service Electric and Gas Company (PSEG) filed a complaint against PJM Interconnection, L.L.C. (PJM) pursuant to section 206 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's regulations (Complaint).² PSEG alleges that PJM was required to, but did not, follow its tariff rules adopted under Order No. 1000³ in conducting the Artificial Island⁴ competitive solicitation. As discussed below, we deny the complaint and find that (1) PJM was not required to follow

¹ 16 U.S.C. § 824e (2012).

² 18 C.F.R. § 385.206 (2014).

³ *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).

⁴ "Artificial Island" refers to the transmission and generation infrastructure associated with the nuclear complex that includes the Salem 1, Salem 2, and Hope Creek nuclear generating units. Due to the stability-constrained nature of the complex, special operating procedures historically have been used to maintain stability in the area.

its Order No. 1000 procedures in its Artificial Island solicitation, and (2) that PJM complied with its pre-Order No. 1000 tariff rules in conducting that solicitation.

I. Background

2. In Order No. 1000, the Commission amended the transmission planning requirements of Order No. 890⁵ 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. With regard to transmission planning, Order No. 1000 required that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its Open Access Transmission Tariff (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.

3. In Order No. 1000, the Commission found that the requirements are intended to apply to new transmission facilities, which are those transmission facilities that are subject to evaluation or revaluation as the case may be, within a public utility transmission provider's local or regional transmission planning process after the effective date of the public utility transmission provider's compliance filing.⁶ Order No. 1000 required that public utility transmission providers explain in their compliance filings how they will determine which transmission facilities evaluated in their local and regional transmission planning processes will be subject to the requirements of Order No. 1000.⁷

4. On October 25, 2012, PJM submitted revisions to its Amended and Restated Operating Agreement (Operating Agreement) and OATT to comply with the local and regional transmission planning requirements of Order No. 1000.⁸ To comply with Order

⁵ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 65, 162.

⁷ *Id.*

⁸ PJM, Compliance Filing, Docket No. ER13-198-000 (filed Oct. 25, 2012) (October 2012 Compliance Filing).

No. 1000's regional transmission planning requirements, PJM proposed, in relevant part, and the Commission conditionally accepted, a "competitive solicitation process to evaluate and select new transmission projects in the regional transmission plan for the purposes of cost allocation."⁹ In particular, PJM described its competitive solicitation process as a "sponsorship model," under which pre-qualified transmission developers may submit proposed transmission solutions to address identified transmission needs during a noticed "proposal window."¹⁰ After the proposal window closes, PJM posts descriptions of the proposals received during the window on its website.¹¹ Then, PJM evaluates the proposals and, after consultation with its Transmission Expansion and Advisory Committee (TEAC),¹² PJM presents to the PJM Board of Managers (PJM Board) its recommendation of the "more efficient or cost-effective" solution to the identified transmission need. If PJM determines that none of the proposals are the more efficient or cost-effective transmission solution, it can either: (1) repost the solicitation, restarting the process; or (2) if there is insufficient time to restart the process, it can propose a solution itself and assign construction to the incumbent transmission owner.¹³ In the end, the PJM Board must approve the recommended solution to be selected in the Regional Transmission Expansion Plan (RTEP) for purposes of cost allocation.¹⁴

5. In the October 2012 Compliance Filing, PJM proposed an effective date for its compliance with Order No. 1000's regional transmission planning requirements to coincide with its "next full 12-month or 24-month planning cycle following a final Commission order approving [its] compliance filing and any associated subsequent compliance filings."¹⁵ In addition, PJM explained that "projects, including proposals

⁹ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 235 (2013) (Order on October 2012 Compliance Filing), *order on reh'g & compliance*, 147 FERC ¶ 61,128 (2014) (Order on July 2013 Compliance Filing), *order on reh'g & compliance*, 150 FERC ¶ 61,038 (2015); *see also* October 2012 Compliance Filing at 13-14.

¹⁰ October 2012 Compliance Filing at 13-14, 22-23; *see* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§ 1.5.8(a)-(c) (5.0.0).

¹¹ PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(d) (5.0.0).

¹² The TEAC provides advice and recommendations to aid PJM in the development of the Regional Transmission Expansion Plan.

¹³ PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(g) (5.0.0).

¹⁴ PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.6(a) (2.1.0).

¹⁵ October 2012 Compliance Filing at 81.

already received, under consideration in the planning cycle in which the Commission's compliance order issues will be evaluated under the new rules to the extent feasible."¹⁶

6. On March 22, 2013, the Commission accepted PJM's compliance filing, subject to modifications.¹⁷ Regarding the effective date for PJM's Order No. 1000 regional transmission planning process, the Commission accepted PJM's proposal to make the tariff revisions "effective at the start of the next full 12-month and 24-month planning cycles following" the date of the Order on October 2012 Compliance Filing.¹⁸ Nevertheless, the Commission required PJM to submit a compliance filing establishing "a date certain indicating the start of the next full 12-month and 24-month planning cycle."¹⁹ In addition, the Commission required PJM to provide, on compliance, "further information regarding PJM's transition to the revised regional transmission planning process, including an explanation of how PJM will evaluate transmission projects currently under consideration."²⁰

7. In response, PJM proposed January 1, 2014, stating that this date coincides with the beginning of the next 12-month and 24-month planning cycle following issuance of the Order on October 2012 Compliance Filing.²¹ PJM explained that "solutions for reliability violations and economic constraints identified prior to [January 1, 2014] will be evaluated under PJM's current regional transmission planning process."²² Additionally, PJM reiterated that it had begun implementing certain aspects of the revised

¹⁶ *Id.* at 82.

¹⁷ Order on October 2012 Compliance Filing, 142 FERC ¶ 61,214 at P 1.

¹⁸ *Id.* P 32.

¹⁹ *Id.* PP 32, 34.

²⁰ *Id.* P 34.

²¹ PJM, Docket No. ER13-198-002, at 3 (filed July 22, 2013) (July 2013 Compliance Filing); *see also* Order on October 2012 Compliance Filing, 142 FERC ¶ 61,214 at PP 32, 34.

²² July 2013 Compliance Filing at 3; *see also* Order on October 2012 Compliance Filing, 142 FERC ¶ 61,214 at PP 32, 34.

regional transmission planning process, in particular the new proposal window process, “to the extent feasible and practicable” under the current rules.²³

8. On January 16, 2014, the Commission found that PJM’s proposed effective date of January 1, 2014 “complies with the Commission’s directive” in the Order on October 2012 Compliance Filing.²⁴ Additionally, on May 15, 2014, the Commission found that “PJM’s explanation of how it will transition to the revised regional transmission planning process complies with the Commission’s directive in the [Order on October 2012 Compliance Filing].”²⁵

9. PJM identified operational performance issues at Artificial Island during its 2012 and 2013 planning cycles. To mitigate these operational limitations, PJM opened a 60-day proposal window for Artificial Island on April 29, 2013, which closed on June 28, 2013. PJM posted its Problem Statement and Requirements Document for the Artificial Island Proposal Window (Problem Statement) on the first day of the proposal window.²⁶ PJM received 26 proposals, submitted by seven entities, which PJM posted on its website after the window had closed.²⁷ PJM staff then evaluated each of the proposals, in consultation with the TEAC, and made certain modifications to the proposals.²⁸ PJM

²³ See Order on July 2013 Compliance Filing, 147 FERC ¶ 61,128 at P 25 (citing July 2013 Compliance Filing at 3-4).

²⁴ *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,030, at P 5 (2014).

²⁵ Order on July 2013 Compliance Filing, 147 FERC ¶ 61,128 at P 30.

²⁶ See Complaint, Attachment 5.

²⁷ Complaint, Attachment 6; see also PJM, *Artificial Island Proposal Window*, <http://www.pjm.com/planning/rtep-development/expansion-plan-process/ferc-order-1000/rtep-proposal-windows/closed-artificial-island-proposals.aspx> (last visited Apr. 22, 2015).

²⁸ Complaint, Attachment 7 at 40-42. Specifically, PJM explains that the modifications included: (1) the construction of a static VAR compensator (SVC), as proposed by some bidders, at a substation where it would be built and owned by PSEG, in order to improve stability performance; (2) the relocation of the connection point within a substation in two proposals to eliminate a critical fault; (3) the removal of breaker schemes proposed in some proposals in favor of a ring bus modification proposed by one of the bidders; and (4) the removal of certain transmission lines from several proposals because, with the construction of a SVC, the additional facilities were not needed to pass applicable reliability criteria testing and therefore their removal would reduce costs and improve constructability. March 11 Answer at 12-13.

next presented its evaluation at the TEAC meeting on May 19, 2014, listing modifications made to each proposal, and providing a list of the four proposals still under consideration.²⁹ After receiving feedback from the TEAC, PJM informed stakeholders on June 16, 2014, that it planned to recommend one of PSEG's proposals, as modified by PJM, to the PJM Board for approval.³⁰

10. PJM then allowed interested parties to submit comments to the PJM Board on PJM's proposed recommendation before it presented the recommendation to the PJM Board at its July 22, 2014 meeting.³¹ In their comments, Pepco Holdings, Inc. (PHI) and Exelon Corporation (Exelon) jointly expressed concern that PJM "did not follow the process that was laid out in [its] October 25, 2012 and July 22, 2013 Order No[.] 1000 FERC Compliance filings," and that the "alternate processes" used were "not transparent to participants and could be problematic in the future if they are not corrected."³² Northeast Transmission Development, LLC (LS Power)³³ also submitted comments, criticizing PJM's recommendation, challenging the cost estimate PJM used in evaluating its project, and proposing a construction cost cap.³⁴

11. At its July 22, 2014 meeting, the PJM Board decided to defer action on PJM's recommendation. The PJM Board sent a letter to the TEAC explaining that LS Power "modified its proposal to place a fixed cap on the costs associated with the project," and inviting the other "finalist" project sponsors to "supplement their proposals in light of LS Power's proposal."³⁵ The PJM Board also sought additional information regarding the Dominion Resources Services, Inc. (Dominion) proposal based on comments received

²⁹ Complaint, Attachment 7 at 181, 197.

