

173 FERC ¶ 61,225  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.  
American Transmission Systems Inc.

Docket No. ER20-2046-001

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued December 17, 2020)

1. On August 11, 2020, the Commission accepted revisions to Attachment M-3 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff) to (1) identify and include Asset Management Projects within the existing planning procedures of Attachment M-3 of the PJM Tariff, and (2) include procedures for the identification and planning for end-of-life (EOL) needs (Attachment M-3 Revisions).<sup>1</sup>
2. The New Jersey Board of Public Utilities (New Jersey Board), parties that protested the proposed Attachment M-3 Revisions (collectively, Protesting Parties),<sup>2</sup>

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 172 FERC ¶ 61,136 (2020) (August 2020 Order); *see* PJM, Intra-PJM Tariffs, OATT ATT M-3, OATT Attach. M-3 (1.0.0). PJM filed the proposed revisions pursuant to Order No. 714, on behalf of PJM Transmission Owners, as provided by the Consolidated Transmission Owners Agreement (CTOA). *See Elec. Tariff Filings*, 124 FERC ¶ 61,270 (2008) (Ord. No. 714); PJM, Rate Scheds. TOA-42 § 4.1.3 PJM Tariff (0.0.0) (“Each Party shall transfer to PJM . . . responsibility for administering the PJM Tariff”).

<sup>2</sup> The Protesting Parties include American Municipal Power, Inc. (AMP), AMP Transmission, LLC, Blue Ridge Power Agency, Delaware Division of the Public Advocate, District of Columbia Office of People’s Counsel, Indiana Office of Utility Consumer Counsel, LSP Transmission Holdings II, LLC, New Jersey Division of Rate Counsel, Old Dominion Electric Cooperative, PJM Industrial Customer Coalition, Public Power Association of New Jersey, The Public Utilities Commission of Ohio’s Office of the Federal Energy Advocate, and West Virginia Consumer Advocate.

and Duquesne Light and Power Company (Duquesne) requested rehearing of the August 2020 Order.

3. Pursuant to *Allegheny Defense Project v. FERC*,<sup>3</sup> the rehearing requests filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 313(a) of the FPA,<sup>4</sup> we are modifying the discussion in the August 2020 Order and continue to reach the same result in this proceeding, as discussed below.<sup>5</sup>

## **I. Background**

### **A. Attachment M-3 for Supplemental Projects**

4. On August 26, 2016, the Commission, pursuant to section 206 of the FPA,<sup>6</sup> established a proceeding to determine whether the PJM Transmission Owners were complying with their Order No. 890 obligations related to openness, transparency, and information exchange with respect to planning Supplemental Projects.<sup>7</sup> On October 25,

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<sup>3</sup> 964 F.3d 1 (D.C. Cir. 2020) (en banc).

<sup>4</sup> 16 U.S.C. § 825l(a) (“Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.”).

<sup>5</sup> *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the August 2020 Order. See *Smith Lake Improvement & Stakeholders Ass’n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

<sup>6</sup> 16 U.S.C. § 824e.

<sup>7</sup> *Monongahela Power Co.*, 156 FERC ¶ 61,134 (2016) (Show Cause Order); see *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119, at P 444, *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). 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 the Office of the Interconnection and is not state public policy project pursuant to Operating Agreement, Sched. 6, section 1.5.9(a)(ii). PJM, Intra-PJM Tariffs, OA Definitions S – T (17.0.0).

2016, PJM and the PJM Transmission Owners, pursuant to section 205 of the FPA,<sup>8</sup> filed revisions to the PJM Tariff to include Attachment M-3,<sup>9</sup> and a revision to Schedule 6 of the PJM Amended and Restated Operating Agreement of PJM (Operating Agreement) in response to the Show Cause Order.<sup>10</sup> On February 15, 2018, the Commission determined that the PJM Transmission Owners had not demonstrated that their filing was just and reasonable,<sup>11</sup> and pursuant to section 206 of the FPA the Commission established a just and reasonable set of Tariff provisions for an Order No. 890-compliant Attachment M-3 planning process. On September 26, 2018, the Commission accepted the Tariff provisions for the Attachment M-3 planning process.<sup>12</sup>

### **B. Attachment M-3 Revisions**

5. On June 12, 2020, the PJM Transmission Owners filed the instant Attachment M-3 Revisions to include additional projects under the planning process described in Attachment M-3.<sup>13</sup> The PJM Transmission Owners explained that the definition of Supplemental Project does not include Asset Management Projects and they made this filing to clarify that Asset Management Projects would for the first time be planned according to Order No. 890 principles.

6. Specifically, the Attachment M-3 Revisions require each PJM Transmission Owner to present its criteria for assessing whether a need exists to replace an existing transmission facility for stakeholder input at least annually. The PJM Transmission Owners stated that the Attachment M-3 Revisions achieve two goals. First, by expanding the scope of the Attachment M-3 process, the PJM Transmission Owners stated that the filing will enhance transparency and the opportunity for stakeholder

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<sup>8</sup> 16 U.S.C. § 824d.

<sup>9</sup> PJM, Intra-PJM Tariffs, OATT ATT M-3, OATT Attach. M-3 (0.1.0).

<sup>10</sup> PJM, Intra-PJM Tariffs, Sched. 6, OA Sched. 6 (0.0.0).

<sup>11</sup> *Monongahela Power Co.*, 162 FERC ¶ 61,129 (2018) (Attachment. M-3 Order).

<sup>12</sup> *Monongahela Power Co.*, 164 FERC ¶ 61,217 (2018) (Attachment M-3 Compliance Order).

<sup>13</sup> PJM Transmission Owners did not include or modify any Tariff provisions related to the cost allocation provisions of Schedule 12 of the PJM Tariff.

review of EOL Needs.<sup>14</sup> Second, the PJM Transmission Owners stated that the Attachment M-3 Revisions will better coordinate the transmission owners' end of life asset management activities with PJM's planning to address Regional Transmission Expansion Plan (RTEP) planning criteria.<sup>15</sup> The PJM Transmission Owners noted that the filing also increases transparency regarding the process that the PJM Transmission Owners use to evaluate the need to replace transmission facilities and provides PJM up to five years of projected replacements that a Transmission Owner has identified (on a confidential basis).<sup>16</sup>

### C. August 2020 Order

7. In the August 2020 Order, the Commission accepted the PJM Transmission Owners' Attachment M-3 Revisions based on a finding that the PJM Transmission Owners retained responsibilities under the CTOA related to EOL planning.<sup>17</sup> Specifically, the Commission found that:

Under the CTOA and the Tariff, the PJM [Transmission Owners] retain all rights that they have not specifically granted to PJM. Under the CTOA, the PJM [Transmission Owners] agree to “transfer to PJM . . . the responsibility to prepare a Regional Transmission Expansion Plan and to

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<sup>14</sup> EOL Need is defined as a need to replace a transmission line between breakers operating at or above 100 kV or a transformer the high side of which operates at or above 100 kV and the low side of which is not connected to distribution facilities, which the Transmission Owner has determined to be near the end of its useful life, the replacement

of which would be an Attachment M-3 project. PJM, Intra-PJM Tariffs, OATT ATT. M-3, OATT Attach. M-3 (1.0.0).

