

171 FERC ¶ 61,212
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

PJM Interconnection, L.L.C.

Docket No. EL19-91-000

ORDER ON SECTION 206 INVESTIGATION AND DIRECTING COMPLIANCE

(Issued June 18, 2020)

1. On October 17, 2019, pursuant to section 206 of the Federal Power Act (FPA)¹ and Rule 209(a) of the Commission's Rules of Practice and Procedure,² the Commission instituted proceedings to consider how the exemption for immediate need reliability projects that the Commission permitted to Order No. 1000's³ requirement to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission developer with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation is being implemented.⁴ In this order, we find that PJM Interconnection, L.L.C. (PJM) is implementing the immediate need reliability project exemption in a manner that is

¹ 16 U.S.C. § 824e (2018).

² 18 C.F.R. § 385.209(a) (2019).

³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (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 *ISO New England Inc.*, 169 FERC ¶ 61,054 (2019) (October 2019 Order). The October 2019 Order instituted proceedings against ISO New England Inc (ISO-NE), PJM, and Southwest Power Pool, Inc. (SPP). ISO-NE's and SPP's implementation of the exemption for immediate need reliability projects are addressed in Docket Nos. EL19-90-000 and EL19-92-000, respectively.

inconsistent with certain criteria that apply to the immediate need reliability project exemption, as required under section 1.5.8(m)(1) of Schedule 6 of the PJM Amended and Restated Operating Agreement (Operating Agreement).⁵ Because we find that PJM is violating its Operating Agreement in this manner, we also find that PJM's implementation of the exemption for immediate need reliability projects is unjust and unreasonable. As discussed below, we direct PJM to implement certain criteria more fully and transparently on a prospective basis. We direct PJM to submit a compliance filing that includes revisions to its Operating Agreement, as discussed in the body of the order, within 60 days of the date of this order. We also find that the criteria for the immediate need reliability project exemption adopted by the Commission appropriately maintain the balance between reliability and competition and ensure that immediate need reliability projects continue to be designated as an exception that should only be used in limited circumstances and, thus, will not impose additional conditions or restrictions on the immediate need reliability project exemption.

I. Background

A. Immediate Need Reliability Project Exemption

2. In Order No. 1000, the Commission required that public utility transmission providers, among other things: (1) “eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal⁶ for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation”;⁷ (2) “establish . . . procedures to ensure that all projects are eligible to be considered for selection in the regional transmission plan for purposes of cost allocation . . . [that] could be, for example, a non-discriminatory competitive bidding process . . . [and] could also allow the sponsor of a transmission project selected in a regional transmission plan for purposes of cost allocation to use the regional cost allocation method associated with the transmission

⁵ PJM, Intra-PJM Tariffs, Operating Agreement Schedule 6, § 1.5.8(m)(1).

⁶ The phrase “a federal right of first refusal” refers only to rights of first refusal that are created by provisions in Commission-jurisdictional tariffs or agreements. Order No. 1000-A, 139 FERC ¶ 61,132 at P 415.

⁷ “Transmission facilities selected in a regional transmission plan for purposes of cost allocation are transmission facilities that have been selected pursuant to a transmission planning region’s Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation because they are more efficient or cost-effective solutions to regional transmission needs.” Order No. 1000, 136 FERC ¶ 61,051 at P 63.

project”;⁸ and (3) provide that “a nonincumbent transmission developer must have the same eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for purposes of cost allocation.”⁹

3. In its Order No. 1000 compliance filing, PJM proposed to create an exemption, where a federal right of first refusal may be retained for transmission facilities that are needed in a short time frame to address reliability needs (i.e., immediate need reliability projects), where PJM determines that there is not sufficient time to hold a proposal window.¹⁰ The Commission partially accepted this proposal,¹¹ explaining that, to avoid delays in the development of projects needed to resolve a time-sensitive reliability criteria violation, it was just and reasonable for PJM to create a class of transmission projects that are exempt from competition.¹² The Commission also stated that “such an exception should only be used in certain limited circumstances.”¹³ To that end, the Commission established five criteria for the exemption, which it believed would place reasonable bounds on PJM’s discretion to determine whether there is sufficient time to permit

⁸ *Id.* P 336.

⁹ *Id.* P 332. The Commission also stated that “the cost of a transmission facility that is not selected in a regional transmission plan for purposes of cost allocation, whether proposed by an incumbent or by a nonincumbent transmission provider, may not be recovered through a transmission planning region’s cost allocation method or methods.” *Id.*

¹⁰ PJM, Intra-PJM Tariffs, Operating Agreement Schedule 6, § 1.5.8(m)(1). PJM considers the following factors in determining the infeasibility of a proposal window: (i) nature of the reliability criteria violation; (ii) nature and type of potential solution required; and (iii) projected construction time for a potential solution to the type of reliability criteria violation to be addressed. *Id.*

¹¹ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at PP 247-251 (2013) (PJM First Compliance Order), *order on reh’g and compliance*, 147 FERC ¶ 61,128, at PP 164-167, 194-199 (2014), *order on reh’g and compliance*, 150 FERC ¶ 61,038, at P 74, *order on reh’g and compliance*, 151 FERC ¶ 61,250, at P 25 (2015).

¹² PJM First Compliance Order, 142 FERC ¶ 61,214 at P 247.

¹³ *See id.* P 248.

competition and, as a result, would ensure that the exemption is used only in limited circumstances.¹⁴ Those five criteria are:

- i. The project must be needed in three years or less to solve reliability criteria violations (Criterion One);¹⁵
 - ii. The Regional Transmission Organization (RTO) must separately identify and then post an explanation of the reliability violations and system conditions in advance for which there is a time-sensitive need, with sufficient detail of the need and time-sensitivity (Criterion Two);
 - iii. The RTO must provide to stakeholders and post on its website a full and supported written description explaining: (1) the decision to designate an incumbent transmission owner as the entity responsible for construction and ownership of the project, including an explanation of other transmission or non-transmission options that the region considered; and (2) the circumstances that generated the immediate reliability need and why that need was not identified earlier (Criterion Three);
 - iv. Stakeholders must be permitted time to provide comments in response to the project description, and such comments must be made publicly available (Criterion Four); and
 - v. The RTO must maintain and post a list of prior year designations of all immediate need reliability projects for which the incumbent transmission owner was designated as the entity responsible for construction and ownership of the project. The list must include the project's need-by date and the date the incumbent transmission owner actually energized the project. The RTO must also file the list with the Commission as an informational filing in January of each calendar year covering the designations of the prior calendar year (Criterion Five).
4. PJM implemented these criteria in section 1.5.8(m)(1) of Schedule 6 of the Operating Agreement for those immediate reliability needs for which PJM determines a proposal window may not be feasible. Specifically, PJM identifies and posts such

¹⁴ *Id.*

¹⁵ The Commission has stated that it is proper to use the date a reliability need must be addressed rather than the expected in-service date of the project chosen to address that need to calculate whether a transmission project qualifies as an immediate need reliability project. *See PJM Interconnection, L.L.C.*, 156 FERC ¶ 61,030, at PP 22-24 (2016).

immediate need reliability criteria violations and system conditions for review and comment by the Transmission Expansion Advisory Committee (TEAC) and stakeholders. Following review and comment, PJM develops immediate need reliability projects for those immediate reliability needs PJM determines a proposal window is infeasible and posts those projects on the PJM website for review and comment, including an explanation of PJM's decision to designate an incumbent transmission owner to construct the project rather than conduct a full or shortened proposal window. Following additional review and comment, PJM conducts further study and evaluation, if necessary, and posts a revised recommended plan for review and comment by the TEAC. The recommended immediate need reliability projects must be approved by the PJM Board of Managers (PJM Board) for inclusion in PJM's Regional Transmission Expansion Plan (RTEP).¹⁶

5. PJM follows a different process if it determines that there is sufficient time to accept proposals in a shortened proposal window. In that case, PJM posts the violations and system conditions that could be addressed by immediate need reliability project proposals, including an explanation of the time-sensitive need, and provides notice to stakeholders of a shortened proposal window. PJM selects the more efficient or cost-effective proposal by considering the extent to which the proposal would address and solve the posted violations or system conditions, as well as other factors such as cost-effectiveness, the ability of the entity to timely complete the project, and project development feasibility in light of the required need. After PJM Board approval of the selected proposal for inclusion in the RTEP, PJM notifies the entities that have been designated to construct the immediate need reliability projects.¹⁷

B. Order Instituting Section 206 Proceedings

6. In the October 2019 Order, the Commission stated that, based on initial analysis, it was concerned that PJM may be implementing the exemption in a manner that is inconsistent with the Commission direction, and therefore may be unjust and unreasonable, unduly preferential and discriminatory.¹⁸ The Commission therefore directed PJM to respond to questions outlined in the October 2019 Order to: (1) demonstrate how it is complying with the immediate need reliability project criteria; (2) demonstrate that the provisions in its tariff, as implemented, containing certain exemptions to the requirements of Order No. 1000 for immediate need reliability projects remain just and reasonable; and (3) consider additional conditions or restrictions

¹⁶ PJM, Intra-PJM Tariffs, Operating Agreement Schedule 6, § 1.5.8(m)(1).