³⁰ Complaint, Attachment 10 at 30-36.

³¹ *Id.* at 4, 36; Complaint, Attachment 7 at 198.

³² Complaint, Attachment 11 at 1.

³³ Northeast Transmission Development, LLC, is an affiliate of LSP Transmission Holdings, LLC. Because PJM refers to the project proposals of this entity as LS Power projects, we refer to Northeast Transmission Development, LLC, herein as LS Power for consistency and clarity.

³⁴ Complaint, Attachment 12.

³⁵ Complaint, Attachment 13 at 1; *see also* Complaint, Attachment 14 at 1-2 (inviting finalist project sponsors "to submit final terms of project costs").

from Dominion.³⁶ At this point, PJM identified five finalist projects, including the Dominion project, rather than only the four that PJM had presented at the May 19, 2014 TEAC meeting.³⁷

12. On August 29, 2014, PJM sent a letter requesting that the Commission's Alternative Dispute Resolution office appoint an administrative law judge to assist in PJM's discussions with the finalist project sponsors.³⁸ After the project sponsors supplemented their proposals on September 12, 2014, in response to PJM's letter, three of the five proposals included newly-added cost caps.³⁹ In October and November 2014, an administrative law judge, "his law clerk[,] and PJM met with each of the four bidders" and "allowed each bidder an equal opportunity to present the merits of their respective proposal."⁴⁰ Since then, PJM has conducted further evaluation of the finalist proposals, and the project sponsors have made additional presentations on their proposals.⁴¹ Although PJM stated in November 2014 that it would make its recommendation to the TEAC in January 2015,⁴² PJM cancelled that meeting and continued to conduct further evaluations.⁴³ PJM announced at the April 28, 2015 Artificial Island TEAC meeting⁴⁴ that it would recommend at the May 20, 2015 PJM Board meeting that LS Power's

³⁶ Complaint, Attachment 14 at 1 n.1.

³⁷ *Id.* at 1.

³⁸ Complaint, Attachment 15 at 1.

³⁹ Complaint, Attachment 16 at 22.

⁴⁰ *Artificial Island Order 1000 Transmission Solicitation*, 149 FERC ¶ 63,017, at PP 14, 17 (2014) (explaining that the administrative law judge "advised the parties in the notice that his role was non-decisional and limited to ensuring due process" and that "he would observe and comment upon the fairness of PJM's fact gathering process and . . . would not attempt to influence PJM's recommendations or decisions in any way").

⁴¹ Complaint, Attachment 16 at 8-12; Complaint, Attachment 17 at 42-46; *see also* PJM, Transmission Expansion Advisory Committee, Meeting Materials (Dec. 9, 2014), <http://www.pjm.com/committees-and-groups/committees/teac.aspx>.

⁴² Complaint, Attachment 18 at 63.

⁴³ Complaint, Attachment 19 at 102.

⁴⁴ PJM scheduled this TEAC meeting specifically to discuss the Artificial Island Project recommendation.

project be included in the RTEP, with LS Power chosen to build the transmission line and PSEG and PHI chosen to perform associated work. Stakeholders had the opportunity to provide comments for the PJM Board on PJM's recommendation by the May 29, 2015 deadline.⁴⁵

II. The Complaint

13. PSEG asserts that PJM did not follow its Order No. 1000 rules for transmission solicitations when conducting the Artificial Island competitive transmission solicitation by: (1) unilaterally modifying each proposal; and (2) allowing LS Power to modify its proposal over a year after the proposal window closed.⁴⁶ While PSEG recognizes that the tariff rules governing PJM's Order No. 1000-compliant regional transmission planning process have an effective date of January 1, 2014, and PJM opened the Artificial Island proposal window in April 2013, PSEG argues that PJM committed to applying the Order No. 1000 solicitation process to Artificial Island. Therefore, PSEG argues, when the Commission accepted PJM's representations in approving its proposal, PJM committed to the Order No. 1000 solicitation process for Artificial Island.⁴⁷

14. PSEG notes that PJM stated that Artificial Island was "a good opportunity to implement a proposal window consistent with the revisions proposed in its" Order No. 1000 compliance filings⁴⁸ and described the Artificial Island solicitation as a "pilot" for the new Order No. 1000 rules.⁴⁹ PSEG also points to PJM's statement that it "commits herein that depending upon the stage of the planning cycle, PJM will implement whatever provisions proposed herein can be implemented without restarting a planning cycle" and that proposals received prior to the effective date of the new rules "will be evaluated under the new rules to the extent feasible."⁵⁰ According to PSEG, the Commission

⁴⁵ PJM, Transmission Expansion Advisory Committee, Meeting Materials, Artificial Island Recommendations (Apr. 28, 2015), <http://www.pjm.com/committees-and-groups/committees/teac.aspx>.

⁴⁶ Complaint at 20.

⁴⁷ *Id.* at 26-27.

⁴⁸ *Id.* at 11, 27 (quoting July 2013 Compliance Filing at 3-4 and citing PJM, Filing, Docket No. ER15-639-000, at 7 (filed Dec. 16, 2014)).

⁴⁹ *Id.* at 27 (citing PJM, Motion for Leave to Answer and Answer, Docket No. ER13-198-002, at 17 (Sept. 5, 2013)).

⁵⁰ *Id.* at 11, 27 (quoting October 2012 Compliance Filing at 81-82 and citing July 2013 Compliance Filing at 3).

accepted PJM's representations in approving PJM's transition proposal, such that PJM is bound to them.⁵¹ PSEG argues that this is particularly important here because PJM had no pre-existing tariff rules to follow regarding competitive transmission solicitations and a regional transmission organization (RTO) such as PJM is "not authorized to implement whatever policies or procedures that it chooses as long as they are not specifically prohibited."⁵² PSEG also contends that when PJM reevaluated the proposed projects in 2014, the formal tariff process that became effective on January 1, 2014, was triggered.⁵³

15. With regard to the specific tariff violations, first, PSEG argues that PJM exceeded its authority by unilaterally modifying the project proposals. PSEG quotes from PJM's Order No. 1000 compliance filings, in which PJM described its role in the competitive solicitation process as to "evaluate and compare all proposals" and then "select the projects . . . for PJM Board review and approval."⁵⁴ Additionally, PJM stated that its proposal was "designed to give both incumbent transmission owners and nonincumbent developers an opportunity to propose new and innovative projects"; PJM explained that the solicitation process was "not designed, nor intended, to award bid-based contracts based on PJM-proposed solutions."⁵⁵ PSEG explains that there is only one exception to PJM's limited role, which is where no proposal is the more efficient or cost-effective solution and there is insufficient time for PJM to repost the solicitation.⁵⁶

16. PSEG also quotes from section 1.5.8(d) of Schedule 6 of the Operating Agreement, which provides that PJM "shall *review* all proposals submitted during a proposal window and *present* to the [TEAC] the proposals that merit further

⁵¹ *Id.* at 27 (citing *Linden VFT, LLC v. N.Y. Indep. Sys. Operator, Inc.*, 141 FERC ¶ 61,008, at P 28 (2012), *order on clarification*, 142 FERC ¶ 61,001 (2013); *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076, at P 149 (2007), *order on reh'g*, 120 FERC ¶ 61,271 (2007); *Cal. Indep. Sys. Operator Corp.*, 106 FERC ¶ 61,179, at P 167 (2004), *order on reh'g*, 107 FERC ¶ 61,118 (2004)).

⁵² *Id.* at 28 (quoting *Shetek Wind Inc.*, 138 FERC ¶ 61,250, at P 49 (2012)).

⁵³ *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 65).

⁵⁴ *Id.* at 8 (citing October 2012 Compliance Filing at 54-56, 67-68).

⁵⁵ *Id.* (citing PJM, Motion for Leave to Answer and Answer, Docket No. ER13-198-002, at 9, 13 (Sept. 5, 2013)).

⁵⁶ *Id.* (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(g) (5.0.0)).

consideration for inclusion in the recommended plan.”⁵⁷ Despite these representations by PJM and the language in the Operating Agreement, PSEG argues that, instead of rejecting proposals that did not satisfy the technical criteria identified in the Problem Statement, PJM modified some of the proposals so that they would pass the criteria.⁵⁸ PSEG asserts that PJM also modified all of the proposals to add a SVC, modified most of the transmission line proposals to remove line segments, and made less significant modifications to some of the proposals.⁵⁹ PSEG asserts that, based on its understanding from statements made by PJM staff, PJM is considering taking two important features from one of PSEG’s proposals and adding those features to the remaining proposals to make them more attractive.⁶⁰ If this is true, PSEG argues this is another departure from the rules and a troubling example of PJM taking key aspects of one sponsor’s proposal and appropriating them to other sponsors.