<sup>15</sup> RTEP is defined as the plan prepared by the Office of the Interconnection pursuant to Operating Agreement, Schedule 6 for the enhancement and expansion of the Transmission System in order to meet the demands for firm transmission service in the PJM Region. PJM, Intra-PJM Tariffs, OATT Definitions – R - S, OATT Definitions – R - S, 23.0.0.

<sup>16</sup> PJM Transmission Owners Transmittal at 11.

<sup>17</sup> August 2020 Order, 172 FERC ¶ 61,136. The Commission denied a motion to dismiss that contended that the Attachment M-3 Revisions should not have been made because the PJM Transmission Owners did not adhere to the procedural requirements of the CTOA. *Id.* PP 78-79.

provide information reasonably requested by PJM to prepare the Regional Transmission Expansion Plan and shall otherwise cooperate with PJM in such preparation.” Pursuant to the CTOA, PJM is limited to “[c]onduct[ing] its planning for the expansion and enhancement of transmission facilities.” The PJM [Transmission Owners] specifically retain the right to “maintain” their transmission facilities and generally reserve all rights not specifically granted to PJM.<sup>18</sup> (Citations omitted)

8. The Commission further found:

Asset Management Projects do not fit within the categories of projects the CTOAs have transferred to PJM. These projects do not fall under regional planning under the Operating Agreement as they relate solely to maintenance of existing facilities, and they do not “expand” or “enhance” the PJM grid as the CTOA requires for planning transferred to PJM. They are solely projects that maintain the existing infrastructure by repairing or replacing equipment. These projects therefore fall within the category of rights not specifically granted to PJM and therefore reserved to the PJM [Transmission Owners].<sup>19</sup> (Citations omitted)

9. The Commission found its conclusions consistent with *Atl. City Elec. Co. v. FERC*,<sup>20</sup> which held that “nothing in section 206 sanctions denying petitioners their right to unilaterally file rate and term changes.”<sup>21</sup> The Commission also found its conclusion

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<sup>18</sup> August 2020 Order, 172 FERC ¶ 61,136 at P 82.

<sup>19</sup> *Id.* P 83. Asset Management Projects are defined as “any modification or replacement of a Transmission Owner’s Transmission Facilities that results in no more than an Incidental Increase in transmission capacity undertaken to perform maintenance, repair, and replacement work, to address an EOL Need, or to effect infrastructure security, system reliability, and automation projects the Transmission Owner undertakes to maintain its existing electric transmission system and meet regulatory compliance requirements.” PJM, Intra-PJM Tariffs, OATT ATT M-3, OATT Attach. M-3 (1.0.0), § (b) 1.

<sup>20</sup> 295 F.3d 1, 10 (D.C. Cir. 2002).

<sup>21</sup> August 2020 Order, 172 FERC ¶ 61,136 at P 82.

consistent with its *Southern California Edison Co.*,<sup>22</sup> and *California Public Utilities Commission v. Pacific Gas & Electric Co.*<sup>23</sup> orders (hereinafter, *California Orders*). The Commission stated that:

“[its] interpretation of the CTOA is consistent with the *California Orders*, in which the Commission concluded that it was appropriate to define “asset management” as activities that “encompass the maintenance, repair, and replacement work done on existing transmission facilities as necessary to maintain a safe, reliable, and compliant grid based on existing topology,” . . . and “that the [Attachment M-3 Revisions] in this proceeding are consistent with the type of projects and activities that the Commission found were appropriately considered transmission owner asset management projects in the *California Orders*.”<sup>24</sup>

## II. Discussion

10. As discussed below, we disagree with the arguments on rehearing and sustain the August 2020 Order. While we are modifying the discussion in the August 2020 Order, we continue to reach the same result in this proceeding.

11. The PJM Transmission Owners filed an answer to the requests for rehearing. Rule 713(d) of the Commission’s Rules of Practice and Procedure prohibits an answer to a request for rehearing.<sup>25</sup> Accordingly, we reject the PJM Transmission Owners’ answer.

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<sup>22</sup> 164 FERC ¶ 61,160, at P 33 (2018).

<sup>23</sup> 164 FERC ¶ 61,161, at P 68 (2018).

<sup>24</sup> August 2020 Order, 172 FERC ¶ 61,136 at P 84 (citing *So. Cal. Edison Co.*, 164 FERC ¶ 61,160 at P 33; *Cal. Pub. Util. Comm’n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161 at P 68).

<sup>25</sup> 18 C.F.R. § 385.713(d)(1) (2020).

**A. Motion to Dismiss**

**1. Rehearing Argument**

12. The Protesting Parties contend that the Commission erred in denying the motion to dismiss.<sup>26</sup> The Protesting Parties state that the CTOA requires a vote prior to any action of the Administrative Committee, and the initiation of consultation with the PJM Members Committee was an action taken by the Administrative Committee.<sup>27</sup>

**2. Commission Determination**

13. Section 8.5 of the CTOA states in pertinent part: “any action taken by the Administrative Committee shall require a combination of the concurrence of the representatives’ Individual Votes of the representatives of those Parties entitled to vote on such matters and Weighted Votes as specified in this Section 8.5.”<sup>28</sup> Section 7.3.2 of the CTOA provides that “[t]he Transmission Owners shall consult with PJM and the PJM Members Committee beginning no less than 30 days prior to any Section 205 filing.”<sup>29</sup>

14. The Protesting Parties contend that, prior to notifying PJM, the CTOA requires a vote by the Administrative Committee.<sup>30</sup> We disagree with Protesting Parties’ interpretation of the CTOA. Section 7.3.2 imposes the requirement that the PJM Transmission Owners notify PJM 30 days prior to making a section 205 filing with the Commission. However, section 7.3.2 does not impose a requirement of a vote

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<sup>26</sup> Protesting Parties Reh’g Req. at 12 (Statement of Errors 1).

<sup>27</sup> *Id.* at 12-13.

<sup>28</sup> PJM, Rates Scheds., TOA-42, 8.5 Manner of Acting (1.0.0) ((future citations to the CTOA may omit PJM, Rate Scheds)).

<sup>29</sup> PJM, Rates Scheds., TOA-42, 7.3.2 (0.0.0). The same provision can be found in section 9.1(b) of the PJM Tariff which provides that “[t]he Transmission Owners shall consult with PJM and the PJM Members Committee beginning no less than 30 days prior to any Section 205 filing.” PJM, Intra-PJM Tariffs, 9.1, OATT 9.1 Rights of the Transmission Owners (2.1.0).