¹⁷ PJM, Intra-PJM Tariffs, Operating Agreement Schedule 6, § 1.5.8(m)(2).

¹⁸ October 2019 Order, 169 FERC ¶ 61,054 at P 1.

on the use of the exemption for immediate need reliability projects to appropriately balance the need to promote competition for transmission development and avoid delays that could endanger reliability.¹⁹

II. Notice of Section 206 Investigation and Responsive Pleadings

7. Notice of the institution of the instant section 206 proceeding and the refund effective date was published in the *Federal Register*, 84 Fed. Reg. 57,726 (Oct. 28, 2019), with interventions due within 21 days of publication of notice in the *Federal Register*. RTO responses were due 60 days from the publication of notice, and comments on the RTO responses were due 30 days after the due date of the RTO response.

8. On December 27, 2019, PJM filed its response to the October 17, 2019 Order (PJM Response). On February 26, 2020, PJM filed reply comments (PJM Reply Comments). On May 6, 2020, PJM filed a second set of reply comments (PJM Second Reply Comments).

9. Notices of intervention were filed by: Arkansas Public Service Commission; Illinois Commerce Commission, Louisiana Public Service Commission; Maryland Public Service Commission; Mississippi Public Service Commission and Mississippi Public Utilities Staff; New Jersey Board of Public Utilities (NJBPU); and Pennsylvania Public Utility Commission.

10. Timely motions to intervene were filed by: American Electric Power Service Corporation (AEP); American Municipal Power, Inc. (AMP); Avangrid Networks, Inc.; Calpine Corporation; Developers Advocating Transmission Advancements (DATA);²⁰ Delaware Municipal Electric Corporation, Inc.; Dominion Energy Services, Inc.; Duke Energy Corporation; East Kentucky Power Cooperative, Inc.; Edison Electric Institute (EEI); FirstEnergy Service Company; LSP Transmission Holdings II, LLC (LS Power); Mid-Kansas Electric Company, Inc.; Monitoring Analytics, LLC (Monitoring Analytics);²¹ National Grid USA; National Rural Electric Cooperative Association;

¹⁹ *Id.* PP 1, 4, 16.

²⁰ DATA is an ad hoc coalition of transmission owning affiliates of National Grid; PSEG Companies; Ameren Services Co.; and ITC Holdings Corp.

²¹ Monitoring Analytics is acting in its capacity as the Independent Market Monitor for PJM.

New York Transco, LLC; New York Transmission Owners;²² NextEra Energy Transmission, LLC; North Carolina Electric Membership Corporation; NRG Power Marketing LLC; Old Dominion Electric Cooperative (ODEC); PJM Industrial Customer Coalition; PPL Electric Utilities Corporation; Public Citizen, Inc.; Public Service Electric and Gas Company; Southern Maryland Electric Cooperative, Inc.; Sunflower Electric Power Corporation; and Xcel Energy Services Inc.

11. Motions to intervene out-of-time were filed by: Anbaric Development Partners, LLC (Anbaric); Exelon Corporation (Exelon); GridLiance East LLC (GridLiance); New Jersey Division of Rate Counsel (New Jersey Rate Counsel); Office of the People's Counsel for the District of Columbia (DC People's Counsel); and The Dayton Power and Light Company (Dayton).

12. AEP; AMP; DATA; Exelon; EEI; Industrial Energy Consumers of America; LS Power; NJBPU; and ODEC filed initial comments. AEP; Exelon; Indicated PJM Transmission Owners;²³ LS Power, Monitoring Analytics; and NJPBU filed reply comments.

III. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant the late-filed motions to intervene by Anbaric;

²² New York Transmission Owners include Central Hudson Gas & Elec. Corp.; Consolidated Edison Co. of New York, Inc.; New York Power Authority; Long Island Lighting Company; Long Island Power Authority; Niagara Mohawk Power Corp.; New York State Electric & Gas Corp.; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corp.

²³ Indicated PJM Transmission Owners include Dayton; Duke Energy Corporation on behalf of its affiliates Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., and Duke Energy Business Services LLC; East Kentucky Power Cooperative, Inc.; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; Monongahela Power Company; The Potomac Edison Company; West Penn Power Company and American Transmission Systems, Incorporated (together, FirstEnergy); PPL Electric Utilities Corporation; and Virginia Electric and Power Company.

Exelon, GridLiance; New Jersey Rate Counsel; DC People's Counsel; and Dayton, given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Substantive Matters

15. Based on the PJM Response and parties' comments, we find that PJM is compliant with Criterion One and Criterion Five. However, we find sufficient evidence in the record to conclude that PJM does not comply with Criterion Two, Criterion Three, and Criterion Four of the immediate need reliability project exemption. We, thus, direct PJM to fully comply with these criteria to provide additional transparency on a prospective basis and to submit a compliance filing, within 60 days of the date of this order, that includes revisions to its Operating Agreement.

16. We further find that the criteria for the immediate need reliability exemption adopted by the Commission appropriately maintain the balance between reliability and competition and ensure that immediate need reliability projects continue to be designated as an exception that should only be used in limited circumstances. Thus, we will not impose additional conditions or restrictions on the use of the immediate need reliability project exemption and are not requiring PJM to include additional conditions or restrictions, either those proposed in the October 2019 Order or those proposed by commenters, on the use of the exemption for immediate need reliability projects.

1. PJM's Compliance with and Implementation of the Immediate Need Reliability Project Exemption

a. Overview of the PJM Response and Comments

17. PJM states that the immediate need reliability project exemption remains an important component of PJM's RTEP process, arguing that given changing load patterns, generator deactivation requests, and system topology, it is inevitable that reliability criteria violations will arise in three years or less as the result of unanticipated system conditions that were not known or knowable in earlier planning cycles and cannot be timely resolved if subject to the competitive proposal window process. PJM claims that it has approached compliance with Order No. 1000 by advancing transparency and competition while at the same time ensuring that: (1) it maintains the reliability of the transmission system even in the face of unforeseen system changes; and (2) the transmission owners will always be able to satisfy their reliability and service obligations.²⁴ PJM states that there is no evidence in the record to refute the fact that the immediate need reliability project exemption is needed for those instances (due to conditions that are often beyond PJM's control) when a time-sensitive reliability need

²⁴ PJM Reply Comments at 3.

emerges as a result of new information provided to PJM for which it would be impractical and potentially imprudent to hold a proposal window.²⁵

18. PJM states that it complies with all of the requirements of the immediate need reliability project exemption.²⁶ PJM explains that during the period 2015 through 2018, out of 694 baseline upgrades approved by the PJM Board for inclusion in the RTEP, 237 were identified as immediate need reliability projects. PJM states that the October 2019 Order noted a significantly different number of immediate need reliability projects among ISO-NE, SPP, and PJM, which can be explained by the relative size of the RTOs and also the different ways the RTOs categorize and report immediate need reliability projects to the Commission. PJM states that it improved its annual reporting methodology beginning with the 2019 annual informational filing, in which PJM reported only transmission projects that qualify for the immediate need reliability project exemption.²⁷ More specifically, PJM states that it no longer reports baseline upgrades that also qualify for a separate exemption from PJM's competitive proposal window process, as explained below. Further, PJM aggregates baseline upgrades into their respective projects in the PJM Response, so that the total number of immediate need reliability projects during the period 2015 through 2018 is reduced to 63. PJM states that it provided additional granularity in its informational filings for transparency, but this level of information can create an erroneous impression that PJM had far more immediate need reliability projects than was the case.²⁸

19. PJM states that it continues to improve implementation of the immediate need reliability project exemption, noting that it has been working with transmission owners and other stakeholders to ensure that the exemption is properly construed and limited in its application. PJM states that it has improved the modeling and testing regarding project reinforcements and upgrades planned on the system; worked with the transmission owners to improve the modeling submitted for the baseline upgrades and Supplemental Projects²⁹ and to improve their submission of system information;

²⁵ PJM Second Reply Comments at 4-5.

²⁶ PJM Response at 2-5, 9-17, 61-95.

²⁷ *Id.* at 2-5.