17. According to PSEG, PJM has not explained why it believes it has the right to unilaterally modify the proposals. PSEG notes that section 1.5.8(d) of Schedule 6 of the Operating Agreement states: “Based on review and comment by the [TEAC], the Office of Interconnection may, if necessary conduct further study and evaluation. The Office of Interconnection shall post on the PJM website and present to the [TEAC] the revised enhancements and expansions for review and comment.”⁶¹ PSEG contends that the word “revised” does not give PJM authority to modify proposals, but rather gives PJM the right to consider the views of the TEAC on “the proposals that merit further consideration” and then revise that list in response to concerns of the TEAC.⁶² PSEG argues that, if PJM had the discretion to modify proposals, there would be no point in requiring PJM to “re-evaluate and re-post” the solicitation if none of the proposals is the more efficient or cost-effective solution.⁶³

⁵⁷ *Id.* at 21 (emphasis added by PSEG).

⁵⁸ *Id.* at 14.

⁵⁹ *Id.* (citing Complaint, Attachment 7 at 65-66, 74-75, 83-84, 94-95, 103-104, 114-115, 123-124, 132-133, 142-143, 151-152, 160-161, 169-170).

⁶⁰ *Id.* at 20 (citing Complaint, Attachment 19, at 101-102).

⁶¹ PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(d) (5.0.0).

⁶² Complaint at 22.

⁶³ *Id.* (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(g) (5.0.0)).

18. Second, PSEG asserts that PJM failed to follow its Order No. 1000 process by allowing LS Power to modify its proposal to add a construction cost cap over a year after the proposal window had closed. PSEG points out that section 1.5.8(c)(4) of Schedule 6 of the Operating Agreement provides: “In response to the Office of Interconnection’s request for additional reports or information, the proposing entity (*whether an existing Transmission Owner or Nonincumbent Developer*) may *not* submit a new proposal or modifications to a proposed project once the proposal window is closed.”⁶⁴ Further, PSEG notes that PJM’s Problem Statement also states that “[a]ny proposals received after the close of the proposal *will not be accepted.*”⁶⁵ PSEG quotes PJM compliance filings, in which PJM stated that the reason project sponsors cannot submit “a new project proposal or modifications to a proposed project once the proposal window is closed”⁶⁶ is because that “would provide an unfair advantage to those entities . . . and would chill PJM’s ability to gather information that would enable it to make a better evaluation.”⁶⁷ PSEG points out that PJM emphasized this limitation in its amended compliance filing: “Once the proposal window closes, no additional proposals or amendments to proposals by the proposer may be submitted or considered for inclusion in the recommended plan.”⁶⁸ PSEG notes that the Commission agreed with this limitation in accepting PJM’s proposal.⁶⁹

19. PSEG asks that the Commission grant the complaint and require PJM to follow its rules in the Artificial Island solicitation and in all future solicitations. If PJM does not believe that any of the proposals submitted in response to the Artificial Island solicitation are the more efficient or cost-effective solution, PSEG asks that PJM be required to re-post the solicitation. Although this may delay the process, PSEG asserts that the process

⁶⁴ PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(c)(4) (5.0.0) (emphasis added by PSEG).

⁶⁵ Complaint, Attachment 5 at 4 (emphasis added by PSEG).

⁶⁶ Complaint at 9 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(c)(4) (5.0.0)).

⁶⁷ *Id.* (quoting PJM, Motion for Leave to Answer and Answer, Docket No. ER13-198-000, at 55 (filed Jan. 29, 2013)).

⁶⁸ *Id.* (quoting July 2013 Compliance Filing at 8-9 (footnote omitted)).

⁶⁹ *Id.* (citing Order on October 2012 Compliance Filing, 142 FERC ¶ 61,214 at P 297); *id.* at 23 (citing *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,059, at P 294 (2013); *ISO New England Inc.*, 143 FERC ¶ 61,150, at PP 297, 307-12 (2013), *order on reh’g*, 150 FERC ¶ 61,209 (2015)).

has already been going on for two years, there are no other tariff-based remedies for the violations, and the remedy is non-discriminatory because it does not favor one project sponsor over another.⁷⁰

III. Notice of Filing and Responsive Pleadings

20. Notice of the complaint was published in the *Federal Register*, 80 Fed. Reg. 6508-09, with answers, interventions, and comments due on or before February 18, 2015, which the Commission subsequently extended to March 11, 2015. Timely motions to intervene were filed by: PHI;⁷¹ Exelon; Linden VFT, LLC; LS Power; FirstEnergy Service Company;⁷² Old Dominion Electric Cooperative; American Electric Power Service Corporation (AEP);⁷³ Duke Energy Business Services, LLC;⁷⁴ BHE U.S. Transmission, LLC; Dominion;⁷⁵ Rockland Electric Company; Duke-American

⁷⁰ *Id.* at 28-29.

⁷¹ PHI moved to intervene along with Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company.

⁷² FirstEnergy Service Company moved to intervene on behalf of its affiliates American Transmission Systems, Incorporated; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; West Penn Power Company; The Potomac Edison Company; and Monongahela Power Company.

⁷³ AEP moved to intervene on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, AEP Indiana Michigan Transmission Company, AEP Kentucky Transmission Company, AEP Ohio Transmission Company, AEP West Virginia Transmission Company, and Transource Energy, LLC.

⁷⁴ Duke Energy Business Services, LLC moved to intervene on behalf of its affiliates Duke Energy Ohio, Inc.; Duke Energy Kentucky, Inc.; Duke Energy Indiana, Inc.; Duke Energy Carolinas, LLC; Duke Energy Progress, Inc. and Duke Energy Commercial Asset Management, Inc.; Duke Energy Retail Sales, LLC; Duke Energy Hanging Rock II, LLC; Duke Energy Washington II, LLC; Duke Energy Lee II, LLC; Duke Energy Fayette II, LLC; Duke Energy Beckjord, LLC; Duke Energy Conesville, LLC; Duke Energy Dicks Creek, LLC; Duke Energy Killen, LLC; Duke Energy Miami Fort, LLC; Duke Energy Stuart, LLC; and Duke Energy Zimmer, LLC.

⁷⁵ Dominion moved to intervene on behalf of Dominion High Voltage Mid-Atlantic.

Transmission Company, LLC; PSEG Nuclear LLC; Midcontinent MCN, LLC; NextEra Energy Transmission, LLC (NextEra); ITC Mid-Atlantic Development LLC (ITC); PPL Electric Utilities Corporation; Monitoring Analytics, LLC, acting as the Independent Market Monitor for PJM; Atlantic Grid Holdings LLC (Atlantic Grid). The Maryland Public Service Commission filed a notice of intervention. NextEra, ITC, LS Power,⁷⁶ Atlantic Grid, and AEP filed comments on the complaint.

21. On February 13, 2015, PJM filed a Motion to Dismiss Complaint and Postpone Answer Date (Motion to Dismiss). On February 18, 2015, PSEG filed an Answer to PJM's Motion to Dismiss. On February 24, 2015, the Commission extended the answer date to March 11, 2015. On February 27, 2015, PJM filed a Motion for Reconsideration of Extension Notice and Request for Expedited Action without Awaiting Answers, or in the Alternative, Request for Expedited Rehearing. On March 2, 2015, PSEG filed an Answer to PJM's Motion for Reconsideration. That same day, PJM filed a Motion for Leave to Answer and Answer to PSEG's response to PJM's Motion to Dismiss (March 2 Answer). On March 4, 2015, the Commission issued an Order Denying Motion to Dismiss Complaint, Request to Postpone Answer Date, and Motion for Reconsideration.⁷⁷

22. On March 11, 2015, as amended on March 12, 2015,⁷⁸ PJM filed an answer to the complaint (March 11 Answer). On March 17, 2015, PSEG filed a Motion for Leave to Answer and Answer to PJM's March 11 Answer. Atlantic Grid also filed an answer to PJM's March 11 Answer.

A. PJM's March 11 Answer to Complaint

23. PJM states that it conducted the Artificial Island solicitation under its pre-Order No. 1000 planning process consistent with its statement that those needs "identified prior to [January 1, 2014] will be evaluated under PJM's [pre-Order No. 1000] regional

⁷⁶ LS Power's comments were filed as a Response in Support of PJM's Motion to Dismiss, but were in the nature of comments on PSEG's complaint, so will be treated as such.

⁷⁷ *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,173 (2015). To the extent not already addressed in the cited order, we consider below arguments made in the Motion to Dismiss and answers thereto.