<sup>30</sup> Protesting Parties Reh’g Req. at 13.

before initiating such a consultation.<sup>31</sup> It is true that section 8.5.2 of the CTOA requires a majority vote of the members present at a quorum before taking action “on any matter other than those specified in [s]ection 8.5.1.” However, section 7.3.2, the section specifically dealing with consultation, does not require a vote prior to consultation. Therefore, we do not find that such consultation is the type of “matter” that requires a vote by the quorum. Consultation ordinarily would be an administrative matter, rather than the type of final action requiring a vote. And, as the PJM Transmission Owners point out, their course of conduct over the years has been to have the Administrative Committee Chair post the consultation pursuant to their authority under the CTOA, without requiring a vote.<sup>32</sup> Indeed, as the Commission found, this interpretation is logical as consulting with PJM prior to voting allows the PJM Transmission Owners to “consider the opinions of PJM and the Members Committee prior to the formal vote on the proposal under section 7.3.2 of the CTOA.”<sup>33</sup> Finally, while the voting requirements in the CTOA are designed to protect the rights of individual PJM Transmission Owners against actions taken without sufficient consensus, we agree with the PJM Transmission Owners that a vote prior to initiating the consultative process is not required by the CTOA because that consultation requirement exists to allow consideration of concerns and the interests of parties other than transmission owners, who do not participate in that vote. Accordingly, we disagree with the rehearing arguments on this issue.

**B. Attachment M-3 Revisions FPA Section 205 Filing Rights**

**1. Rehearing Requests**

15. The Protesting Parties contend that the Commission cites to no evidence that section 9.1 of the PJM Tariff, nor any other provision of the PJM Tariff or CTOA provide the PJM Transmission Owners with unilateral filing rights to alter transmission planning

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<sup>31</sup> See PJM, Rates Scheds., TOA-42 8.5.1 Action by Two-thirds Majority (1.0.0); TOA-42 7.3.2 (0.0.0) (vote required for section 205 filing); TOA-42 7.6.4 (0.0.0) (resolving disputes among members); TOA-42 8.4 Meetings (0.0.0) (vote required to change agenda).

<sup>32</sup> Answer of the Indicated Transmission Owners to Mot. to Dismiss, Docket No. ER20-2046-000, at 7-8 (Jun. 25, 2020); TOA-42 8.3.2 Duties of the Officers (0.0.0) (the Chair shall “cause notices of meetings to be distributed”).

<sup>33</sup> PJM, Rates Scheds., TOA-42 7.3.2 (0.0.0); see August 2020 Order, 172 FERC ¶ 61,136 at P 79.

in PJM, particularly the right to establish planning provisions that alter the scope of the regional planning process.<sup>34</sup>

## 2. Commission Determination

16. Prior to the PJM Transmission Owners' filing in this proceeding, Asset Management Projects and EOL Projects were not subject to PJM's RTEP planning process or the Order No. 890 planning process in Attachment M-3. In their filing, the PJM Transmission Owners voluntarily proposed to include Asset Management Projects and EOL Projects as part of the Order No. 890 process approved by the Commission in *Monongahela Power Co.*<sup>35</sup>

17. Contrary to the argument made by the Protesting Parties, the Commission in the August 2020 Order did not expand the planning rights of the PJM Transmission Owners into areas reserved for PJM planning. The Commission explained how the CTOA reserved filing rights for planning of Asset Management Projects to the PJM Transmission Owners.<sup>36</sup> Under the PJM Operating Agreement and the prior version of Attachment M-3, Asset Management Projects and EOL Projects were not specifically addressed. These projects either were developed by the individual transmission owner or adhered to the planning criteria for Supplemental Projects.<sup>37</sup> The PJM Transmission Owners made their filing to clarify that Asset Management Projects and EOL Projects would be planned under Order No. 890 planning principles as described in Attachment M-3.<sup>38</sup> The Attachment M-3 Revisions therefore do not restrict PJM's current planning

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<sup>34</sup> Protesting Parties Reh'g Req. at 17 (Statement of Errors 2).

<sup>35</sup> Attachment M-3 Compliance Order, 164 FERC ¶ 61,217.

<sup>36</sup> *Id.*; August 2020 Order, 172 FERC ¶ 61,136 at PP 81-87.

<sup>37</sup> See *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,097, at P 8 n.13 (Dominion project to address end of useful life initially submitted as a Supplemental Project), *order on reh'g*, 157 FERC ¶ 61,191 (2016), *rev'd sub nom.*, *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254, *reh'g denied*, 905 F.3d 671 (D.C. Cir. 2018).

<sup>38</sup> While there were no planning procedures to address EOL Needs prior to the Attachment M-3 Revisions, individual transmission owners, at times, filed projects at the end of their useful life as Supplemental Projects, demonstrating that planning for EOL Needs was within the PJM Transmission Owners' retained responsibilities. See *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,097 at P 8 n.13, *order on reh'g*, 157 FERC ¶ 61,191, *rev'd sub nom.*, *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254 (D.C. Cir. 2018), *reh'g denied*, 905 F.3d 671.

responsibilities, but, in fact, enhanced the transparency of the planning process for Asset Management Projects and EOL Projects.

18. As the Commission found in the August 2020 Order, the filing came within the filing rights reserved to the PJM Transmission Owners per the CTOA. Pursuant to *Atlantic City*, PJM can exercise only those rights transferred to it by the PJM Transmission Owners.<sup>39</sup> Under the CTOA, the PJM Transmission Owners agreed only to “transfer to PJM . . . the responsibility to prepare a Regional Transmission Expansion Plan.”<sup>40</sup> PJM is limited to “[c]onduct[ing] its planning for the expansion and enhancement of transmission facilities.”<sup>41</sup> The Commission found that Asset Management Projects are similar to Supplemental Projects and, therefore, not approved by the PJM Board.<sup>42</sup> Given the specific definition of Asset Management Projects, including EOL Projects, in Attachment M-3 of the PJM Tariff, Asset Management Projects maintain, rather than enhance the grid. In addition, as pointed out in the August 2020 Order, the PJM Transmission Owners specifically retained the right to “maintain” their transmission facilities<sup>43</sup> and, with respect to EOL Projects, determine when to “retire” facilities.<sup>44</sup>

19. The Commission’s determination here is consistent with its precedent on the scope of RTO planning. In Order No. 890, the Commission found that RTO planning processes should focus “on regional problems and solutions, not local planning issues that may be

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<sup>39</sup> Under the CTOA, the PJM Transmission Owners specifically reserved all rights not specifically granted to PJM. PJM, Rate Schedules, TOA-42, Art. 5 Parties’ Retained Rights (0.0.0), TOA-42, 5.6 Reservation of Rights (0.0.0).

<sup>40</sup> PJM, Rates Schedules., TOA-42 4.1.4 Planning Information (0.0.0).

<sup>41</sup> PJM, Rates Schedules., TOA-42, 6.3.4 (0.0.0).

<sup>42</sup> August 2020 Order, 172 FERC ¶ 61,136 at P 83; *see* PJM, Intra-PJM Tariffs, OA Sched. 6 Sec 1.6, OA Schedule 6 Sec 1.6 Approval of the Final Regional Trans. (4.0.0) (“the PJM Board shall approve the [RTEP] in accordance with the requirements of Operating Agreement, Schedule 6”); OA Schedule 6 Sec 1.5 Procedure for Development of the Regi. (24.0.0), § 1.5.6 (n) (“Certain Regional RTEP Project(s) and Subregional RTEP Project(s) may not be required for compliance with the following PJM criteria: system reliability, market efficiency or operational performance, pursuant to a determination by the Office of the Interconnection. These Supplemental Projects shall be separately identified in the RTEP and are not subject to approval by the PJM Board.”).