²⁸ *Id.*

²⁹ A Supplemental Project is defined as a transmission expansion or enhancement that is not required for compliance with the following PJM criteria: system reliability, operational performance or economic criteria, pursuant to a determination by PJM, and is not a state public policy project pursuant to section 1.5.9(a)(ii) of Schedule 6 of the PJM

improved internal processes to evaluate whether a violation first identified in three years or less should be classified as an immediate-need or could be included in the five-year case; and applied more structure to the analysis process by taking a more holistic view of the violations identified. PJM states that, as a result, the number of immediate need reliability projects has decreased, pointing out that for 2019, PJM reported only eight immediate need reliability projects consisting of eleven baseline upgrades that were exempted from PJM's competitive proposal window process.³⁰ PJM commits to ensuring that all system topology changes known to the transmission owners are submitted to PJM for inclusion in the five-year models and states that it will examine each proposed immediate need reliability project to determine whether it qualifies for the exemption, or whether it could be included in the five-year RTEP planning process.³¹

20. Exelon states that PJM's immediate need reliability project exemption remains just and reasonable, without modification. Furthermore, Exelon explains that the exemption balances competition with the need to address reliability issues in a timely manner. Any additional conditions or restrictions on the use of the immediate need reliability project exemption, Exelon explains, would either undermine the effectiveness of the exemption or fail to meaningfully increase opportunities for nonincumbent transmission development.³² Similarly, DATA asserts that PJM implements the immediate need reliability project exemption in a just and reasonable manner and is not unduly discriminatory.³³ AEP states that PJM's process for identifying immediate need reliability projects is independent and transparent and PJM's implementation is fair, as stakeholders are permitted to comment.³⁴ EEI and AEP state that PJM demonstrates that the need for the exemption is balanced with the need to maintain reliability and the goals of Order No. 1000. Moreover, EEI and AEP argue the percentage of immediate need reliability projects indicate that the exemption is used in a limited manner.³⁵ EEI states

Operating Agreement. PJM, Intra-PJM Tariffs, Operating Agreement, Definitions S-T.

³⁰ PJM Reply Comments at 3-4.

³¹ *Id.* at 5-6.

³² Exelon Initial Comments at 1-2.

³³ DATA Initial Comments at 1.

³⁴ AEP Initial Comments at 5-6.

³⁵ EEI Initial Comments at 6, AEP Initial Comments at 10-11.

that the RTOs make a concerted effort to maintain the reliability of its transmission system, as outlined in their tariffs and practice manuals.³⁶

21. DATA also asserts that, because need-by date assessments are based on publicly available, objective criteria that are largely codified in Commission-jurisdictional agreements, they are not susceptible to gaming of the immediate need reliability project exemption to remove certain transmission projects from the solicitation process.³⁷

22. Both AMP and ODEC affirm support for the immediate need reliability project exemption while suggesting the further improvements may be necessary to increase transparency and reduce the total number of transmission projects that are categorized as immediate need.³⁸

23. Conversely, NJBPU asserts that PJM's Response to the Commission's questions does not sufficiently support its assertion that the implementation of the immediate need reliability project exemption is just and reasonable, which signals that the exemption is not being used as intended.³⁹ NJBPU further requests that the Commission affirm its initial findings in the October 2019 Order and convene a technical conference to determine whether the Commission should continue to allow other exemptions from competition (i.e., Lower Voltage Threshold Exemption, Substation Equipment Exemption, and Form 715 Exemption).⁴⁰

24. LS Power states that PJM's implementation of the immediate need reliability project exemption is not just and reasonable and should be removed from the Operating Agreement. According to LS Power, the PJM Response sufficiently demonstrates

³⁶ EEI Initial Comments at 11-12.

³⁷ DATA Comments at 9.

³⁸ AMP Initial Comments at 2-3; ODEC Initial Comments at 6, 8.

³⁹ NJBPU Initial Comments at 4.

⁴⁰ *Id.* at 8, 10; PJM Response 3-4, 7. The Lower Voltage Threshold Exemption, effective August 26, 2016, is for reliability violations on transmission facilities operating below 200 kV. The Substation Equipment Exemption, effective July 18, 2017, is for thermal reliability violations identified on existing transmission substation equipment that are resolved with an upgrade to existing transmission substation facilities. The Form No. 715 Exemption, effective January 18, 2018 through January 23, 2020, was for transmission needs driven solely by individual transmission owner Form No. 715 local planning criteria. PJM Response at 3-4.

the exemption is no longer just and reasonable⁴¹ LS Power argues that PJM has demonstrated that it can operate its transmission system without immediate need reliability projects and is using the exemption to reduce competition. LS Power clarifies that PJM would not need the exemption if it improved its long-term transmission planning.⁴²

25. In their respective replies, PJM and Indicated PJM Transmission Owners disagree with LS Power's assertion, arguing that eliminating the immediate need reliability project exemption is inconsistent with Order Nos. 1000 and 890⁴³ and would be expensive and ineffective in improving PJM's long-term transmission planning process.⁴⁴ Moreover, elimination of the immediate need reliability project exemption, Indicated PJM Transmission Owners argue, would impair PJM's transmission planning process, system safety, and reliability. In addition, in the PJM Second Reply Comments, PJM states that LS Power's suggestion that PJM focus more on long-term transmission planning, as required by Order No. 1000, is ill placed. PJM argues that its long-term transmission planning process is based on current information and assumptions that do not always come true—e.g., load growth that does not come to fruition—and thus, there is no need to move forward with those long-term transmission projects. In addition, PJM states that immediate need reliability projects largely are a function of new information that the RTO did not previously know, and as a result, PJM will typically have a need for immediate need reliability projects.⁴⁵

26. After PJM provided its initial response to the Commission order, NJBPU notes that PJM did not demonstrate that the RTO was implementing the immediate need reliability project exemption correctly. PJM addresses NJBPU's call for the Commission to narrow the immediate need reliability project exemption by stating that it is working to "narrow the application of the exemption by improving the efficacy of the five-year model and thus ensuring that it is only utilized for projects that are truly needed on

⁴¹ LS Power Initial Comments at 1-2.

⁴² *Id.* at 5.

⁴³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (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).

⁴⁴ Indicated PJM Transmission Owners Reply Comments at 2-3.

⁴⁵ PJM Second Reply Comments at 1-6.

an immediate basis [and] the NJBPU's proposed changes to the exemption are not appropriate at this time." NJBPU answers that PJM's disclosure that it is working to

improve its application of the exemption indicates that PJM is not currently implementing the exemption correctly in a limited and just and reasonable manner. Thus, NJBPU argues the Commission has the authority to set a new rate.⁴⁶

b. Criterion One: The project must be needed in three years or less to solve reliability criteria violations.

i. PJM Response

27. PJM states that it determines which projects qualify as immediate need reliability projects through its standard RTEP planning process, which is based on a 24-month cycle and includes two 18-month overlapping cycles. PJM explains it uses the overlapping cycles to identify transmission projects that need to be implemented relatively quickly (i.e., between one and five years). PJM explains that parameters, such as the start and scope of the study, data, and assumptions, are vetted with stakeholders. PJM states that, after it identifies reliability violations, including those of an immediate need nature, PJM develops solutions to the reliability violations according to the process detailed in Schedule 6 of the Operating Agreement.⁴⁷

28. PJM Manual 14B details the development and identification of solutions to reliability violations. PJM conducts reliability planning using North American Electric Reliability Corporation, PJM, and local planning criteria over a 15-year horizon. PJM assesses baseline reliability annually using power flow analyses. Assumptions used in baseline reliability analyses are vetted with stakeholders at TEAC and sub-regional RTEP committee meetings. If violations are discovered in the initial five-year base case scenario, PJM uses the same contingencies and conditions for summer peak, light load, or winter peak studies over a three-year scenario. PJM notes that system upgrades needed within three years are determined by a number of factors, including decisions by transmission and generation asset owners that are beyond PJM's control. Immediate need reliability projects may arise due to changing assumptions, new information from transmission and generation asset owners, or states' siting decisions that ban previously approved RTEP projects.⁴⁸

29. PJM states that it determines whether a transmission project qualifies as an immediate need reliability project using the project's need-by date. According to PJM, it intends for an upgrade to be in service by the time the need-by date occurs. PJM explains that factors that contribute to the need-by date include: decisions by generator owners to

⁴⁶ PJM Reply Comments at 7; NJBPU Reply Comments at 4, 9.

⁴⁷ PJM Response at 9-10.

⁴⁸ *Id.* at 10-11.

interconnect to or disconnect from the transmission system, changes to the distribution system to accommodate local system needs, new information about the physical condition of transmission assets, and operational performance issues. New information about the physical condition of transmission assets was often previously unavailable to PJM. Even if a reliability violation occurs in three years or less, if PJM is still able to open a competitive proposal window, it will do so.⁴⁹

30. PJM states that different factors cause PJM to restudy solutions to baseline reliability violations. PJM states that it does not amend a need-by date of a restudied project; however, a solution to a reliability violation may be canceled if it is no longer needed.⁵⁰ PJM explains that circumstances, such as siting and eminent domain issues, may arise that delay construction of the solution.⁵¹

ii. **Comments**

31. EEI claims that certain issues related to siting and construction can arise and cause delays in putting a project into service. As a result, EEI notes that an immediate need reliability project's in-service date may exceed three years, but these factors are out of the control of the RTO.⁵²

c. **Criterion Two: The RTO must separately identify and then post an explanation of the reliability violations and system conditions in advance for which there is a time-sensitive need, with sufficient detail of the need and time-sensitivity.**

i. **PJM Response**

32. PJM states that it has a dedicated webpage for its competitive transmission planning process where it posts presentation materials that provide an update to PJM's reliability analysis a minimum of three days prior to the TEAC meetings. PJM explains that the minimum three-day period is provided to allow stakeholders an opportunity to review the reliability analysis. PJM states that the reliability analysis update includes, among other things, a description of the proposal window exemptions, an update of PJM's transmission planning analysis (e.g., retool study update), and a review of baseline

⁴⁹ *Id.* at 17-18.