⁷⁸ PJM submitted a correction to a footnote in its answer, which appeared garbled as a result of a computer glitch.

transmission planning process.”⁷⁹ PJM explains that the needs giving rise to the Artificial Island solicitation were identified prior to the planning cycle that commenced in January 2014, and the proposal window was opened eight months prior to the January 1, 2014 effective date.⁸⁰ While PJM admits that it committed to use its new Order No. 1000 rules on “projects, including proposals already received, under consideration in the planning cycle in which the Commission’s compliance order issues . . . *to the extent feasible*,” including in the Artificial Island solicitation process, PJM argues it is not bound to every particular aspect of that process before its effective date.⁸¹ PJM asserts that applying the pre-Order No. 1000 process is also consistent with the Commission’s statement in Order No. 1000 that the “requirements of this Final Rule will apply to the evaluation or reevaluation of any transmission facility that occurs *after* the effective date of the public utility transmission provider’s filing adopting the transmission planning and cost allocation reforms of the *pro forma* OATT required by this Final Rule.”⁸² PJM emphasizes that the Commission gave transmission providers discretion “to determine at what point a previously approved project is no longer subject to reevaluation and, as a result whether it is subject to the requirements of” Order No. 1000.⁸³ The Commission then accepted PJM’s transition proposal.⁸⁴

⁷⁹ Motion to Dismiss at 5 (quoting July 2013 Compliance Filing at 3); March 2 Answer at 3; March 11 Answer at 2, 20, 21-22. PJM also argues that the filed rate doctrine precludes binding PJM to a tariff that was not in effect at the time of the solicitation. Motion to Dismiss at 1, 5 (citing 18 C.F.R. § 35.2(f) (2014); *Haviland Holdings, Inc. v. Pub. Serv. Co. of N.M.*, 107 FERC ¶ 61,034, at P 17 (2004); *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577-78 (1981)); March 11 Answer at 2, 21.

⁸⁰ March 11 Answer at 20.

⁸¹ Motion to Dismiss at 6 (emphasis added by PJM); March 2 Answer at 3; March 11 Answer at 2, 22 (citing Order on July 2013 Compliance Filing, 147 FERC ¶ 61,128 at P 30).

⁸² Motion to Dismiss at 5 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 65) (emphasis added by PJM); March 11 Answer at 21.

⁸³ March 2 Answer at 5 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 65 and citing Order on October 2012 Compliance Filing, 142 FERC ¶ 61,214 at P 34; Order on July 2013 Compliance Filing, 147 FERC ¶ 61,128 at P 22); March 11 Answer at 21.

⁸⁴ March 2 Answer at 6 (citing Order on July 2013 Compliance Filing, 147 FERC ¶ 61,128 at P 25).

24. PJM rebuts PSEG's argument that PJM began "reevaluating" the Artificial Island project proposals after January 1, 2014, triggering the Order No. 1000 process.⁸⁵ PJM argues that the "reevaluation" contemplated by the new rules occurs when a facility already included in the RTEP is subsequently restudied to determine if it is still required for reliability, economic, or operational performance needs.⁸⁶ PJM maintains that, because it has at no time approved a project for inclusion in the RTEP to address the needs at Artificial Island, here, it is continuing to consider and evaluate the proposals, not reevaluate them. Thus, PJM contends there cannot be a "reevaluation" as contemplated by the new rules.⁸⁷

25. PJM explains that almost all of the project proposals for Artificial Island could trigger complex state siting processes. It was for this reason, and because PJM knew there would be significant interest from developers, that PJM decided to seek competitive proposals for Artificial Island before making its decision, even though it was not required to do so. PJM states that it also thought using the Order No. 1000 solicitation process to the extent feasible for Artificial Island would serve as an appropriate "trial run."⁸⁸ PJM argues that it should not be penalized for making a good faith attempt to try out the complex and sweeping competitive solicitation requirements of Order No. 1000 during a transition period (and an opportunity to learn from a "trial run") before the new tariff rules became effective.⁸⁹

26. While PSEG argues that PJM had no pre-Order No. 1000 process in place, PJM states that it has had a long-standing transmission planning process, which the Commission approved as compliant with Order No. 890.⁹⁰ According to PJM, its pre-Order No. 1000 process contemplated opportunities for stakeholder participation in the

⁸⁵ Motion to Dismiss at 6-7 (citing Complaint at 28); March 11 Answer at 22.

⁸⁶ Motion to Dismiss at 7 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§ 1.5.7(b)(iii), 1.5.8(k) (5.0.0); *PJM Interconnection, L.L.C.*, 141 FERC ¶ 61,177 (2012)); March 11 Answer at 22-23 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.7(c)(iii) (5.0.0)).

⁸⁷ March 11 Answer at 23 (citing July 2013 Compliance Filing at 3).

⁸⁸ *Id.* at 3 nn.7, 12.

⁸⁹ Motion to Dismiss at 8; March 11 Answer at 23-24 & n.67.

⁹⁰ March 2 Answer at 4 (citing *PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,166 (2009) (Order No. 890 Compliance Order); March 11 Answer at 3 (citing Order on October 2012 Compliance Filing, 142 FERC ¶ 61,214 at P 52).

planning process, including opportunities for nonincumbent third-parties to propose and construct transmission facilities to be included in the RTEP.⁹¹ PJM explains that the Commission clarified in *Primary Power, LLC*⁹² that “the PJM Tariff permits PJM to designate” either an incumbent or an “entity other than an incumbent transmission owner” to build a project “included in the RTEP as a baseline reliability project or economic project.”⁹³ PJM states that the Commission directed PJM to “designate projects under the relevant tariff provisions in a not unduly discriminatory manner, whether sponsored by transmission owners or others.”⁹⁴

27. PJM maintains that it is applying the standard discussed in *Primary Power*, meaning that, while using its new proposal window process “to the extent feasible and practicable,” PJM is evaluating the proposals in a nondiscriminatory manner, in accordance with its pre-Order No. 1000 tariff.⁹⁵ According to PJM, none of PSEG’s allegations demonstrate a failure of PJM to seek to “designate projects under the relevant tariff provisions in a not unduly discriminatory manner.”⁹⁶ PJM contends that it has been fair and transparent in conducting the Artificial Island solicitation by providing: (1) timelines for the solicitation; (2) the objectives of its evaluation; (3) a description of its approach to evaluating the proposals; (4) the primary and secondary considerations in the evaluation and the modifications it believed necessary to each proposal to improve performance or reduce cost and improve constructability; (5) the results of its evaluation as it applied to each proposal; and (6) evaluation updates.⁹⁷ PJM notes that it also explained its initial recommendation of the PSEG proposal in detail to the TEAC and

⁹¹ March 11 Answer at 24-25 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§ 1.5.6(a), (e) (5.0.0); *PJM Interconnection, L.L.C.*, 96 FERC ¶ 61,061, at 61,235 (2001), *order on reh’g*, 101 FERC ¶ 61,345, at P 20 (2002), *order on reh’g and compliance*, 105 FERC ¶ 61,123 (2003)).

⁹² 131 FERC ¶ 61,015 (2010), *order on reh’g*, 140 FERC ¶ 61,052 (2012), *appeal dismissed*, 2015 WL 1638541 (D.C. Cir. Apr. 14, 2015).

⁹³ March 2 Answer at 4-5 (quoting *Primary Power*, 131 FERC ¶ 61,015 at P 62); March 11 Answer at 25.

⁹⁴ March 2 Answer at 5 (quoting *Primary Power*, 131 FERC ¶ 61,015 at P 62); March 11 Answer at 4, 25-26.

⁹⁵ March 11 Answer at 4, 26.

⁹⁶ *Id.* at 27 (quoting *Primary Power*, 131 FERC ¶ 61,015 at P 62).

⁹⁷ *Id.* at 26-27 (citing Complaint, Attachments 7, 8, 10).

provided an opportunity for comments.⁹⁸ Although PJM considered the proposals in conjunction with the construction of a SVC at an existing substation, PJM contends that it considered all of the projects in that light; where proposed facility elements were no longer needed when combined with the SVC, PJM states that it eliminated those elements non-discriminatorily from each of the proposals.⁹⁹ In addition, when the PJM Board received LS Power's proposed cost cap, PJM allowed all of the finalists to address their cost commitments, ensuring nondiscriminatory consideration of the proposals.¹⁰⁰ PJM also notes that it sought out on its own initiative an administrative law judge to observe and report on PJM's evaluation process relating to the proposals.¹⁰¹

28. PJM asserts that, even if its Order No. 1000 tariff provisions applied to the Artificial Island solicitation, PSEG has not shown that PJM acted inconsistently with those tariff provisions and has provided no basis for the remedy it seeks.¹⁰² PSEG contends that section 1.5.8(g) prevents PJM from making modifications but requires, instead, that PJM repost solicitations or determine the solution and assign construction to an incumbent.¹⁰³ PJM counters that PSEG's interpretation would result in PJM engaging in interminable, never-ending solicitations until the perfect project was proposed, with the inevitable result that PJM would have to default to assigning many projects to incumbents due to time constraints.¹⁰⁴ This result, PJM contends, is counter to

⁹⁸ *Id.* at 27 (citing Complaint, Attachment 10).

⁹⁹ *Id.* at 27-28.

¹⁰⁰ *Id.* at 27.

¹⁰¹ *Id.* (citing *Artificial Island Order 1000 Transmission Solicitation*, 149 FERC ¶ 63,017 at Findings (G)).

¹⁰² *Id.* at 4.

¹⁰³ *Id.* at 5, 30 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(g) (5.0.0)). Section 1.5.8(g) provides that if PJM “determines that none of the proposed Long-lead Projects received during the Long-lead Project proposal window would be the more efficient or cost-effective solution to resolve a posted violation, or system condition,” PJM “may re-evaluate and re-post on the PJM website the unresolved violations, or system conditions pursuant to Section 1.5.8(b), provided such re-evaluation and re-posting would not affect” PJM’s ability “to timely address the identified reliability need.”