<sup>43</sup> PJM, Rate Schedules., TOA-42, 4.5 Operation and Maintenance (0.0.0).

<sup>44</sup> PJM, Rates Schedules., TOA-42 5.2 Facility Rights (1.0.0).

addressed by individual transmission owners.”<sup>45</sup> The Commission found that when the individual transmission owners perform this planning, they also must comply with Order No. 890.<sup>46</sup> In *Monongahela Power Co.*, the Commission found, specifically with respect to PJM, that “[t]he PJM Transmission Owners have primary responsibility for planning Supplemental Projects and, therefore, retain the filing rights to make modifications to these provisions.”<sup>47</sup> The Commission went on to explain, as it did in the August 2020 Order:

[u]nlike the RTEP transmission projects, for which the PJM Transmission Owners have ceded planning to PJM as part of establishing an RTO, the PJM Transmission Owners remain responsible for planning Supplemental Projects, and we find that it is just and reasonable for the PJM Transmission Owners to establish the process for planning these transmission projects and to initiate under section 205 any proposed revisions.<sup>48</sup>

The Commission made similar findings in *Appalachian Power Co.*<sup>49</sup> in finding that the PJM Transmission Owners had reserved the right to plan and file procedures for Supplemental Projects designed to mitigate the risk associated with critical transmission stations and substations identified pursuant to NERC reliability standard CIP-014-2.

20. As the Commission found in the August 2020 Order, it treated the PJM Transmission Owners’ proposal in this case consistently with its recent decisions in the *California Orders*. In the *California Orders*, the Commission determined that “asset management” projects do not fall under Order No. 890 planning principles and therefore do not have to go through the Order No. 890 process. While that issue is not present in this case, as the PJM Transmission Owners voluntarily have included Asset Management Projects under their Order No. 890 protocols, the Commission found that the definition of “asset management” projects in the *California Orders* supported its determination that the Asset Management Projects in the PJM Transmission Owners’ proposal fell under the filing rights that the PJM Transmission Owners retained. In the *California Orders*, the Commission found that “asset management” projects “do not, as a general matter, expand

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<sup>45</sup> Ord. No. 890, 118 FERC ¶ 61,119 at P 440.

<sup>46</sup> *Id.*

<sup>47</sup> Attachment M-3 Compliance Order, 164 FERC ¶ 61,217 at P 13.

<sup>48</sup> *Id.* P 14.

<sup>49</sup> 170 FERC ¶ 61,196, at P 59 (2020).

the California Independent System Operator (CAISO) grid. Rather, these asset management projects and activities include such items as maintenance, compliance, work on infrastructure at the end-of-useful life, and infrastructure security, that SoCal Edison undertakes to maintain its existing electric transmission system and meet regulatory compliance requirements.”<sup>50</sup> The Asset Management Projects included in Attachment M-3 Revisions in this proceeding are consistent with this definition as they do not expand the PJM grid, but encompass maintenance and replacement of infrastructure.<sup>51</sup>

21. The Protesting Parties argue that “[t]he *California Orders*, however, focused on whether certain activities, including the replacement of existing transmission facilities, ‘expand’ the transmission grid.”<sup>52</sup> The Protesting Parties contend that the Commission, erred by failing to recognize that transmission projects to address EOL Needs may be enhancements to the transmission system.<sup>53</sup> The Protesting Parties continue, “[n]owhere does the Commission actually discuss whether EOL projects ‘enhance’ the grid. Only by ignoring the term ‘enhancements’ could the Commission reach the conclusion that ‘Asset Management Projects’ do not fit within the categories of projects that the CTOA transferred to PJM.”<sup>54</sup> The Protesting Parties argue that even if the *California Orders* did apply to the instant case, they do not support the definition of Asset Management Project adopted by the PJM Transmission Owners because the projects at issue in the Attachment M-3 Revisions are not the same as the projects at issue in the *California Orders*.<sup>55</sup> The Protesting Parties also argue that distinctions exist between the CAISO and PJM such that the *California Orders* should not apply in PJM. They claim that the Commission failed to address the Protesting Parties’ demonstration that the Attachment M-3 Revisions violate the PJM Operating Agreement, which is a critical distinction between PJM and the CAISO.<sup>56</sup>

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<sup>50</sup> *S. Cal. Edison Co.*, 164 FERC ¶ 61,160 at P 32.

<sup>51</sup> August 2020 Order, 172 FERC ¶ 61,136 at P 84.

<sup>52</sup> Protesting Parties Reh’g Req. at 20-21.

<sup>53</sup> *Id.* at 21.

<sup>54</sup> *Id.*

<sup>55</sup> Protesting Parties Reh’g Req. at 33 (Statement of Errors 4).

<sup>56</sup> Protesting Parties Reh’g Req. at 34-35.

22. Any replacement of a project with newer, more modern equipment may provide some enhanced capability, but we do not find that qualifies all replacement projects as within the province of PJM's planning.<sup>57</sup> The term enhancement in the CTOA is part of the phrase "expansion and enhancement" which we interpret to mean projects that modify or revise the grid itself.<sup>58</sup> As the Commission recognized in *California Public Utilities Commission*,<sup>59</sup> the replacement of a vintage 1940's transformer with a modern replacement could be considered an enhancement, particularly if the new equipment would be of higher capacity. Nonetheless, the Commission found that, as long as that new equipment resulted in *no more than incremental increase in transmission capacity*, the project would still be best characterized as an asset management replacement.<sup>60</sup> As such, the modernization of equipment would not be considered an enhancement subjecting such replacement to a different planning structure than repair or maintenance.

23. Moreover, the Commission did not read out of the CTOA the term "enhancement," as the Protesting Parties argue.<sup>61</sup> Asset Management Projects, as defined by the Attachment M-3 Revisions, are not enhancements of the grid as they merely replace worn out equipment. As discussed above, enhancements and expansions of the transmission system are developed through the RTEP developed pursuant to Operating Agreement, Schedule 6.<sup>62</sup>

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<sup>57</sup> See August 2020 Order, 172 FERC ¶ 61,136 at P 83 (Asset Management Projects "do not 'expand' or 'enhance' the PJM grid as the CTOA requires for planning transferred to PJM" and "are solely projects that maintain the existing infrastructure by repairing or replacing equipment"); *id.* P 84 ("[o]ur interpretation of the CTOA is consistent with the *California Orders*, in which the Commission concluded that it was appropriate to define 'asset management' as activities that 'encompass the maintenance, repair, and replacement work done on existing transmission facilities as necessary to maintain a safe, reliable, and compliant grid based on existing topology,' even if these projects result in an 'incidental increase in transmission capacity that is not reasonably severable from the asset management or activity'").

<sup>58</sup> PJM, Rates Scheds., TOA-42 6.3.4 (0.0.0).