⁵⁰ *Id.* at 30.

⁵¹ *Id.* at 19, 34.

⁵² EEI Initial Comments at 7-11.

reliability projects. PJM notes that the presentation material(s) for a given transmission project provide information on the transmission project's status, criteria used to identify the violation, assumptions and models used, exemption from a proposal window, any applicable Order No. 1000 exemption, problem statement, existing facility rating, proposed solution, estimated project costs, any alternatives, and required in-service date.⁵³

33. PJM asserts that Appendix B of the PJM Response includes links to all TEAC presentation materials that PJM provided in advance of the TEAC meetings, which PJM states provide stakeholders an explanation of the reliability conditions for which there was a time-sensitive need for each individual baseline upgrade. In addition, PJM states that, to solicit solutions from qualified transmission developers, PJM publishes a problem statement and set of criteria violations on its webpage for each proposal window.⁵⁴

ii. Comments

34. NJBPU states that the PJM Response does not adequately demonstrate PJM's compliance with Criterion Two's transparency and coordination requirements. NJBPU points out that PJM provides stakeholders with information on both the reliability violation and the proposed solution at the same time (i.e., three days before TEAC meetings). NJBPU argues that simultaneously posting the reliability violation and the proposed solution deprives stakeholders of the opportunity to evaluate potentially complex transmission violations and, if appropriate, recommend solutions to the TEAC or PJM. NJBPU argues that three days is not a sufficient amount of time to vet proposed projects let alone the solutions, which are often extremely complex.⁵⁵ Similarly, ODEC states that PJM and the transmission owners do not provide enough detail regarding the need and time sensitivity of projects and also do not make the information available sufficiently in advance.⁵⁶

⁵³ PJM Response at 12, 16-17.

⁵⁴ *Id.* at 12-13.

⁵⁵ NJBPU Initial Comments at 4-5.

⁵⁶ ODEC Initial Comments at 8.

- d. **Criterion Three: The RTO must provide to stakeholders and post on its website a full and supported written description explaining: (1) the decision to designate an incumbent transmission owner as the entity responsible for construction and ownership of the project, including an explanation of other transmission or non-transmission options that the region considered; and (2) the circumstances that generated the immediate reliability need and why that need was not identified earlier.**

i. **PJM Response**

35. PJM states that Appendix B of the PJM Response includes links to all TEAC presentation materials that it provided in advance of the TEAC meetings. PJM asserts that the presentation materials describe the criteria violations, why the need was not identified earlier, and alternatives that were considered for each baseline upgrade.⁵⁷

ii. **Comments**

36. NJBPU, ODEC and LS Power state that the PJM Response does not adequately demonstrate compliance with Criterion Three, pointing particularly to PJM's failure to identify the circumstances underlying immediate need reliability projects.⁵⁸ ODEC requests that the Commission direct PJM to adopt a procedure for providing this information on its website and, for ease of review, that PJM post all immediate need reliability project information in a single location.⁵⁹

37. Furthermore, LS Power states that the TEAC meeting presentation materials are not sufficient. LS Power states that the short descriptions and conclusory statements do not qualify as "full and supported written descriptions." The presentation materials, LS Power argues, do not address the alternate solutions that the Commission expects PJM to consider. Lastly, LS Power asserts that PJM does not explain why a given need was not identified earlier. In terms of explaining why the reliability was not identified earlier,

⁵⁷ PJM Response at 15-16.

⁵⁸ NJBPU Initial Comments at 6-7; ODEC Initial Comments at 9; LS Power Initial Comments at 23-24.

⁵⁹ ODEC Initial Comments at 9.

LS Power states that PJM's explanation is insufficient; PJM does not adequately address the "why" of the requirement and only provides non-specific reasons.⁶⁰

38. LS Power argues that PJM does not consider alternate solutions because it automatically applies the exemption based on the need-by date of three years. LS Power states that under section 1.5.8(m) of Schedule 6 of PJM's Operating Agreement, once PJM identifies time-sensitive needs that must be addressed within three years, it must consider several factors when deciding whether it is feasible to open a shortened proposal window, including (1) nature of the reliability criteria; (2) nature and type of potential solution required; and (3) projected construction time for a potential solution to the type of reliability criteria to be addressed. LS Power argues that PJM has not provided any evidence that it affirmatively determined that it was infeasible to open a proposal window for any of the 237 immediate need reliability projects from 2015 through 2018, including in its presentations. As examples, LS Power points to presentation materials PJM provided to stakeholders at the TEAC meetings for several immediate need reliability projects to demonstrate that PJM failed to conduct a full analysis on why a full or shortened proposal window was infeasible. Accordingly, LS Power alleges that PJM's implementation of the immediate need reliability project exemption violates the Operating Agreement.⁶¹

39. Indicated PJM Transmission Owners reply that PJM has considered the three factors specified in section 1.5.8(m)(1) of Schedule 6 of PJM's Operating Agreement in determining whether a competitive proposal window is feasible, pointing specifically to the Flint Run 500-138 kilovolt (kV) substation project, which, due to increased customer load expectations, was needed to address generator deliverability reliability violations in less than three years. Indicated PJM Transmission Owners state that PJM considered all factors in determining the infeasibility of a proposal window and also determined that alternative solutions were inadequate to address expected continued load growth in the area.⁶² LS Power answers that the only alternatives PJM considered were alternative locations for the projects and that PJM provided no explanation for *why* a shortened proposal window was infeasible, only that it was infeasible.⁶³

⁶⁰ LS Power Initial Comments at 22-24.

⁶¹ *Id.* at 26-29.

⁶² Indicated PJM Transmission Owners Reply Comments at 4-8.

⁶³ LS Power Reply Comments at 20-21.

e. **Criterion Four: Stakeholders must be permitted time to provide comments in response to the project description, and such comments must be made publicly available.**

i. **PJM Response**

40. PJM states that it posts presentation materials to its website prior to the TEAC meetings, allowing stakeholders an opportunity to review the information and provide comments. PJM states that from time to time, it has received verbal stakeholder questions specific to certain baseline upgrades exempted as immediate need reliability projects and that it has responded to such inquires as presented. PJM states that it does not recall receiving any written comments specific to PJM's determination that a previous proposal window was infeasible for an immediate need reliability project which would have warranted a reversal of PJM's initial determination. Furthermore, PJM states that, up until September 1, 2018, comments could be submitted via email to a dedicated email address. PJM explains that, following the elimination of that email address, PJM now receives comments through the PJM Planning Community located on its website, as well as several of the individual pages under the main planning page and the individual committee pages (TEAC and Subregional RTEP Committees).⁶⁴

ii. **Comments**

41. LS Power states that PJM does not demonstrate that it allows stakeholders to comment on immediate need reliability projects.⁶⁵ According to NJBPU, PJM's practice of posting reliability violations and their solutions simultaneously three days before the TEAC meetings does not permit the stakeholders sufficient time to vet immediate need reliability projects and does not constitute an adequate comment period.⁶⁶ ODEC similarly states that it is not clear that PJM publicly posts comments provided by stakeholders in response to immediate need reliability projects. PJM's explanation that it "does not recall receiving written comments . . . that warranted reversal of its determination," ODEC argues, does not demonstrate compliance with Criterion Four and is not what the criterion requires. ODEC requests that the Commission direct

⁶⁴ PJM Response at 16-17. PJM states that the Planning Community is a tool on the PJM website that provides transparency to the PJM planning processes and enables transmission and generation owner users to find answers to their questions, initiate discussions and collaborate with other users, as well as PJM subject matter experts regarding, for example, planning initiatives, proposal windows and process questions. *Id.*

⁶⁵ LS Power Initial Comments at 22-23.

⁶⁶ NJBPU Initial Comments at 5.

PJM to publish all stakeholder comments made in response to immediate need reliability projects.⁶⁷

42. In its response to NJBPU, PJM states that stakeholders have at least one month, and usually more than two months, to submit comments on projects, including immediate need reliability projects, which have been vetted by both the TEAC and Subregional RTEP Committees. Moreover, PJM states that as a general rule, stakeholders have approximately thirty days during which to submit comments on projects recommended by the TEAC to be submitted to the PJM Board for approval in the RTEP. PJM states that written comments submitted through the Planning Community webpage or letters sent to the PJM Board via email are publicly posted on the Planning Community page or the PJM website as ex parte communication with the PJM Board.⁶⁸

- f. **Criterion Five: The RTO must maintain and post a list of prior year designations of all immediate need reliability projects for which the incumbent transmission owner was designated as the entity responsible for construction and ownership of the project. The list must include the project's need-by date and the date the incumbent transmission owner actually energized the project. The RTO must also file the list with the Commission as an informational filing in January of each calendar year covering the designations of the prior calendar year.**

i. **PJM Response**

43. PJM states that it has complied with the annual reporting requirement. However, PJM acknowledges that the methodology used to develop past annual informational filings has overestimated the number of immediate need reliability projects. PJM explains that, in an effort to provide additional granularity, its annual informational filings for years 2015 through 2018 included baseline upgrades, subject to any of its four exemptions to its competitive proposal window process.⁶⁹ Initially, PJM had identified 237 baseline upgrades that were needed in three years or less, thus qualifying as immediate need projects, even if these projects were also exempted from PJM's

⁶⁷ ODEC Initial Comments at 9-10.