¹⁰⁴ *Id.* (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(g) (5.0.0)).

Order No. 1000. PJM also asserts that this result could chill participation by nonincumbent developers, or otherwise result in PJM “signaling” what is needed through the evaluation and discussion process with the TEAC, reposting, and ultimately receiving the identical “perfect” proposal from all the bidders, contrary to the “sponsorship model” PJM adopted.¹⁰⁵

29. PJM argues that a more reasonable interpretation of PJM’s Order No. 1000 solicitation process is that, in evaluating potential solutions, PJM must evaluate all of the project proposals to determine the “more efficient or cost-effective” solution. To the extent proposals need to be refined, in combination with other proposals, PJM contends it should be permitted to address these issues without having to repost the solicitation, or to assign a project to an incumbent.¹⁰⁶ PJM explains that its Order No. 890-compliant process involved combining various proposed ideas to develop the “more efficient or cost-effective” solution, and the Order No. 1000 tariff was not designed to preclude PJM from continuing to review and refine combinations of proposals in this way.¹⁰⁷ PJM explains that PSEG’s interpretation would turn the Order No. 1000 solicitation process into a strict bidding process of the type that would govern homogenous products such as the purchase of paper clips.¹⁰⁸ PJM points to section 1.5.8(e), which provides that PJM shall evaluate the proposed projects “individually or in combination with other” proposals. PJM interprets this provision to mean that PJM is permitted to consider elements of one proposal “in combination” with other separately submitted proposals.¹⁰⁹ While PSEG contends that PJM “added” a SVC to each proposal, PJM counters that, rather, it combined a bidder-proposed SVC with other proposals but placed it in an existing PSEG substation.¹¹⁰ PJM admits that it did make other minor modifications but argues that they simply do not rise to the level of being a fundamental change to the

¹⁰⁵ *Id.* at 35-36 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 47).

¹⁰⁶ *Id.* at 6, 31.

¹⁰⁷ *Id.* at 6, 29-30.

¹⁰⁸ *Id.* at 6 n.13.

¹⁰⁹ *Id.* at 6-7, 32 (citing *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,117, at P 49 (2015)). PJM explains that, for example, in the case of the optical ground wire that PSEG proposed, if PJM selects that solution, PSEG would still build that element of the selected project, regardless of other selected proposals.

¹¹⁰ *Id.* at 33 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(l) (5.0.0)).

proposals.¹¹¹ PJM points out that, without its combinations and modifications, it would be left with accepting a proposal four times as expensive as the combinations it is considering.

30. With regard to LS Power adding a cost cap to its proposal, PJM explains that this should be viewed not as a “modification” but as a confirmation and clarification by LS Power of the cost component of its proposal, which is permitted under PJM’s OATT.¹¹² PJM states that, as part of its evaluation of proposed projects, it necessarily must evaluate cost estimates; otherwise, project sponsors could submit any costs, be selected, and then be paid for any cost increases. Therefore, PJM attempts to place project costs under a common framework. PJM explains that, because LS Power disagreed with PJM’s cost estimate, it offered a cost cap.¹¹³ PJM states that it could have just revised its estimate of LS Power’s costs in response to LS Power’s comments without giving rise to a claim that PJM allowed a project sponsor to “modify” its proposal, but PJM thought it benefited ratepayers to accept the certainty of the cost cap. PJM also notes that PSEG cannot claim that it was prejudiced because the PJM Board allowed all finalist project sponsors the same, nondiscriminatory opportunity to clarify their costs.¹¹⁴ PJM also notes that PSEG raised no concerns about the modifications that PJM made to the PSEG proposal when PJM was recommending that proposal; rather, only when the PJM Board decided to defer consideration did PSEG complain that the process was flawed.¹¹⁵

31. PJM requests that, if the Commission determines that PJM’s Order No. 1000 process applies, it affirm that: (1) PJM may combine elements of proposed projects in determining the more efficient or cost-effective solution; (2) PJM has the flexibility to make adjustments to a proposed project that do not change the fundamental nature of the project to best address system needs, costs, and reliability; and (3) PJM’s selection of a modified or combined project for inclusion in the RTEP is consistent with the competitive solicitation tariff.¹¹⁶ PJM also requests that the Commission use its discretion if it finds a tariff violation in crafting remedies to direct future changes to

¹¹¹ *Id.* at 7, 34.

¹¹² *Id.* at 8, 37-38 (citing LS Power Comments at 9-13).

¹¹³ *Id.* at 38 (citing LS Power Comments at 12-13).

¹¹⁴ *Id.* at 8.

¹¹⁵ *Id.* at 34.

¹¹⁶ *Id.* at 36-37.

PJM's process and to instruct PJM how to proceed in the future rather than adopting PSEG's proposal to repost the Artificial Island solicitation.¹¹⁷

32. PJM also requests that the Commission defer action on PSEG's complaint until after PJM completes the Artificial Island solicitation.¹¹⁸ According to PJM, a deferral is appropriate because the Commission would clearly benefit from having all of the solicitation facts and outcomes available before addressing issues with the Artificial Island solicitation process and project selection. Moreover, PJM contends that a deferral would allow the Commission to decide whether to defer to the judgment of the PJM Board in making the difficult decision of which proposal to choose.¹¹⁹ PJM also asserts that deferral would be beneficial for the Commission in addressing an appropriate remedy, if necessary. PJM states that it expects to complete the solicitation process sometime this spring and will supplement its answer as the process develops.¹²⁰

B. Comments and Protests

33. NextEra agrees with PSEG that PJM's competitive solicitation process can only succeed if solicitation rules are clear and PJM follows them, consistent with the

¹¹⁷ *Id.* at 39-40 (citing *Consol. Edison Co. of N.Y. v. FERC*, 510 F.3d 333, 339 (D.C. Cir. 2007); *Town of Concord v. FERC*, 955 F.2d 67, 73-76 (D.C. Cir. 1992); *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,113, at PP 45, 92-95 (2006), *order on reh'g*, 118 FERC ¶ 61,212, at PP 87, 95 (2007); *N.Y. Indep. Sys. Operator, Inc.*, 110 FERC ¶ 61,244, at PP 63-64 (2005), *order on reh'g*, 113 FERC ¶ 61,155 (2005)).

¹¹⁸ *Id.* at 41 (citing *Wis. Pub. Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,277, at P 25, *order on clarification*, 115 FERC ¶ 61,185 (2006); *High Prairie Pipeline, LLC v. Enbridge Energy, Ltd. P'ship*, 149 FERC ¶ 61,004, at P 22 (2014); *N. Ind. Pub. Serv. Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,256, at P 22 (2013); *Hot Springs Power Co. v. Entergy Ark., Inc.*, 119 FERC ¶ 61,277, at P 15 (2007)).

¹¹⁹ *Id.* at 42 (citing *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,163 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001); Order on July 2013 Compliance Filing, 147 FERC ¶ 61,128 at PP 228, 253).

¹²⁰ *Id.* at 43.

experience of other regions.¹²¹ NextEra contends that, even if the Commission finds the Order No. 1000 rules do not govern, PJM's actions are still outside of its tariff because the pre-Order No. 1000 tariff contained no authorization for competitive solicitations.¹²² NextEra asserts that PJM must have concluded that none of the projects, as proposed, met the needs identified, but, rather than reposting the solicitation, PJM modified the proposals.¹²³ According to NextEra, stepping outside of the tariff provisions to unilaterally implement significant modifications to the proposed projects undermines the credibility of the project selection process.¹²⁴ NextEra asks the Commission to find that PJM's actions show that none of the proposals met the needs identified, such that PJM must repost the Problem Statement and open a new proposal window.¹²⁵

34. ITC supports using this proceeding to ensure that the right rules are applied within PJM's Order No. 1000 competitive solicitation process going forward. On the one hand, ITC acknowledges the merit in PJM making minimal modifications to project proposals to avoid disqualifying a project based on an easily-remedied, non-substantive error. On the other hand, ITC cautions against permitting PJM to make major material changes to project proposals after the proposal window has closed, which can lead to the unfairness and lack of finality that PJM identified in its compliance filings.¹²⁶ Therefore, ITC urges the Commission to require PJM to define situations in which it may make changes to proposals, and to establish a clear threshold for materiality of such permitted changes. Similarly, ITC asks that the Commission require PJM to provide clearer delineation of when the failure of a set of proposals to provide a more efficient or cost-effective solution triggers the requirement in the Operating Agreement, Schedule 6, section 1.5.8(g), to repost a solicitation or to assign a project to an incumbent.¹²⁷ ITC also comments that, if the Commission permits PJM to allow project sponsors subsequently to modify their bids

¹²¹ NextEra Comments at 2-3 (citing *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,237, *order on reh'g*, 149 FERC ¶ 61,178 (2014); *Sw. Power Pool, Inc.*, 150 FERC ¶ 61,047 (2015)).

¹²² *Id.* at 4 n.11.

¹²³ *Id.* at 3-4.

¹²⁴ *Id.* at 4.

¹²⁵ *Id.* at 5 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(g) (5.0.0)).

¹²⁶ ITC Comments at 2-4 (citing Complaint at 9-10).