<sup>59</sup> *S. Cal. Edison Co.*, 164 FERC ¶ 61,160 at P 32; *Cal. Pub. Utilities Comm'n*, 164 FERC ¶ 61,161 at P 68 (using as an example the replacement of a transformer at the end of its useful life).

<sup>60</sup> *Cal. Pub. Utilities Comm'n*, 164 FERC ¶ 61,161 at P 68.

<sup>61</sup> Protesting Parties Reh'g Req. at 21.

<sup>62</sup> PJM, Intra-PJM Tariffs, OA Sched. 6 Sec 1.5, OA Schedule 6 Sec 1.5 Procedure for Development of the Regi (24.0.0), § 1.5.6 Development of the Recommended

24. Under *Atlantic City*, the PJM Operating Agreement cannot confer on PJM authority not granted by the PJM Transmission Owners. While the Commission has authority under FPA section 206 to revise the PJM Operating Agreement,<sup>63</sup> as the Court of Appeals for the District of Columbia Circuit found in *Atlantic City*, “nothing in section 206 sanctions denying petitioners their right to unilaterally file rate and term changes” unless they agreed to do so.<sup>64</sup> The Protesting Parties’ argument that the PJM Tariff does not confer filing rights regarding planning to the PJM Transmission Owners<sup>65</sup> is backwards. The question under *Atlantic City* is not whether the PJM Tariff accorded filing rights to the PJM Transmission Owners, but whether the PJM Transmission Owners conferred filings rights on PJM through the CTOA. PJM agrees that Asset Management Projects and EOL Projects are outside the scope of PJM’s planning authority based on the CTOA and other PJM governing documents.<sup>66</sup>

25. In any event, the Attachment M-3 Revisions here are consistent with the PJM Operating Agreement. As explained above, the PJM Operating Agreement limits PJM’s planning to developing an RTEP based on PJM planning procedures, NERC Reliability Standards, Regional Entity reliability principles and standards, and the individual Transmission Owner FERC filed planning criteria as filed in FERC Form No. 715 as PJM planning criteria.<sup>67</sup> As previously noted, the PJM Operating Agreement further recognizes that PJM does not plan Supplemental Projects.<sup>68</sup> Indeed, Supplemental Projects under the PJM Operating Agreement may go beyond maintenance and replacement to include projects that expand and enhance the transmission “that is not

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Regional Transmission Expansion Plan; § 1.5.7 Development of Economic-based Enhancements or Expansions; §1.5.9 State Agreement Approach.

<sup>63</sup> See, e.g., *Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656 (D.C. Cir. 2017).

<sup>64</sup> *Atlantic City Electric Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002).

<sup>65</sup> Protesting Parties Reh’g Req. at 18, 39.

<sup>66</sup> Cmts. of PJM Interconnection, L.L.C., Docket No. ER20-2308-000, at 8-11 (July 2, 2020).

<sup>67</sup> PJM, Intra-PJM Tariffs, OA Sched. 6 Sec 1.2 Conformity with NERC and Other Applic. (2.0.0), § 1.2 (e).

<sup>68</sup> PJM, Intra-PJM Tariffs, OA Schedule 6 Sec 1.5 Procedure for Development of the Regi (24.0.0), § 1.5.6 (n) (“These Supplemental Projects shall be separately identified in the RTEP and are not subject to approval by the PJM Board.”). Planning for Supplemental Projects was included in Attachment M-3, and is included in the Attachment M-3 Revisions.

required for compliance with the following PJM criteria: system reliability, operational performance or economic criteria, pursuant to a determination by the Office of the Interconnection and is not state public policy project pursuant to Operating Agreement, Sched. 6, section 1.5.9(a)(ii).”

26. The Protesting Parties’ make a number of claims that the Attachment M-3 Revisions effected a “shift of planning responsibility for Asset Management Projects from PJM to the TOs.”<sup>69</sup> But Asset Management Projects always have been within the province of the PJM Transmission Owners who have planned these projects on their own or as Supplemental Projects. The Attachment M-3 Revisions effectuated no change in planning, only further clarification of the process used to plan these projects. We therefore find no inconsistency between the PJM Transmission Owners’ proposal for Asset Management Projects and the PJM Operating Agreement.

**C. Planning for EOL Needs Retained by PJM Transmission Owners**

**1. Rehearing Request**

27. The Protesting Parties argue that the Commission’s approval of the Attachment M-3 Revisions ignored the fact that it shifts control over the scope of regional transmission planning from the PJM stakeholders to the PJM Transmission Owners.<sup>70</sup>

**2. Commission Determination**

28. As discussed above, the PJM Transmission Owners’ proposal does not shift responsibility for planning Asset Management Projects from PJM to the PJM Transmission Owners for the very reason that PJM never had this planning responsibility. The filing merely provides that these projects would be planned according to Order No. 890 principles, making more transparent the procedures the PJM Transmission Owners would use to plan these projects.

**D. Role of PJM in Transmission Planning**

**1. Rehearing Request**

29. The Protesting Parties contend that the Commission erred in failing to address arguments that the Attachment M-3 Revisions limit the flexibility and role of PJM in

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<sup>69</sup> Protesting Parties Reh’g Req. at 38-39 (Statement of Errors 5, 6, 7, & 8).

<sup>70</sup> Protesting Parties Reh’g Req. at 22.

transmission planning and are contrary to the PJM Operating Agreement.<sup>71</sup> In support, the Protesting Parties point to the PJM Operating Agreement definition of Supplemental Project, 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 the Office of the Interconnection . . . .”<sup>72</sup> The Protesting Parties state that system reliability, operational performance or economic criteria are not defined and provide PJM flexibility as to the regional criteria that PJM should address.<sup>73</sup>

## 2. Commission Determination

30. As discussed above, the PJM Operating Agreement cannot confer planning authority to PJM that is not explicitly provided in the CTOA. Also, the PJM Operating Agreement’s delineation of PJM’s planning responsibility is consistent with our interpretation of the limits included in the CTOA. The PJM Operating Agreement limits PJM’s planning to those projects that are transmission expansions and meet the RTEP planning criteria. Specifically, PJM’s Tariff defines the RTEP as limited to enhancement and expansion of the transmission system as does the CTOA.<sup>74</sup> Moreover, the PJM Operating Agreement limits PJM’s planning role to certain specified regional planning activities, none of which includes maintenance or asset management:

[t]he Regional Transmission Expansion Plan planning criteria shall include, Office of the Interconnection planning procedures, NERC Reliability Standards, Regional Entity reliability principles and standards, and the individual Transmission Owner FERC filed planning criteria as filed in FERC Form No. 715, and posted on the PJM website.<sup>75</sup>

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<sup>71</sup> *Id.* at 34.

<sup>72</sup> PJM, Intra-PJM Tariffs, S–T, OA Definitions S – T (17.0.0).

<sup>73</sup> Protesting Parties Reh’g Req. at 34.