⁶⁸ PJM Reply Comments at 8.

⁶⁹ As noted above, the three other exemptions are the Lower Voltage Threshold Exemption, the Substation Equipment Exemption, and the Form No. 715 Exemption. *See supra* note 40.

competitive proposal window process under any of the three other exemptions. Of the 237 baseline upgrades, PJM identifies 203 as solely immediate need reliability baseline upgrades based on the effective dates of the three other exemptions and 89 as solely immediate need reliability baseline upgrades based on if all four exemptions were effective for the period of 2015 through 2018. According to PJM, 89 baseline upgrades amounts to 13% of all baseline upgrades being identified as immediate need reliability projects during that period.⁷⁰

44. Further, PJM explains that, in its past annual informational filings, it listed immediate need reliability projects as individual baseline upgrades, not projects. PJM states that baseline upgrades are individual components that make up an RTEP project. Thus, PJM states that, after aggregating baseline upgrades to the project level, PJM identifies 158 projects (out of 237 baseline upgrades) that were needed in three years or less but also were exempted under the three other exemptions; 138 projects (out of 203 baseline upgrades) that were solely immediate need reliability projects based on the effective dates of the three other exemptions; and 63 projects (out of 89 baseline upgrades) that were solely immediate need reliability projects if all four exemptions were effective for the period of 2015 through 2018.⁷¹

45. PJM states that, beginning with the 2019 annual informational filing, PJM will no longer include transmission projects exempted from the competitive proposal window process under the Lower Voltage Threshold Exemption, Substation Equipment Exemption, or Form No. 715 Exemption, even if they also qualify as an immediate need reliability project.⁷²

ii. Comments

46. EEI notes that PJM's past reporting of immediate need reliability baseline upgrades gave the impression that PJM was overusing the exemption when it was not.⁷³ Exelon and ODEC support the changes to the way in which PJM reports immediate need reliability projects that it implemented in its 2019 informational filing.⁷⁴ In contrast, LS Power states that the baseline upgrade level is the correct way of measuring PJM's

⁷⁰ PJM Response at 6-7, 32.

⁷¹ *Id.* at 8-9.

⁷² *Id.* at 4.

⁷³ EEI Initial Comments at 6-7.

⁷⁴ Exelon Initial Comments at 13; ODEC Initial Comments at 5.

compliance with the requirements of the immediate need reliability project exemption.⁷⁵ In their respective replies to LS Power, PJM and Indicated PJM Transmission Owners both state that LS Power misrepresents the total number of transmission additions in PJM that have fallen under the exemption.⁷⁶

g. Commission Determination

47. Based on the PJM Response and comments, we find that PJM is compliant with Criterion One and Criterion Five. However, we find sufficient evidence in the record to conclude that PJM does not comply with Criterion Two, Criterion Three, and Criterion Four of the immediate need reliability project exemption. Therefore, as discussed below, we direct PJM to implement these criteria more fully and transparently on a prospective basis and to submit a compliance filing, within 60 days of the date of this order, that includes revisions to its Operating Agreement.

48. Regarding Criterion One, PJM has a defined process for modeling future transmission needs. PJM also identifies new immediate need reliability projects when new information is available and may cancel such projects if they are found to no longer be needed. Furthermore, PJM appropriately uses the need-by date by which a reliability need must be addressed, rather than the anticipated in-service date of the project chosen to address that need, to calculate whether a transmission project qualifies as an immediate need reliability project.⁷⁷ Accordingly, we find, based on the record in this proceeding, that PJM is compliant with Criterion One that immediate need reliability projects must be needed in three years or less to solve reliability criteria violations.

49. Regarding Criterion Five, we find that PJM has complied with the requirement to maintain and post a list of prior year designations of all immediate need reliability projects for which the incumbent transmission owner was designated as the entity responsible for construction and ownership of the project, including the project's need-by date and the date the project is energized. Moreover, PJM has submitted the required annual informational filings on a timely basis. Given PJM's statement that it had been overreporting projects that previously qualified for the immediate need reliability project exemption because it reported all baseline upgrades, subject to any of its four exemptions to its competitive proposal window process – not projects qualifying solely for the immediate need reliability project exemption – we agree with PJM's proposal to modify its reporting practice to report both baseline upgrades and projects subject only to the

⁷⁵ LS Power Initial Comments at 12.

⁷⁶ PJM Reply Comments at 7; Indicated PJM Transmission Owners Reply Comments at 6-7.

⁷⁷ See *PJM Interconnection, L.L.C.*, 156 FERC ¶ 61,030 at PP 22-24.

immediate need reliability project exemption, noting that it will provide additional transparency.

50. Regarding Criterion Two, we find that there is sufficient evidence in the record to demonstrate that PJM does not comply with the requirement that it separately identify and then post an explanation of the reliability violations and system conditions for which there is a time-sensitive need, with sufficient detail of the need and time-sensitivity. We agree with concerns raised in comments that PJM's explanations do not provide sufficient detail to meet this requirement. Similarly, we find that PJM generally fails to include any discussion about system conditions related to the reliability violations in its TEAC presentation materials. For example, we find one-line labels (e.g., "short circuit," "end-of-life," "overstressed") identifying the reliability violation driving the immediate need reliability project insufficient to comply with Criterion Two. While an exhaustive description is not required, we find that PJM does not comply with Criterion Two and we direct PJM on a prospective basis to provide the reliability violations and system conditions for which there is a time-sensitive need, with sufficient detail of the need and time-sensitivity. For example, PJM may provide details regarding the specifics of the violation; why the violation arose; when it first occurred; the implications of the violation in terms of generation, load, congestion, etc.; the severity of the problem; and expectations for the violation's severity in the future (i.e., will the problem get worse or have a cascading effect at a later point in time).

51. Regarding Criterion Three, we find that there is sufficient evidence in the record to demonstrate that PJM does not comply with the requirement that it must provide to stakeholders and post on its website a full and supported written description explaining: (1) the decision to designate an incumbent transmission owner as the entity responsible for construction and ownership of the project, including an explanation of other transmission or non-transmission options that the region considered; and (2) the circumstances that generated the immediate reliability need and why that need was not identified earlier. The TEAC presentation materials provide little insight as to PJM's reasoning to select an incumbent transmission owner for an immediate need reliability project or why the reliability violations were not identified earlier. In addition, we find that PJM does not provide in its presentation materials an explanation for its determination that there was insufficient time to open a full or shortened proposal window, as described in section 1.5.8(m)(1) of Schedule 6 of its Operating Agreement, to support its decision to designate the incumbent transmission owner to develop an immediate need reliability project. Additionally, it is unclear whether PJM is considering factors beyond a need-by date of three years in determining whether a full or shortened competitive proposal cannot be held. As a result, we direct PJM on a prospective basis to expound on its description to support the designation of its immediate need reliability projects, specifically addressing the time-sensitive nature of the need, why the incumbent transmission owner was selected, alternatives considered, and why the need was not identified earlier.

52. We note that, for additional transparency, PJM could also describe how it is making its determination that a full or shortened proposal window is infeasible, in consideration of the factors in section 1.5.8(m)(1) of Schedule 6 of its Operating Agreement, by fully explaining how it considers the nature of the reliability criteria, the nature and type of potential solution required, and the projected construction time for a potential solution to the type of reliability criteria to be addressed. PJM could also explain the urgency of the violation and compare it to the typical timeline of a standard or shortened competitive proposal window, explaining how the proposal window would delay the solution further.

53. For Criterion Four, we find that there is sufficient evidence in the record to demonstrate that PJM does not comply with the requirement that stakeholders must be permitted time to provide comments in response to the project description, and that PJM must make such comments publicly available. Though Criterion Four does not specify an amount of time for PJM to allow stakeholders to comment on the project description, we find that PJM does not comply with Criterion Four because providing three days for stakeholders to review immediate need reliability project materials before providing comments at stakeholder meetings is not sufficient. We note that stakeholders should have adequate time to review the project descriptions before providing comments. We also note that PJM provides 10 days for stakeholders to review transmission project materials for Supplemental Projects in PJM's Attachment M-3 process.⁷⁸ As a result, we direct PJM to submit a compliance filing to designate a specific time period greater than three days for stakeholders to provide comments in response to the project description. Furthermore, we direct PJM to make Operating Agreement revisions adding the designated time period for stakeholder comment to its Operating Agreement.