¹²⁷ *Id.* at 4-5 (making specific recommendations).

or otherwise to repost a solicitation only to a subset of bidders, as the PJM Board did in response to LS Power's letter, the Commission should require PJM clearly to specify when such a process will be used, and how PJM will determine the subset of project sponsors.¹²⁸ ITC further asks the Commission to consider requiring PJM to establish criteria governing how cost-control bid elements will be evaluated.¹²⁹

35. In supporting PJM's Motion to Dismiss, LS Power contends that PJM did not improperly modify technical aspects of LS Power's proposal. First, LS Power explains that, although PSEG complains that PJM added a SVC to all project proposals, at the February 12, 2015 TEAC meeting, PJM updated its technical analysis to show that a SVC is not needed.¹³⁰ Even if it is needed, LS Power argues there is no tariff violation because section 1.5.8(e) of the Operating Agreement, Schedule 6, clearly provides that a project can be "in combination with other" projects.¹³¹ Moreover, LS Power explains that PJM looks at the "extent to which a . . . [p]roject would address and solve the posted violation, system condition, or economic constraint," meaning PJM has latitude to address transmission needs in the manner most appropriate for ratepayers.¹³²

36. LS Power also asserts that the PJM Board did not violate PJM's tariff provisions by allowing finalist project sponsors to supplement financial aspects of their proposals. LS Power explains that PJM raised LS Power's cost estimate by nearly \$100 million and lowered PSEG's cost estimate by more than \$85 million.¹³³ LS Power contends that it raised its concerns with PJM, but they were not addressed; therefore, LS Power then presented its concerns to the PJM Board, offering a cost cap.¹³⁴ LS Power contends that it did not modify its project, but rather responded to unsupported PJM staff revisions to the cost estimates.¹³⁵ According to LS Power, the PJM Board then prudently remanded

¹²⁸ *Id.* at 5.

¹²⁹ *Id.* at 6 (providing suggested modifications to PJM's rules).

¹³⁰ LS Power Comments at 7-8, Ex. 1.

¹³¹ *Id.* at 8 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(e) (5.0.0)).

¹³² *Id.* at 8-9.

¹³³ *Id.* at 10 (citing Complaint, Attachment 6).

¹³⁴ *Id.* at 10-11, Ex. 7, Ex. 8 at 1-2, Ex. 9.

¹³⁵ *Id.* at 12.

the recommendation back to PJM with a requirement that all finalists be permitted to supplement their proposals with cost containment provisions.¹³⁶ LS Power argues that, although there was no tariff violation, the fact that all finalists were treated identically and ratepayers are the beneficiaries weighs in favor of a waiver of any violation.¹³⁷ LS Power objects to reposting the solicitation because a significant amount of proprietary material has been shared with other participants, and the existing shortlisted bidders would be prejudiced, as any entity could simply propose a version of each of the finalist proposals.¹³⁸

37. LS Power points out that, in PSEG's July 22, 2014 letter to the PJM Board regarding PJM's recommendation to implement one of PSEG's project proposals, PSEG commended PJM for its thoroughness in conducting its first Commission Order No. 1000 solicitation process and reassured the PJM Board that "PJM selected the right project and the right company to build it."¹³⁹ LS Power avers that, although PSEG was aware of the modifications PJM made to its proposal, PSEG did not complain about PJM's alleged violation of its tariff when PSEG's proposal was being recommended to the PJM Board.¹⁴⁰

38. Atlantic Grid shares PSEG's concerns with PJM's actions, arguing that it was inappropriate for PJM to make substantial modifications to some project proposals so that they could qualify for PJM's short list, and that it was inappropriate to fail to give adequate consideration to important issues of grid resiliency and common mode failures in the context of this very large nuclear complex.¹⁴¹

39. AEP states that PJM must be held to its commitment to use its new Order No. 1000 provisions for the Artificial Island proposal window.¹⁴² According to AEP, this is not PJM's first competitive transmission process. AEP states that after the Commission's 2010 order in *Primary Power*, PJM began explicitly considering proposals by

¹³⁶ *Id.* at 13.

¹³⁷ *Id.* at 14 n.27.

¹³⁸ *Id.* at 14 n.29.

¹³⁹ *Id.* at 4, Ex. 2.

¹⁴⁰ *Id.* at 4 n.7.

¹⁴¹ Atlantic Grid Comments at 2.

¹⁴² AEP Comments at 4, Ex. A, Ex. B.

nonincumbent developers as part of its RTEP process.¹⁴³ AEP explains that, since then, PJM has been using quasi-competitive processes for developing and designating projects such as the Potomac Appalachian Transmission Highline and Mid-Atlantic Power Pathway projects; the process used in Artificial Island is just an extension of those prior processes.¹⁴⁴

40. AEP contends that the Commission should allow the Artificial Island solicitation process to continue without interference because PJM can still make a decision consistent with its Order No. 1000 tariff,¹⁴⁵ and to interrupt the process would unnecessarily jeopardize the progress that has already been made.¹⁴⁶ AEP explains that the proposals submitted by one of its affiliates met PJM's original Problem Statement, such that, even if PJM acted inconsistent with its Order No. 1000 process, it should not be required to repost the solicitation or assign a project to an incumbent developer.¹⁴⁷ Moreover, AEP asserts that such a result would be disastrous to developers who have spent significant time and incurred substantial expenses in crafting their proposals and providing PJM the additional information it requested.¹⁴⁸ AEP agrees that PJM took actions that may have been inconsistent with its Order No. 1000 process;¹⁴⁹ however, AEP argues that PSEG's complaint is not a platform for revising PJM's Order No. 1000 provisions, which comprise a well thought-out approach to Order No. 1000 and under which PJM has successfully opened six additional proposal windows. Rather, AEP urges PJM to make improvements through the collaborative lessons learned process it is conducting with its stakeholders.¹⁵⁰

¹⁴³ *Id.* at 5 n.10 (citing *Primary Power*, 131 FERC ¶ 61,015 at P 63).

¹⁴⁴ *Id.* at 5 (citing PJM, Transmission Expansion Advisory Committee, Reliability Analysis Update and 2010 RTEP Sensitivity Analysis Assumptions 30-35 (Apr. 14, 2010), <http://www.pjm.com/committees-and-groups/committees/teac.aspx>).

¹⁴⁵ *Id.* at 3 (citing LS Power Comments at 3).

¹⁴⁶ *Id.* at 4.

¹⁴⁷ *Id.* at 5-12, Ex. C.

¹⁴⁸ *Id.* at 12.

¹⁴⁹ *Id.* at 9-10 (citing Complaint, Attachment 12 and LS Power Comments at 11).

¹⁵⁰ *Id.* at 12.

C. Answers

41. PSEG reiterates that PJM committed to apply its Order No. 1000 rules to the Artificial Island solicitation because there were no other solicitation rules to apply.¹⁵¹ PSEG points out the one exception—if applying the Order No. 1000 rules is not “feasible”—but states that PJM does not claim that there is anything infeasible about applying the new rules to the Artificial Island solicitation.¹⁵² PSEG contends that PJM cannot identify any pre-existing solicitation rules because there were none before Order No. 1000.¹⁵³ Although PJM asserts that it followed its process under Order No. 890, PSEG counters that PJM committed to follow its Order No. 1000 rules and that is the issue here.¹⁵⁴ With regard to PJM’s arguments about *Primary Power*, PSEG agrees that the Commission required PJM to meet the “nondiscrimination” standard because that is the statutory standard; however, PJM did not even follow that standard.¹⁵⁵ Specifically, PSEG argues that PJM allowed a bidder to modify its proposal nearly a year after the proposal window closed, rescued proposals that did not pass the criteria set forth in the Problem Statement, and appropriated design elements from one sponsor and gave them to another.¹⁵⁶ This lack of clear rules, PSEG asserts, fosters discrimination.¹⁵⁷

42. With regard to PJM’s “combination” theory, PSEG explains that the relevant tariff language in section 1.5.8(e) does not actually state that PJM has the authority to combine various proposals in a single project window; rather, it states that, in considering any proposal, PJM may evaluate that proposal “individually or in combination with” other

¹⁵¹ PSEG Answer at 4 (citing October 2012 Compliance Filing at 81-82; July 2013 Compliance Filing at 3-4; PJM, Filing, Docket No. ER15-639-000, at 2, 7 (filed Dec. 16, 2014); Complaint, Attachment 13 at 2; Complaint, Attachment 15 at 1).

¹⁵² *Id.* (citing March 11 Answer at 18-28).

¹⁵³ *Id.* at 5 (citing March 11 Answer at 24-28).

¹⁵⁴ *Id.* (citing March 11 Answer at 3; PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§ 1.5.6(a), 1.5.6(e) (5.0.0)).

¹⁵⁵ *Id.* (citing *Primary Power*, 131 FERC ¶ 61,015 at P 62; and PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.7(c)(iii) (5.0.0)).

¹⁵⁶ *Id.* at 5-6.

¹⁵⁷ *Id.* at 6 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 3).