<sup>74</sup> PJM, Intra-PJM Tariffs, OATT Definitions – R - S, OATT Definitions – R - S (24.0.0) (“Regional Transmission Expansion Plan defined as “the plan prepared by the Office of the Interconnection pursuant to Operating Agreement, Schedule 6 for the enhancement and expansion of the Transmission System in order to meet the demands for firm transmission service in the PJM Region”).

<sup>75</sup> PJM, Intra-PJM Tariffs, OA Sched. 6 Sec 1.2, OA Sched. 6 Sec 1.2 Conformity with NERC and Other Applic (2.0.0).

31. The phrase “system reliability, operational performance or economic criteria” in the definition of Supplemental Projects refers to the planning performed by PJM pursuant to the PJM Operating Agreement, and does not serve to expand the role of PJM planning beyond that conferred by the CTOA.

**E. Attachment M-3 Revisions are Limited to Incidental Expansions**

**1. Rehearing Requests**

32. The Protesting Parties and the New Jersey Board contend that the Commission did not address whether Asset Management Projects at issue in this proceeding must comply with Order No. 890, and instead determined that “where transmission projects developed under the expanded Attachment M-3 process result in only incidental expansions of the transmission system, such asset management activities are not subject to Order No. 890 transmission planning principles, and are inconsistent with the Attachment M-3 Order.”<sup>76</sup> The Protesting Parties contend that the Commission applied an invalid interpretation of Order No. 890 to the PJM Transmission Owners’ proposal.<sup>77</sup> The Protesting Parties essentially challenge on rehearing the Commission’s interpretation of Order No. 890 in the *California Orders* as not applicable to Asset Management Projects in this proceeding.

33. The Protesting Parties state that they disagree with the *California Orders*. They note that the *California Orders* are subject to review in the United States court of Appeals for the Ninth Circuit. The Protesting Parties state that to the extent the Commission’s determination in this proceeding (Docket No. ER20-2046) regarding the scope of Order No. 890 as set forth in the *California Orders* is modified or vacated, the Commission’s reliance on the *California Orders* in this proceeding must also be modified or vacated.<sup>78</sup>

**2. Commission Determination**

34. The Commission did not address whether Asset Management Projects at issue in this proceeding must comply with Order No. 890. Such a finding was unnecessary,

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<sup>76</sup> Protesting Parties Reh’g Req. at 38 (citing August 2020 Order, 172 FERC ¶ 61,136 at P 89); New Jersey Board Reh’g Req. at 5.

<sup>77</sup> Protesting Parties Reh’g Req. at 35.

<sup>78</sup> Protesting Parties Reh’g Req. at 36 (citing *Cal. Pub. Utils. Comm’n. v. FERC*, Case No. 19-72886 and *N. Cal. Power Agency*, Case No. 19-72925).

because the Attachment M-3 Revisions included Asset Management Projects in the Attachment M-3 Tariff which the Commission already had found just and reasonable.<sup>79</sup> While the August 20 Order agreed with the finding in the *California Orders* that asset management projects are not subject to Order No. 890 transmission planning principles,<sup>80</sup> that statement was dicta and was not necessary to the approval of the Attachment M-3 Revisions, and the Protesting Parties' attack on the *California Orders* would not invalidate the Commission's acceptance of the Attachment M-3 Revisions.

35. Moreover, the Commission did not base its determination to accept the Attachment M-3 Revisions on the requirements of Order No. 890. Rather, the Commission based its determination on the planning rights reserved by the PJM Transmission Owners in the CTOA and in the PJM Operating Agreement. As pointed out earlier, Order No. 890 supports the Commission's reading of the CTOA, as Order No. 890 found that RTO planning focuses "on regional problems and solutions, not local planning issues that may be addressed by individual transmission owners."<sup>81</sup> Therefore, the requirement that the planning of local projects comply with Order No. 890 was a necessary component in the establishment of an RTO.

## **F. Right of First Refusal in Violation of Order No. 1000**

### **1. Rehearing Request**

36. The Protesting Parties contend that the Attachment M-3 revisions improperly reinsert a right of first refusal in violation of Order No. 1000.<sup>82</sup> They contend that the new Applicability section in Attachment M-3 gives each transmission owner responsibility for planning and constructing all transmission expansions or enhancements that are not needed for the five criteria listed in the same section, thus creating a new

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<sup>79</sup> See August 2020 Order, 172 FERC ¶ 61,136 at n.141 ("We make no determination here as to whether EOL Needs or any of these Asset Management Projects, and in particular specific replacement activities, are subject to the transmission planning requirements of Order No. 890, as the PJM [Transmission Owners] proposed to include these types of projects in the Order No. 890 planning process in Attachment M-3").

<sup>80</sup> *Id.* P 89.

<sup>81</sup> Order No. 890, 118 FERC ¶ 61,119 at P 440.

<sup>82</sup> Protesting Parties Reh'g Req. at 24 (citing *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051, at P 253 (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)).

right of first refusal in the PJM Tariff that limits PJM's ability to create new categories of regional projects.<sup>83</sup>

## 2. Commission Determination

37. We do not find that the Attachment M-3 Revisions creates a new federal right of first refusal. As we explained earlier, this filing is limited to those transmission projects that PJM cannot plan for as the PJM Transmission Owners retained the planning rights for these projects. The five criteria listed in Attachment M-3 Revisions<sup>84</sup> that delineate the border between transmission owner transmission planning and PJM transmission planning are consistent with the criteria in the CTOA and PJM Operating Agreement, which define the planning responsibilities of PJM. While the elimination of any federal right of first refusal applies to PJM-planned regional and interregional transmission facilities, the requirement to eliminate any federal right of first refusal does not apply to the transmission projects at issue here because they are not regional or interregional transmission facilities planned by PJM.<sup>85</sup>

### G. Order No. 2000

#### 1. Rehearing Request

38. The Protesting Parties contend that the August 2020 Order is at odds with the Order No. 2000 requirement that the RTO must have ultimate responsibility for both

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<sup>83</sup> *Id.* at 25.

<sup>84</sup> *See* PJM, Intra-PJM Tariffs, OATT ATT M-3, OATT Attach. M-3 (1.0.0), § (a) ((1) NERC Reliability Standards (which includes Applicable Regional Entity reliability standards); (2) Individual Transmission Owner planning criteria as filed in FERC Form No. 715 and posted on the PJM website; (3) criteria to address economic constraints in accordance with section 1.5.7 of the Operating Agreement or an agreement listed in Sched. 12-App. B; (4) State Agreement Approach expansions or enhancements in accordance with section 1.5.9(a)(ii) of the Operating Agreement; (5) an expansion or enhancement to be addressed by the RTEP Planning Process pursuant to section (d)(2) of this Attachment M-3 in accordance with RTEP Planning Process procedures in Schedule 6 of the Operating Agreement).