54. We find that the PJM Response regarding how it addresses stakeholder questions about immediate need reliability projects does not demonstrate compliance with Criterion Four. In order to improve the transparency of stakeholder feedback, we direct PJM on a prospective basis to post on its website all stakeholder comments and answers, whether provided in writing or submitted verbally at TEAC meetings, regarding immediate need reliability projects. With regard to verbal feedback from stakeholders, we provide PJM with discretion as to how that information is recorded (e.g., spreadsheet, meeting notes, or other means).

55. With respect to the transparency inherent in and needed to comply with all the criteria, we find that PJM must do more prospectively to provide stakeholders access to information related to immediate need reliability projects. For example, PJM placed the information necessary to comply with the criteria for previously identified immediate

⁷⁸ PJM, Intra-PJM Tariffs, Open Access Transmission Tariff, Attachment M-3 (Additional Procedures for Planning of Supplemental Projects).

need reliability projects in more than 60 different locations on its website. Given this, we understand the concerns some commenters express in trying to obtain information about immediate need reliability projects and commenters' request for PJM to post all information related to designated immediate need reliability projects to a single webpage. While we do not find that PJM must post all immediate need reliability project information to a single webpage to meet the transparency requirements, we find that PJM's current practices are insufficient to meet Criteria 2 through 4. Therefore, we direct PJM to post all information regarding immediate need reliability projects in a manner that is more easily accessible to stakeholders than the current approach, which could but is not required to be a central location on the PJM website.

2. Additional Conditions or Restrictions on the Immediate Need Reliability Project Exemption

a. October 2019 Order

56. The October 2019 Order included several questions regarding additional conditions or restrictions that the Commission could consider imposing on the immediate need reliability project exemption to help maintain the balance between reliability and competition and ensure that immediate need reliability projects continue to be designated as an exception that should only be used in limited circumstances. Specifically, the Commission suggested that those additional conditions or restrictions could include the following: (1) shortening the current three-year time frame for immediate need reliability projects (Question 15a); (2) requiring the use of the anticipated in-service date instead of the need-by date to determine immediate need reliability project eligibility (Question 15b); (3) requiring each relevant incumbent transmission owner to provide the RTO and stakeholders periodic, detailed status reports on each immediate need reliability project (Question 15c); (4) requiring the RTO to reevaluate each immediate need reliability project that does not go into service by its need-by date (Question 15d); (5) prohibiting projects with specific characteristics from qualifying as immediate need reliability projects (e.g., those that exceed a certain voltage level, line mile, or capital cost thresholds) (Question 15e); and (6) creating an abbreviated competitive process for immediate need reliability projects (Question 15f).⁷⁹

b. Overview of the PJM Response and Comments

57. In response to the Commission's questions regarding potential changes to the current requirements for the immediate need reliability project exemption that would help ensure immediate need reliability projects remain a limited exemption, PJM states it explicitly opposes some of the potential conditions or restrictions proposed by the

⁷⁹ See October 2019 Order, 169 FERC ¶ 61,054 at P 19.

Commission since its existing processes are already sufficient or the potential conditions or restrictions would compromise PJM's "discretion to exercise its judgement" with regards to RTEP projects.⁸⁰ Specifically, PJM explicitly opposes: (15a) shortening the current three-year time frame for immediate need reliability projects; (15b) requiring the use of an anticipated in-service date instead of need-by date to determine immediate need reliability project eligibility; (15d) requiring PJM to reevaluate each immediate need reliability project that does not go into service by the need-by date;⁸¹ and, (15e) prohibiting projects with specific characteristics from qualifying as immediate need reliability projects (e.g., those that exceed a certain voltage level, line miles, or capital cost thresholds). PJM states its existing processes already satisfy the Commission's proposed conditions or restrictions to (15c) require each relevant incumbent transmission owner to provide periodic status reports on each immediate need reliability project; and to (15f) create an abbreviated competitive process for immediate need reliability projects.

58. Exelon, DATA, AEP, and EEI assert that PJM's immediate need reliability project exemption does not require any modifications as contemplated by the Commission in the October 2019 Order.⁸²

59. EEI argues that transmission planning regions implement contingency plans to mitigate reliability violations, but the longer addressing a violation is delayed, the longer mitigation measures will be used. EEI believes that mitigation measures are a temporary solution and should not be used as a replacement for immediate need reliability projects because relying on mitigation measures could lead to complications.⁸³

60. Conversely, LS Power, NJBPU, ODEC, and AMP all either support incremental modifications to PJM's immediate need reliability project exemptions or outright support its elimination entirely.⁸⁴

⁸⁰ PJM Response at P 37.

⁸¹ *Id.* at 32-38.

⁸² Exelon Initial Comments at 2-3; DATA Initial Comments at 1-3; AEP Initial Comments at 2; EEI Initial Comments at 3.

⁸³ EEI Comments at 9.

⁸⁴ LS Power Initial Comments at 5-7; NJBPU Initial Comments at 4-11; ODEC Initial Comments at 8-10; AMP Initial Comments at 3-9.

i. Shortened Timeframe

61. PJM asserts that the three-year timeframe is the right balance between the time required to hold and construct a project against the reliability-based need, stating that in proposing the three-year timeframe, PJM considered the time needed for considering alternatives, siting and permitting, and construction.⁸⁵ PJM notes that some transmission projects take more than three years to construct.⁸⁶

62. EEI, ODEC, Exelon, and DATA argue the Commission should decline to shorten the three year timeframe for the immediate need reliability project exemption.⁸⁷ Both EEI and Exelon contend that PJM's use of the three year timeframe strikes the right balance between removing barriers to entry for nonincumbent transmission developers and the need to ensure that incumbent transmission providers can meet their reliability needs and service obligations.⁸⁸

63. Conversely, LS Power argues the Commission should shorten the timeframe for the immediate need reliability project exemption from three years to two years.⁸⁹

ii. Use of Anticipated In-Service Date

64. PJM states that it opposes the use of anticipated in-service dates to determine immediate need reliability projects because that would require it to predict the length of the siting and eminent domain process. PJM argues that since the length of the siting and eminent domain process cannot be pinned down with any degree of certainty at the time the reliability violation is identified, basing immediate need on anticipated in-service dates would inject a level of subjectivity to the choice of whether or not to open a proposal window, creating potential for litigation and further delays.⁹⁰

⁸⁵ PJM Response at 32-33 (citing PJM Filing, Docket No. ER13-198-000, at 62 (filed October 25, 2012)).

⁸⁶ *Id.* at 33.

⁸⁷ EEI Initial Comments at 13, ODEC Initial Comments at 7, Exelon Initial Comments at 10-11, DATA Initial Comments at 10.

⁸⁸ Exelon Initial Comments at 5, 10-11 (citing PJM First Compliance Order, 142 FERC ¶ 61,214 at PP 247-250).

⁸⁹ LS Power Initial Comments at 6.

⁹⁰ PJM Response at 34-35.

65. Exelon, DATA, EEI, and ODEC assert that immediate need reliability projects should be gauged based on need-by dates rather than in-service dates because reliability violations can occur suddenly, and proper solutions can take time. They argue that expanding mitigation procedures in order to hold competitive proposal windows places increased risk on the transmission and distribution system.⁹¹ AEP states that the exemption is not to guarantee that a project will be in place as of the first date a need exists, but rather to minimize delays in constructing and place into service a solution because of the imminent nature of such need. AEP highlights the negative impact that project delays have on placing the project into service, which it argues does not minimize the need for the project.⁹²

66. In contrast, LS Power states that the use of a need-by date for determining eligibility of the exemption may be unjust and unreasonable because so many immediate need reliability projects have in-service dates that are after their need-by dates.⁹³ LS Power argues that PJM should use the later of the anticipated in-service date or need-by date, rather than exclusively the need-by date to determine eligibility for competition.⁹⁴

67. PJM and Indicated PJM Transmission Owners contend that LS Power's argument to utilize the in-service date ignores the fact that operating the transmission system beyond the need-by date for new transmission facilities exacerbates safety and reliability issues.⁹⁵

iii. Reporting Requirements

68. Regarding an additional condition that would require each relevant transmission owner to provide the RTO and stakeholders periodic, detailed reports on the status of each immediate need reliability project, PJM states that its Infrastructure Coordination Department already tracks each immediate need reliability project until it goes into service. Specifically, PJM states that on a quarterly basis, PJM requests status reports from transmission owners that include: (1) general status of engineering and

⁹¹ Exelon Initial Comments at 9-11; DATA Initial Comments at 2-9; ODEC Initial Comments at 7.

⁹² AEP Reply Comments at 5-7, 9.

⁹³ LS Power Initial Comments at 14.

⁹⁴ *Id.* at 7.