“Projects.”¹⁵⁸ PSEG interprets this language to mean that PJM should not consider proposals in a vacuum but instead by reference to other approved projects. Even if PJM’s interpretation were correct, PSEG responds that PJM did not combine Artificial Island proposals but rather redesigned them all and then considered them individually.¹⁵⁹ In fact, PSEG states that PJM described them as its own “additions,” “modifications,” and “enhancements.”¹⁶⁰ If PJM wants the broad discretion it claims, PSEG contends it must propose to amend its tariff, provide criteria for exercising that new discretion, and justify any such tariff changes.¹⁶¹

43. In response to PJM’s contention that it can make changes that are not fundamental, PSEG argues that there is no tariff language suggesting that PJM has the authority to make “non-fundamental” modifications.¹⁶² PSEG contends that, even if there was some discretion reserved to PJM, there are no discernible limits without PJM requesting a tariff amendment, providing clear criteria for exercising that authority, and justifying its proposed approach.¹⁶³

44. PSEG further rejects PJM’s assertion that LS Power merely clarified its proposal by adding a cost cap because the PJM Board itself called the change a modification at the time.¹⁶⁴ While PJM states that LS Power had a good reason to offer a cost cap (i.e., its disagreement with PJM’s cost estimate), PSEG counters that every bidder in a competitive solicitation has an incentive to modify its proposal after seeing the other

¹⁵⁸ *Id.* at 7 (quoting PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(e) (5.0.0)).

¹⁵⁹ *Id.* at 2, 7-8 (citing Merriam-Webster’s Collegiate Dictionary (11th Ed. 2013), available at <http://www.merriam-webster.com/dictionary/combine>; Complaint, Attachment 11, at 2).

¹⁶⁰ *Id.* at 8 (citing Complaint, Attachment 7 at 40-41, 74, 83, 94; Complaint, Attachment 10 at 17; PJM, Transmission Expansion Advisory Committee, Reliability Analysis Update 67-70 (Feb. 12, 2015), <http://www.pjm.com/committees-and-groups/committees/teac.aspx>).

¹⁶¹ *Id.* at 2-3, 8-9 (citing *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,117 at P 49).

¹⁶² *Id.* at 9-10.

¹⁶³ *Id.* at 10 (citing March 11 Answer at 31-32).

¹⁶⁴ *Id.* at 3, 12 (citing March 11 Answer at 8; Complaint, Attachment 13, at 1).

proposals.¹⁶⁵ With regard to PJM's argument that it remedied any violation by inviting all of the finalist project sponsors to submit cost containment provisions, PSEG argues this compounded the violation; PJM should have rejected the late modification because accepting it allowed one sponsor to dictate the issue on which a modification was permitted and discriminated against non-finalists.¹⁶⁶

45. Among other things, Atlantic Grid disagrees that PJM is not subject to the rules of Order No. 1000. Even if PJM is correct, Atlantic Grid contends that the manner in which PJM evaluated the Artificial Island proposals was not transparent; by any measure, it was unfair and unduly discriminatory to modify a failed proposal to meet PJM's criteria and then reject proposals that qualified without modifications.¹⁶⁷

IV. Procedural Matters

46. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁶⁸ the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

47. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁶⁹ prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept the answers filed by PJM, PSEG, and Atlantic Grid because they have provided information that assisted us in our decision-making process.

V. Discussion

48. We deny the complaint. We find that PSEG has not met its burden under FPA section 206 to show that PJM's actions were unjust, unreasonable, unduly discriminatory or preferential.¹⁷⁰ PSEG alleges that PJM was bound by, but failed to comply with, the OATT and Operating Agreement provisions governing its Order No. 1000 transmission planning process when conducting the Artificial Island solicitation. As discussed more

¹⁶⁵ *Id.* at 12-13 (citing March 11 Answer at 37-39).

¹⁶⁶ *Id.* at 13 (citing March 11 Answer at 27).

¹⁶⁷ Atlantic Grid Answer at 3-5.

¹⁶⁸ 18 C.F.R. § 385.214 (2014).

¹⁶⁹ 18 C.F.R. § 385.213(a)(2).

¹⁷⁰ 16 U.S.C. § 824e(b) (2012).

fully below, we disagree with PSEG that PJM was bound to use its Order No. 1000 procedures for the Artificial Island solicitation and further find that PJM complied with its pre-Order No. 1000 tariff rules in conducting that solicitation.

A. Applicable Tariff Provisions

49. We find that PJM was not bound to its Order No. 1000 tariff provisions prior to the January 1, 2014 effective date of those provisions. In Order No. 1000, the Commission stated that the new requirements would apply to “those transmission facilities that are subject to evaluation, or reevaluation as the case may be, within a public utility transmission provider’s local or regional transmission planning process after the effective date of the public utility transmission provider’s filing”¹⁷¹ PJM proposed, and the Commission accepted, a January 1, 2014 effective date for PJM’s Order No. 1000 rules.¹⁷² Further, the Commission accepted PJM’s explanation that “solutions for reliability violations and economic constraints identified prior to [January 1, 2014] will be evaluated under PJM’s current regional transmission planning process.”¹⁷³

50. While PJM stated that it would implement the new solicitation process “to the extent feasible and practicable” before January 1, 2014,¹⁷⁴ this statement did not bind PJM to the Order No. 1000 process.¹⁷⁵ It is undisputed that PJM opened the Artificial

¹⁷¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 65.

¹⁷² July 2013 Compliance Filing at 3; Order on July 2013 Compliance Filing, 147 FERC ¶ 61,128 at PP 22, 30.

¹⁷³ July 2013 Compliance Filing at 3; *see also* Order on October 2012 Compliance Filing, 142 FERC ¶ 61,214 at PP 32, 34; Order on July 2013 Compliance Filing, 147 FERC ¶ 61,128 at P 25.

¹⁷⁴ July 2013 Compliance Filing at 3.

¹⁷⁵ Although PSEG cites three Commission orders to support its assertion that PJM is bound to its representations, all three are distinguishable. *See Linden VFT*, 141 FERC ¶ 61,008 at PP 8-9, 27, 32 (finding that the New York Independent System Operator, Inc. applied its tariff inconsistent with the explicit grandfathering of a project in the Commission order accepting NYISO’s revised tariff provisions); *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076 at P 149 (disagreeing that the California Independent System Operator Corp. (CAISO) failed to satisfy its promise to address seams issues in its filing, but not addressing whether CAISO was bound by that promise); *Cal. Indep. Sys. Operator Corp.*, 106 FERC ¶ 61,179 at P 167 (requiring CAISO to “honor its commitment,” made in its answer to the intervenors’ comments, “to post an updated, conformed tariff on its website”).

Island proposal window on April 29, 2013, eight months prior to the effective date of the Order No. 1000 tariff provisions.

51. We disagree with PSEG's interpretation that when PJM reevaluated the proposed projects in 2014, the formal tariff process that became effective on January 1, 2014, was triggered.¹⁷⁶ In Order No. 1000, the Commission recognized that the new rule was "likely to fall in the middle of ongoing planning cycles," so it required each region "to determine at what point a previously approved project is no longer subject to reevaluation and, as a result, whether it is subject to the requirements of" Order No. 1000.¹⁷⁷ PJM explained in its compliance filing that it would use its pre-Order No. 1000 planning process to find solutions for needs identified prior to January 1, 2014, importing the solicitation proposal window process to the extent feasible and practicable.¹⁷⁸ We agree with PJM's interpretation of reevaluation as described by the Commission—such "reevaluation" occurs when PJM restudies a facility already included in the RTEP to determine if it is still needed.¹⁷⁹ Thus, PJM's continuing evaluation of the Artificial Island project proposals after January 1, 2014 was part of PJM's original or initial evaluation.

B. Artificial Island Solicitation

52. We find that PJM complied with its pre-Order No. 1000 process in conducting the Artificial Island solicitation. PJM followed its commitment to evaluate Artificial Island proposals using its then-effective transmission planning process and to incorporate its new Order No. 1000 proposal window into that process "to the extent feasible and practicable."

1. PJM's Pre-Order No. 1000 Transmission Planning Process

53. We disagree with PSEG and NextEra that PJM had no pre-existing rules to follow to conduct a competitive solicitation.¹⁸⁰ The Commission's orders approving PJM's

¹⁷⁶ Complaint at 28 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 65).

¹⁷⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 65.

¹⁷⁸ July 2013 Compliance Filing at 3; Order on July 2013 Compliance Filing, 147 FERC ¶ 61,128 at P 25.

¹⁷⁹ March 11 Answer at 22-24.

¹⁸⁰ See Complaint at 28; NextEra Comments at 4 n.11.

pre-Order No. 1000 transmission planning process as compliant with Order No. 890 demonstrate that PJM's long-standing process provided for consideration and selection of competing proposals. Specifically, PJM's pre-Order No. 1000 tariff provided for PJM to complete studies "on the transmission system's physical, economic and/or operational capability performance, as well as potential expansions and enhancements needed to mitigate those limitations," and to "prepare[] a recommended enhancement and expansion plan;" then "any transmission owner or other participant in the TEAC [could] offer an alternative."¹⁸¹ PJM noted that participation in the TEAC is open to "transmission customers, PJM members, entities proposing to provide transmission facilities to be integrated into the PJM region, regulatory agencies, and other interested entities and persons."¹⁸² PJM explained that it would "consider whether to adopt a proposed alternative based upon its review of the relative costs and benefits, the ability of the alternative to supply the required level of transmission service, and its impact on the reliability of the transmission facilities."¹⁸³ The Commission found that Schedule 6 of the Operating Agreement and PJM Manual 14B clearly described the process PJM would use "to select the preferred solution from competing alternatives such that all types of resources . . . are considered on a comparable basis."¹⁸⁴

54. In addition, since the Commission's orders approving PJM's Order No. 890 compliance filings, the Commission has clarified PJM's pre-Order No. 1000 process. First, in *Primary Power*, the Commission held that PJM's tariff provisions do not preclude PJM from designating nonincumbent transmission owners to build projects included in the RTEP.¹⁸⁵ The Commission explained that "PJM must designate projects under the relevant tariff provisions in a not unduly discriminatory manner, whether sponsored by transmission owners or others."¹⁸⁶ Second, on rehearing, the Commission

¹⁸¹ Order No. 890 Compliance Order, 127 FERC ¶ 61,166 at PP 15-16 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§ 1.5.4(d), 1.5.7(g) (2.1.0); PJM Manual 14B at 19); *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§ 1.5.6(a), (e) (2.1.0) (providing for meaningful stakeholder participation in the planning process).