<sup>85</sup> Order No. 1000, 136 FERC ¶ 61,051 at P 253 (explaining that the requirement to remove provisions from Commission-jurisdictional tariffs and agreements that grant incumbent transmission providers a federal right of first refusal applies only to transmission facilities that are selected in a regional transmission plan for purposes of cost allocation).

transmission planning and expansion within its region that will enable it to provide efficient, reliable and non-discriminatory transmission service.<sup>86</sup>

## 2. Commission Determination

39. The August 2020 Order does not violate Order No. 2000. Order No. 2000 recognized that joining an RTO was voluntary and the Court in *Atlantic City* concluded that the Commission could not, under FPA section 206, require the transmission owners to cede their filing rights to PJM. Order No. 2000 also provided general guidance as to planning. It required that the RTO (1) encourage market-motivated operating and investment actions for preventing and relieving congestion, and (2) accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities, coordinated with programs of existing Regional Transmission Groups (RTGs) where necessary.<sup>87</sup> But beyond those two categories, Order No. 2000 provided the RTO participants with “considerable flexibility in designing a planning and expansion process that works best for its region.”<sup>88</sup> Order No. 2000 also required that the RTO provide service under a tariff that is consistent with or superior to the Commission's *pro forma* tariff,<sup>89</sup> and as noted above, the division of responsibility in the CTOA and the PJM Operating Agreement is consistent with the general division of responsibility in Order No. 890.

### H. Attachment M-3 Revisions are Just and Reasonable

40. The Protesting Parties argue that the Commission did not adequately respond to the issues raised in the protest that the Attachment M-3 Revisions were not just and reasonable.<sup>90</sup> The Protesting Parties argue that the Attachment M-3 Revisions go beyond the responsibilities retained by the CTOA and affect the regional planning responsibilities

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<sup>86</sup> Protesting Parties Reh’g Req. at 43 (citing *Reg’l Transmission Orgs.*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999) (cross-referenced at 89 FERC ¶ 61,285), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross-referenced at 90 FERC ¶ 61,201), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish Cty. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)). (Statement of Errors 9).

<sup>87</sup> Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,163-64.

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

<sup>89</sup> *Id.*

<sup>90</sup> Protesting Parties Reh’g Req. at 26 (Statement of Errors 3).

subject to the PJM Operating Agreement.<sup>91</sup> The Protesting Parties include a list of specific provisions they deem unjust and unreasonable.

**1. Any Other Transmission Expansion and Enhancement**

41. The Protesting Parties claim the “applicability” section, related definitions of “Attachment M-3 Project,” and “PJM Planning Criteria” provisions unjustly and unreasonably expand the applicability of the Attachment M-3 process and limit PJM’s flexibility to improve its structure and operations to meet demands by restricting the PJM planning criteria.<sup>92</sup> The applicability provision of the Attachment M-3 Revisions, approved by the Commission in the August 2020 Order states:

Each Transmission Owner shall be responsible for planning and constructing in accordance with Schedule 6 of the Operating Agreement as provided in this Attachment M-3, to the extent applicable, (i) Asset Management Projects, as defined herein, (ii) Supplemental Projects, as defined in section 1.42A.02 of the Operating Agreement, and (iii) *any other transmission expansion or enhancement of Transmission Facilities that is not planned by PJM to address one or more of the following planning criteria:*

1. NERC Reliability Standards (which includes Applicable Regional Entity reliability standards);
2. Individual Transmission Owner planning criteria as filed in FERC Form No. 715 and posted on the PJM website, provided that the Additional Procedures for the Identification and Planning of EOL Needs, set forth in section (d), shall apply, as applicable;
3. Criteria to address economic constraints in accordance with section 1.5.7 of the Operating Agreement or an agreement listed in Schedule 12-Appendix B;
4. State Agreement Approach expansions or enhancements in accordance with section 1.5.9(a)(ii) of the Operating Agreement; or

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<sup>91</sup> *Id.* at 27, 45, 62 (Statement of Errors 10, 13).

<sup>92</sup> *Id.* at 27.

5. An expansion or enhancement to be addressed by the RTEP Planning Process pursuant to section (d)(2) of this Attachment M-3 in accordance with RTEP Planning Process procedures in Schedule 6 of the Operating Agreement.<sup>93</sup>

The Protesting Parties assert that the Commission failed to explain how this provision, which authorizes the PJM Transmission Owners to plan for expansions or enhancements of the Transmission System that are not Supplemental Projects, is consistent with its finding that the Attachment M-3 Revisions are just and reasonable.<sup>94</sup>

42. We continue to find this applicability provision is consistent with the responsibilities of the PJM Transmission Owners under the PJM Operating Agreement, which details the planning responsibilities of PJM,<sup>95</sup> leaving the planning responsibility for other transmission projects with the PJM Transmission Owners. Moreover, the applicability section of Attachment M-3 does not define the planning authority the PJM Transmission Owners retain and the authority they transferred to PJM. Rather, the planning reserved to the PJM Transmission Owners is defined by the CTOA, and the PJM Transmission Owners cannot expand on their authority through this revision to Attachment M-3.

43. The Protesting Parties in particular contend that the Attachment M-3 Revisions include planning for Attachment M-3 Projects<sup>96</sup> that affect Transmission Facility ratings or significantly change the impedance of Transmission Facilities when such projects are

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<sup>93</sup> PJM Intra-PJM Tariffs, OATT ATT M-3, OATT Attach. M-3 (1.0.0), § (a).

<sup>94</sup> *Id.* at 28.

<sup>95</sup> The PJM Operating Agreement limits PJM's planning to developing an RTEP based on Office of Interconnection planning procedures, NERC Reliability Standards, Regional Entity reliability principles and standards, and the individual Transmission Owner FERC filed planning criteria as filed in FERC Form No. 715, and posted on the PJM website. PJM, Intra-PJM Tariffs, OA Sched. 6 Sec 1.2 Conformity with NERC and Other Applic. (2.0.0), § 1.2 (e).

<sup>96</sup> Attachment M-3 Projects are defined as (i) an Asset Management Project that affects the connectivity of Transmission Facilities that are included in the Transmission System, affects Transmission Facility ratings or significantly changes the impedance of Transmission Facilities; (ii) a Supplemental Project; or (iii) any other expansion or enhancement of Transmission Facilities that is not excluded from this Attachment M-3 under any of clauses (1) through (5) of section (a). "Attachment M-3 Project" does not include a project to address Form No. 715 EOL Planning Criteria. PJM Intra-PJM Tariffs, OATT ATT M-3, OATT Attach. M-3 (1.0.0), § (b) 2.

expansions and enhancements that provide regional benefit, conferring transmission planning authority beyond the scope of planning for Supplemental Projects.<sup>97</sup> As discussed above, the Attachment M-3 Revisions do not reserve to the PJM Transmission Owners projects to address impedance that are planned by PJM pursuant to the PJM Operating Agreement. The only impedance projects the PJM Transmission Owners would plan are those they have reserved as they are not based on PJM Planning Criteria in the Operating Agreement.

44. The Protesting Parties also maintain that the phrase “any other transmission expansion or enhancement” improperly reserves to the PJM Transmission Owners the right to plan beyond Supplemental Projects. We disagree that this filing expands the authority of the PJM Transmission Owners or infringes on PJM’s planning authority. As discussed above, Attachment M-3 Revisions reserves to the PJM Transmission Owners only those projects that PJM does not plan under the RTEP. The Attachment M-3 Revisions include planning for transmission facilities that are not part of the RTEP but are developed based on Order No. 890 local transmission planning.