⁹⁵ PJM Second Reply Comments at 9-10; Indicated PJM Transmission Owners Initial Comments at 9-10.

construction; (2) percent of the project complete; (3) current project in-service date or actual date of completion; (4) applicable outage information; and (5) project cost updates.⁹⁶ PJM adds that the construction status of RTEP projects is reflected in the models used by transmission owners. PJM notes that there are additional reporting requirements for transmission facilities 500 kV and above.⁹⁷

69. AEP, Exelon, and EEI state that PJM's reporting process is sufficient, and no changes are needed. AEP states that PJM's existing reporting requirements and publicly available information provide transparency consistent with Order Nos. 890 and 1000.⁹⁸ Exelon argues that reporting modifications would fail to create new opportunities for nonincumbent transmission development in PJM,⁹⁹ whereas EEI argues that additional reporting would not increase transparency on how an RTO determines that a transmission project qualifies as immediate need.¹⁰⁰

iv. Project Reevaluation

70. Regarding reevaluating an immediate need reliability project that does not go into service by the need-by date, PJM states that it tracks the construction status of all RTEP projects through completion, which allows the incorporation of the projected in-service date into near term planning, operations, and markets models for applicable studies and consideration of project delay impacts. In addition, PJM avers that it conducts seasonal operation studies throughout the year and in advance of summer and winter seasons to prepare for expected conditions. PJM also notes that it reflects the construction status of transmission projects in its models for capacity market auctions.¹⁰¹ PJM explains that reevaluation is not intended to address typical project delays but, instead, is intended to address those situations where PJM determines that a project is unable to be constructed or is no longer needed due significant changes to the factors that initially drove the need for the project. PJM avers that it will reevaluate an RTEP project and may modify or cancel the project, but such action is taken when there are triggering events that would lead PJM to perform such analysis.¹⁰² Finally, PJM asserts that it is important that it

⁹⁶ PJM Response at 35 (citing PJM Manual 14c, § 6).

⁹⁷ *Id.* at 36.

⁹⁸ AEP Initial Comments at 6.

⁹⁹ Exelon Initial Comments at 12.

¹⁰⁰ EEI Initial Comments at 16-17.

¹⁰¹ PJM Response at 36.

¹⁰² *Id.* at 37. PJM explains that in the event that system condition changes indicate

maintain discretion in reevaluating transmission projects and that any change to PJM's ability on this issue would be highly disruptive to all RTEP projects.¹⁰³

71. EEI and Exelon argue that the Commission should not impose reevaluation reforms.¹⁰⁴ EEI asserts that imposing additional reevaluation protocols on the RTOs may cause unintended consequences, such as incentivizing project opponents to seek delays until the in-service date has passed, thus triggering an automatic reevaluation.¹⁰⁵

v. **Prohibit Projects with Specific Characteristics**

72. PJM states that it is not the type of facility needed to address an immediate need reliability violation that is relevant, but rather the timing of the need-by date that drives the exemption. PJM argues that it needs to continue to have the authority, given the relevant facts and circumstances, to direct transmission owners to resolve immediate need reliability issues when identified.¹⁰⁶

73. ODEC and EEI support PJM's position, agreeing that it is the timing of the need-by date, not the technical characteristics of the transmission solution itself, that drives whether a project qualifies for the immediate need reliability project exemption.¹⁰⁷ EEI further states that limiting the types of transmission solutions that qualify as immediate need reliability projects will only further delay addressing immediate reliability threats.¹⁰⁸

an RTEP project may no longer be needed, PJM and the transmission owners perform sensitivity studies to determine if any existing RTEP projects may be removed. Schedule 6, section 1.58(k) of the Operating Agreement also provides that if an entity designated to construct a transmission project fails to meet a transmission project milestone that causes a delay in its in-service date, PJM reevaluates the transmission project's need and may (1) retain the project in the RTEP; (2) remove the project from the RTEP; or (3) include an alternative solution. *Id.* at 28-29.

¹⁰³ *Id.* at 37.

¹⁰⁴ EEI Initial Comments at 17-18; Exelon Initial Comments at 12.

¹⁰⁵ EEI Initial Comments at 17-18.

¹⁰⁶ PJM Response at 38.

¹⁰⁷ ODEC Initial Comments at 7-8; EEI Initial Comments at 18.

¹⁰⁸ EEI Initial Comments at 19.

74. LS Power argues that “end-of-life” projects should be excluded from the immediate need reliability project category because they comprise a large share of PJM’s immediate need designations.

vi. Abbreviated Competitive Window

75. PJM notes that it currently has the ability to conduct an abbreviated competitive window pursuant to its Operating Agreement. Specifically, under Schedule 6, section 1.5.8(m), PJM must determine whether a full or shortened proposal window is feasible once an immediate reliability need that must be addressed within three years or less is identified, considering: (i) nature of the reliability criteria violation; (ii) nature and type of potential solution required; and (iii) projected construction time for a potential solution to the type of reliability criteria violation to be addressed.¹⁰⁹

76. EEI and Exelon state that the Commission should not require an abbreviated competitive process and should continue to allow RTOs discretion on whether they can conduct an abbreviated process based on the identified need.¹¹⁰

77. Monitoring Analytics suggests that, whereas it supports eliminating the exemption all together, PJM may be able to adopt a streamlined competitive process for short lead-time projects.¹¹¹

c. Commenter-Proposed Conditions or Restrictions

i. Case-by-Case Exemption

78. LS Power proposes that if the Commission chooses to retain the immediate need reliability project exemption, the Commission should require PJM to request a case-by-case determination from the Commission that it is just and reasonable to assign a project directly to a transmission owner if a truly immediate need arises.¹¹² LS Power states if the transmission project is truly immediate need, the Commission would be able to act

¹⁰⁹ PJM also cites to Schedule 6, § 1.5.8 (c), which permits PJM to shorten a proposal window to address any identified transmission need by considering the complexity of the violation and whether there is sufficient time to accommodate a standard proposal window. *See* PJM Filing at 38 (citing PJM, Operating Agreement, Schedule 6, §§ 1.5.8(c), (m)(1), & (m)(2)).

¹¹⁰ EEI Initial Comments at 11-12, 19-20; Exelon Initial Comments at 12.

¹¹¹ Monitoring Analytics Reply Comments at 2.

¹¹² LS Power Initial Comments at 3-4.

quickly to ensure reliability. Monitoring Analytics disagrees with LS Power that the removal of the immediate need reliability project exemption requires any case-by-case exception provision.¹¹³

79. In contrast, Indicated PJM Transmission Owners and PJM claim that LS Power's suggestion to request the immediate need reliability project exemption on a case-by-case basis would lead to unnecessary delays to transmission planning and construction, as well as jeopardize the reliability of the grid.¹¹⁴

ii. **Transmission Owner Information, End-of-Life Projects, and Supplemental Projects**

80. AMP argues that PJM requires load information from transmission owners to update its load model but because the load data may not be supplied in a timely manner, it can result in a relatively high number of immediate need reliability projects. AMP contends that PJM should require more frequent and timely submission of information on load changes from transmission owners, particularly when they may benefit from the immediate need reliability projects. In particular, AMP believes information related to Supplemental Projects, violations on lower-voltage facilities, and, changes to facility rating methodologies, are driven by transmission owners and place PJM in a reactive position as it receives information.¹¹⁵ LS Power specifically points to "end-of-life" projects, arguing that transmission owners determine when a facility will reach the end of its useful life, but PJM does not have a procedure in place to receive that information sufficiently in advance to timely plan needed upgrades. LS Power states that transmission owners should provide PJM with the required "end-of-life" information on an annual basis looking no less than seven years out.¹¹⁶ NJBPU states that the Commission should convene a technical conference to examine this issue, as well as to determine whether other exemptions are supported by Commission precedent.¹¹⁷

81. LS Power requests that Supplemental Projects be removed from the immediate need reliability project exemption because, if rejected by local or state authorities, the

¹¹³ Monitoring Analytics Reply Comments at 2-3.

¹¹⁴ PJM Reply Comments at 3, 8; PJM Second Reply Comments at 7-8; Indicated Transmission Owners Reply Comments at 8, 13.

¹¹⁵ AMP Initial Comments at 4-5, 7-9.

¹¹⁶ LS Power Initial Comments at 32-33.

¹¹⁷ NJBPU Initial Comments at 10; NJBPU Reply Comments at 5, 9.

projects must be removed from the RTEP process, thus potentially causing more immediate need reliability projects.¹¹⁸

82. AMP criticizes PJM's use of a five-year base case scenario and then scaling down the load data to a three-year time horizon which, according to AMP, creates a "mismatch between the topology of the model and the load projections." AMP suggests that PJM utilize a previous RTEP model and the corresponding load projections without scaling.¹¹⁹ AMP also proposes that PJM should potentially abandon the sponsorship model for facilities below a certain threshold and adopt a more straightforward process to reduce complexities with its competitive proposal windows.¹²⁰

83. Indicated PJM Transmission Owners answer that LS Power's assertions regarding Supplemental Projects and "end-of-life" projects are beyond the scope of this proceeding.¹²¹ PJM contends that there is no basis for LS Power's seven-year out proposal, noting that it is not a meaningful timeframe in the PJM planning process and that PJM's existing reliability analysis, which looks five years forward, appropriately captures near-term problems.¹²² PJM states that even with LS Power's approach, the immediate need reliability project exemption would still be needed due to new information being provided to PJM that is not available or known farther than three years out.¹²³ Exelon states that it is unlikely that information about the projected condition of transmission facilities for the next seven years will be accurate as a variety of factors affect the condition of a transmission asset.¹²⁴

iii. Provide More Detail in the Business Practice Manual

84. LS Power suggests that the Commission should direct PJM to develop detailed sections in its business practice manual to address shortcomings in the determination of competitive windows as well the use of operational and short-term solutions to keep the

¹¹⁸ LS Power Initial Comments at 33-34.