¹⁸² Order No. 890 Compliance Order, 127 FERC ¶ 61,166 at P 16 n.12 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(b) (1.0.0)).

¹⁸³ *Id.* P 16.

¹⁸⁴ *Id.* P 17.

¹⁸⁵ *Primary Power*, 131 FERC ¶ 61,015 at PP 2, 63 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§ 1.5.7(c)(iii), 1.5.6 (f) (2.1.0)).

¹⁸⁶ *Id.* P 62.

further stated that PJM’s transmission planning process was “designed to provide an opportunity for a wide variety of participants and different business models to propose projects”¹⁸⁷ Therefore, the Commission’s orders in *Primary Power* demonstrate that PJM’s pre-Order No. 1000 transmission planning process provided for both incumbent and nonincumbent transmission providers to propose projects to resolve system needs, as well as be designated to build these projects. Finally, as noted by AEP in its comments,¹⁸⁸ since issuance of *Primary Power* PJM has used competitive processes for developing and designating projects such as the Potomac Appalachian Transmission Highline and Mid-Atlantic Power Pathway projects; the process used in Artificial Island is an extension of those prior processes.

55. While PSEG quotes Commission precedent that an RTO “is not authorized to implement whatever policies or procedures that it chooses as long as they are not specifically prohibited,”¹⁸⁹ as discussed above, PJM is authorized to accept project proposals from incumbents and nonincumbents alike. Moreover, in the cited case, the Commission found instances where the procedure the RTO used was not only absent from the tariff, but “inconsistent with the existing Tariff.”¹⁹⁰ Implementing PJM’s pre-Order No. 1000 process is certainly not inconsistent with the PJM tariff provisions in effect at the time.¹⁹¹

2. PJM’s Application of the Pre-Order No. 1000 Process to Artificial Island

56. PJM proposed to use its pre-Order No. 1000 process for the Artificial Island project, as described above, and to implement the new proposal window process “to the

¹⁸⁷ *Primary Power*, 140 FERC ¶ 61,052 at P 35.

¹⁸⁸ AEP Comments at 5 (citing PJM, Transmission Expansion Advisory Committee, Reliability Analysis Update and 2010 RTEP Sensitivity Analysis Assumptions 30-35 (Apr. 14, 2010), <http://www.pjm.com/committees-and-groups/committees/teac.aspx>).

¹⁸⁹ Complaint at 28 (quoting *Shetek Wind*, 138 FERC ¶ 61,250 at P 49).

¹⁹⁰ *Shetek Wind*, 138 FERC ¶ 61,250 at P 48.

¹⁹¹ Order No. 890 Compliance Order, 127 FERC ¶ 61,166 at P 17 (finding that Schedule 6 provided a process whereby PJM would select a “preferred solution from competing alternatives”); *Primary Power*, 140 FERC ¶ 61,015 at P 62 (providing that PJM’s pre-Order No. 1000 tariff provisions permitted PJM to select a nonincumbent to construct an RTEP project).

extent feasible and practicable.”¹⁹² In other words, PJM essentially used its pre-existing process that permitted incumbent and nonincumbent transmission providers to propose projects, and PJM to evaluate those projects; PJM implemented “to the extent feasible and practicable” its new pre-qualification process and proposal window to provide project developers a timeline for submitting proposals and to allow PJM to organize all of the proposals to resolve the Artificial Island operational limitations. We find that PJM’s application of its pre-Order No. 1000 transmission planning process was just and reasonable, and not unduly discriminatory or preferential, as explained below.

57. PJM made numerous presentations to project developers and other interested parties starting in March 2013 about the Artificial Island solicitation before the proposal window opened on April 29, 2013.¹⁹³ PJM then provided a detailed Problem Statement on the first day of the proposal window,¹⁹⁴ and later explained its evaluation considerations in reviewing each of the proposals.¹⁹⁵ PJM has updated the project sponsors every step of the way,¹⁹⁶ including explaining its initial recommendation of the PSEG proposal and providing an opportunity for comments on that recommendation.¹⁹⁷ In addition, nothing in PJM’s pre-Order No. 1000 process prohibits the actions PJM took with regard to the Artificial Island project proposals.¹⁹⁸ Moreover, PJM considered the project proposals in a not unduly discriminatory manner because it evaluated each

¹⁹² July 2013 Compliance Filing at 3.

¹⁹³ See Complaint, Attachment 3 (March 7, 2013 presentation describing problems at Artificial Island, the pre-qualification process, and the proposal window timeline); Complaint, Attachment 4 (April 11, 2013 presentation providing additional detail on the Artificial Island proposal window).

¹⁹⁴ See Complaint, Attachment 5 (Problem Statement).

¹⁹⁵ See Complaint, Attachment 7 (May 19, 2014 presentation detailing each of the project proposals, PJM’s evaluation considerations, and PJM’s project modifications).

¹⁹⁶ See, e.g., Complaint, Attachment 8 (December 13, 2013 presentation updating the TEAC on its progress in the Artificial Island transmission planning process).

¹⁹⁷ See Complaint, Attachment 10 (June 16, 2014 presentation on PJM’s recommendation and timeline going forward); Complaint, Attachment 11 (July 14, 2014 letter from PHI and Exelon regarding PJM’s recommendation); Complaint, Attachment 12 (July 8, 2014 letter from LS Power regarding PJM’s recommendation).

¹⁹⁸ See PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§ 1.5.3(a)-(b), 1.5.6 (2.1.0); March 11 Answer at 6.

proposal in conjunction with the construction of a SVC at an existing substation, only removing proposed facility elements from projects if they were no longer needed when combined with the SVC.¹⁹⁹ When PJM received the letter from LS Power proposing a construction cost cap, it acted in a not unduly discriminatory manner by inviting all of the finalist project sponsors to make further submissions to confirm their costs as well.²⁰⁰ There is no evidence in the record that PJM's conducting of the Artificial Island solicitation process was inconsistent with its pre-Order No. 1000 procedures.

The Commission orders:

The complaint is hereby denied, as discussed in the body of this order.

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

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁹⁹ March 11 Answer at 27-28.

²⁰⁰ Complaint, Attachment 13 (July 23, 2014 letter from the PJM Board to TEAC members regarding LS Power's letter); Complaint, Attachment 14 (August 12, 2014 letter from PJM to the finalist project sponsors regarding LS Power's cost cap).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Public Service Electric and Gas Company

Docket No. EL15-40-000

v.

PJM Interconnection, L.L.C.

(Issued June 16, 2015)

LaFLEUR, Commissioner, *concurring*:

I support today's order, which denies a complaint by Public Service Electric and Gas Company against PJM Interconnection, L.L.C. (PJM) concerning PJM's Artificial Island competitive solicitation. The order correctly concludes that PJM was not required to follow its Order No. 1000 procedures when conducting the Artificial Island solicitation, and that PJM complied with its pre-Order No. 1000 tariff rules in conducting that solicitation.

I write separately because, though the Commission finds that the Order No. 1000 competitive solicitation procedures did not govern the Artificial Island solicitation, this case presents an opportunity to consider more generally the implementation of Order No. 1000's competitive solicitation procedures in PJM and other regions throughout the country.

One of Order No. 1000's key goals was to harness the benefits of competition in transmission development for customers, and it is important that, as regions implement their Order No. 1000 procedures, we do not lose sight of that goal: facilitating the identification, development, and ultimately the construction of more efficient or cost-effective transmission projects that are better for customers. Order No. 1000's competitive solicitation processes – and in some cases, the mere prospect of competitive solicitation processes – have already led to a host of innovative rate structures and cost containment proposals that, if properly designed, could provide significant benefits for customers. I believe that these efforts should be encouraged, both by the Commission and in the regional transmission planning processes, to foster a dynamic environment for new transmission development.

As demonstrated by the broad diversity in how regions around the country conduct their Order No. 1000 transmission planning, Order No. 1000 provides significant flexibility for regional transmission planning processes (provided that those processes comply with the rule's requirements), and therefore does not mandate any particular planning structure, let alone a rigid planning structure that would inhibit innovative transmission proposals. Accordingly, as regions around the country gain experience with competitive processes, I encourage them to learn from their and other regions' experiences to ensure that their procedures evolve as appropriate to help realize the full benefits of competitive transmission development for customers.

Accordingly, I respectfully concur.

Cheryl A. LaFleur