¹¹⁹ AMP Initial Comments at 6.

¹²⁰ *Id.* at 7.

¹²¹ Indicated PJM Transmission Owners Reply Comments at 2-3, 13-17.

¹²² PJM Reply Comments at 5-6.

¹²³ PJM Second Reply Comments at 4-5.

¹²⁴ Exelon Reply Comments at 4-5.

transmission system operational while reliability violations are solved. With regard to establishing competitive windows, LS Power notes that PJM is required to affirmatively determine whether a full or shortened competitive window is feasible for each time-sensitive need, but PJM does not have detailed criteria or procedures for determining whether it is feasible to open a proposal window. LS Power states that there are general factors listed in the Operating Agreement that PJM must consider, but the factors are highly discretionary. LS Power also requests that PJM's business practice manual list any operational or short-term solutions that PJM must consider when making a determination on feasibility of opening a competitive window. LS Power contends that a Commission directive requiring the above amendments to PJM's business practice manual would help to weed out those reliability violations that are not truly immediate in nature.¹²⁵

85. Exelon and Indicated Transmission Owners argue that the Commission should not require PJM to rely on operational tools, non-transmission alternatives, or other short-term solutions to temporarily mitigate immediate reliability needs for the sole purpose of opening more proposal windows. They argue that interim mitigation measures, such as redispatch or temporary system reconfiguration, can be costly and, under certain system conditions or contingencies, could fail to perform, resulting in service degradation or interruption. They argue that, given these risks, PJM should not rely on interim mitigation measures for any longer than absolutely necessary.¹²⁶ PJM states that the Commission should not direct use of emergency operational procedures solely for the purpose of preserving competitive opportunities for developers.¹²⁷

86. LS Power answers that it is not suggesting that operational measures be a long-term solution; rather, it is proposing that PJM rely on short-term operating procedures to mitigate a reliability need such that a shortened proposal window could be held.¹²⁸

d. Commission Determination

87. We find that we need not impose additional criteria on the immediate need reliability exemption. First, we reject requests by LS Power, Industrial Energy Consumers of America, and Monitoring Analytics for the Commission to no longer allow RTOs to have an immediate need reliability project exemption. The Commission has

¹²⁵ See LS Power Initial Comments at 15-16, 22-23, 30-32.

¹²⁶ Exelon Reply Comments at 3-4; Indicated Transmission Owners Reply Comments at 13.

¹²⁷ PJM Second Reply Comments at 10.

¹²⁸ LS Power Reply Comments at 15-16.

already found the exemption to be just and reasonable, and none of LS Power, Industrial Energy Consumers of America, or Monitoring Analytics has provided information showing that the exemption itself to be unjust and unreasonable, unduly preferential and discriminatory.¹²⁹ In particular, we recognize that time-sensitive reliability needs usually emerge as a result of new information provided to PJM that was previously unavailable, for which it would be impractical to hold a proposal window, and the immediate need reliability project exemption is needed to address these time-sensitive reliability needs. We also recognize PJM's commitment to continue working with transmission owners and stakeholders to make the exemption limited in its application, by, for instance, improving transmission owners' timely submission of system information and incorporating all known system topology changes in the five-year models.

88. Furthermore, we are not convinced that we should modify Criterion One to shorten the current three-year time frame for immediate need reliability projects or to require the use of the anticipated in-service date instead of the need-by date to determine immediate need reliability project eligibility. A number of commenters point out that there are a multitude of factors in determining the appropriate length of time needed to solve reliability criteria violations and when a project can be placed in service, such as the time needed to open a proposal window, the consideration of alternatives, siting and permitting, and construction, in proposing a three-year time frame. These hurdles are largely out of the control of the RTO, so we do not believe Criterion One should be modified to link the timeframe for immediate need reliability projects to factors beyond the reliability criteria violation and need-by date. Thus, we find that the three year time frame outlined in Criteria One and the practice of using the need-by date to calculate the three-year time frame for immediate need reliability projects continues to strike a reasonable balance and find there is insufficient evidence to support shortening that time frame at this time.

89. We further find that the record does not support modifying the criteria to prohibit projects with specific characteristics from qualifying as immediate need reliability projects (e.g., those that exceed a certain voltage level, line miles, or capital cost thresholds). Furthermore, LS Power's suggestion to eliminate end-of-life projects and Supplemental Projects from the exemption involves project planning and siting decisions by local or state authorities, which are issues beyond the scope of the inquiry in the

¹²⁹ Because we are not removing the immediate need reliability project exemption, we also reject LS Power's request to implement the immediate need reliability project exemption on a case-by-case basis necessary if PJM implements the Commission-directed changes. We also agree with the commenters that argue that having a case-by-case approval process to implement the immediate need reliability project exemption is impractical because it may cause delays in addressing time-sensitive reliability violations.

October 2019 Order. We also find AMP's suggestion for PJM to potentially change its sponsorship model as beyond the scope of the proceeding.

90. Further we decline to require transmission owners to provide PJM with the required "end-of-life" information on an annual basis seven-year out basis or, as AMP suggests, to provide more frequent and timely submission of information on load changes from transmission owners for the purpose of system modeling. We make this determination because such a requirement is outside the scope of the proceeding. We expect that, as PJM has committed to do, PJM will continue to improve its processes, to both timely receive the relevant system information from transmission owners and timely incorporate this information into its planning models, to potentially reduce reliance on the immediate need reliability project exemption.

91. We find that the record does not support modifying the criteria to require an RTO to reevaluate each immediate need reliability project that does not go into service by the need-by date. As PJM states in the PJM Response, it has procedures in place to track projects through completion and to determine whether they are still needed if they do not go into service by the need-by dates. Similarly, PJM receives status reports on immediate need reliability projects to help it determine whether or not it will meet their need-by dates. As a result, we will not require PJM to reevaluate certain immediate need reliability projects or require status reports from transmission owners.

92. In addition, we find that the record does not support changing the criteria to require the RTO to create an abbreviated competitive process for immediate need reliability projects. We note that PJM does have such an abbreviated competitive process. Specifically, PJM states that its Operating Agreement allows it to open a shortened proposal window if it is feasible.¹³⁰ We continue to find that providing PJM with discretion, in consideration of the factors in Schedule 6, section 1.5.8(m)(1) of its Operating Agreement, is appropriate, particularly in light of the additional transparency PJM may provide in making this determination.

93. We find that the record does not support LS Power's recommendation of requiring PJM to provide additional details or procedures regarding use of a full or shortened competitive proposal window. We understand that reliability issues can arise unexpectedly, and an RTO needs to take appropriate measures to maintain the transmission system on a short-term basis until a permanent solution is put in place. In addition, we are not persuaded by LS Power's suggestion that PJM use operational tools to extend project timelines in order to hold competitive proposal windows. As other commenters point out, relying on these operational tools, particularly consistently or in the long term, can pose risks to the stability and reliability of the transmission system.

¹³⁰ PJM, Intra-PJM Tariffs, Operating Agreement Schedule 6, § 1.5.8(m)(2).

94. Accordingly, we find that the five criteria for the immediate need reliability exemption adopted by the Commission appropriately maintain the balance between reliability and competition and ensure that immediate need reliability projects continue to be designated as an exception that should only be used in limited circumstances. Thus, we will not impose additional conditions or restrictions on the immediate need reliability project exemption and do not require PJM to include additional conditions or restrictions, either those proposed in the October 2019 Order or those proposed by commenters, on the use of the exemption for immediate need reliability projects.

The Commission orders:

(A) We hereby direct PJM to implement Criterion Two, Criterion Three, and Criterion Four to fully comply with the PJM Operating Agreement, as discussed in the body of the order.

(B) We hereby direct PJM to submit a compliance filing, within 60 days of the date of this order, that includes revisions to its Operating Agreement designating a specific time period greater than three days for stakeholders to provide comments in response to the project description, in compliance with Criterion Four, as discussed in the body of the order.

(C) We hereby direct PJM to report all immediate need reliability projects and baseline upgrades that qualify for the exemption, in compliance with Criterion Five, as discussed in the body of the order.

(D) We hereby direct PJM to post all information regarding immediate need reliability projects so that it is more easily accessible to stakeholders, as discussed in the body of the order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.