## 2. Incidental Increase

45. The Protesting Parties argue that the definition of Incidental Increase in the Attachment M-3 Revisions is unreasonably broad as it is susceptible to manipulation through unfettered modifications to Transmission Owner design standards.<sup>98</sup> They further argue the definition also references “advancements in technology” but there is no limitation on the phrase, so it could refer to more efficient equipment, replacement from lower voltage to regionally beneficial higher voltage facilities, or the inclusion of new energy storage technology.

46. The Attachment M-3 Revisions define an Incidental Increase as follows:

an increase in transmission capacity achieved by advancements in technology and/or replacements consistent with current Transmission Owner design standards, industry standards, codes, laws or regulations, which is not reasonably severable from an Asset Management Project. A transmission project that results in more than an Incidental Increase in

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<sup>97</sup> Protesting Parties Reh’g Req. at 23-24.

<sup>98</sup> *Id.* at 28.

transmission capacity is an expansion or enhancement of Transmission Facilities.<sup>99</sup>

47. We find that this definition is appropriate as it limits incidental increases in two ways. First, the increase has to be the result of technological or other change related to the equipment itself, such as improved transformers as in the example above. Second, the change under no circumstances can result in more than an incidental increase in transmission capacity. Even if the Protesting Parties are correct that the definition might be subject to manipulation, the second part of the definition protects against any project that more than incidentally increases transmission capacity and would be planned by PJM, and therefore would not fall under the Attachment M-3 Revisions definition.

### **3. Definition of EOL Need**

48. The Protesting Parties argue the definition of “EOL Need” is unjust and unreasonable because it includes a “test” for regional planning of transmission lines operating at or above 100 kV or a transformer. They argue that it is not limited to local Supplemental Projects and, thus, unlawfully confers authority for transmission planning to the PJM Transmission Owners.<sup>100</sup> The Protesting Parties contend that EOL Need definition also creates a test that will limit regional planning, by creating a backdoor right of first refusal on substations and anything else that is not a replacement transmission line or transformer. EOL Need is defined as:

a need to replace a transmission line between breakers operating at or above 100 kV or a transformer, the high side of which operates at or above 100 kV and the low side of which is not connected to distribution facilities, which the Transmission Owner has determined to be near the end of its useful life, the replacement of which would be an Attachment M-3 Project.<sup>101</sup>

49. We find this definition is just and reasonable and does not restrict PJM’s legitimate planning responsibilities as conveyed by the CTOA. This definition limits the PJM Transmission Owners to replacing transmission lines or transformers near the end of their useful lives which, as discussed above, is the maintenance of facilities the PJM Transmission Owners reserved under the CTOA.

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<sup>99</sup> PJM Intra-PJM Tariffs, OATT ATT M-3, OATT Attach. M-3 (1.0.0), § (b) 3.

<sup>100</sup> Protesting Parties Reh’g Req. at 28.

<sup>101</sup> PJM Intra-PJM Tariffs, OATT ATT M-3, OATT Attach. M-3 (1.0.0).

#### 4. Candidate EOL Needs List

50. The Protesting Parties contend that the definition of “Candidate EOL Needs List” is unjust and unreasonable because it is not transparent in contravention of Order No. 890 requirements.<sup>102</sup> Under the Attachment M-3 Revisions, each PJM Transmission Owner will provide to PJM annually a Candidate EOL Needs List comprising its non-public confidential, non-binding projection of up to five years of EOL Needs that it has identified under the Transmission Owner’s processes for identification of EOL Needs documented under section (d)(1)(i) of the Attachment M-3 Revisions.<sup>103</sup> We do not find that the provision of a non-binding, confidential list to PJM is unjust and unreasonable. The Attachment M-3 Revisions provide that prior to actually planning the project, stakeholders will be involved and that would be sufficient under Order No. 890, even if Order No. 890 did apply to these projects.<sup>104</sup> Providing such a list to PJM in advance will help PJM’s own five-year planning process, and the Protesting Parties have cited to no provision of Order No. 890 or other Commission requirement that every such non-binding list must be shared with stakeholders.

#### 5. Form No. 715 EOL Planning Criteria

51. The Protesting Parties contend the proposed definition of “Form No. 715 EOL Planning Criteria” is unjust, unreasonable and unlawful because it modifies the RTEP and, thus exceeds the authority of the PJM Transmission Owners to modify the Operating Agreement through a unilateral FPA Section 205 filing.<sup>105</sup> Form No. 715 EOL Planning Criteria is defined as “planning criteria filed by a Transmission Owner in FERC Form No. 715 to address EOL Needs.”<sup>106</sup>

52. The Protesting Parties do not explain how this definition modifies the RTEP or in any way exceeds the PJM Transmission Owners’ reserved planning rights. This is a definition of the current PJM Transmission Owners’ right to include end of life criteria in its Form No. 715 filing with the Commission. Once an EOL Project is included in Form

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<sup>102</sup> Protesting Parties Reh’g Req. at 28-29.

<sup>103</sup> PJM Intra-PJM Tariffs, OATT ATT M-3, OATT Attach. M-3 (1.0.0), § (b) 6.

<sup>104</sup> As noted earlier, the Commission’s position in the *California Orders* is that Order No. 890 does not apply to asset management activities, including end of life projects.

<sup>105</sup> Protesting Parties Reh’g Req. at 29.

<sup>106</sup> PJM Intra-PJM Tariffs, OATT ATT M-3, OATT Attach. M-3 (1.0.0), § (b) 8.

No. 715, PJM plans the project under the current Operating Agreement and this definition effects no change to that process.

#### **6. No Limitations on Meetings**

53. The Protesting Parties contend that the revisions to Paragraph (c) 7 of Attachment M-3 expand the use of Attachment M-3 to other undefined “Transmission Projects,” and, thus, are unjust and unreasonable because they confer authority to the PJM Transmission Owners to use the Attachment M-3 transmission planning process beyond local projects.<sup>107</sup> Attachment M-3 Revisions, Paragraph (c) 7 is entitled “No Limitation on Additional Meetings and Communications or Use of Attachment M-3 For Other Transmission Projects” and it merely indicates that the PJM Transmission Owners are free to schedule additional meetings with stakeholders on Attachment M-3 Projects as well as other transmission projects.<sup>108</sup>

54. We find that this provision merely provides for additional transparency to stakeholders, which does nothing to expand transmission owners’ planning rights beyond those they reserved in the CTOA.

#### **7. Decrease in Coordination**

55. The Protesting Parties argue that the Commission erred in not responding to arguments that the Attachment M-3 Revisions will decrease coordination between the PJM Transmission Owners and PJM, will reduce transparency in transmission planning, and will have negative implications even beyond transmission planning in PJM.<sup>109</sup>

56. We find that these arguments do not render the Attachment M-3 Revisions unjust and unreasonable. This filing did not decrease coordination because PJM previously did not plan these EOL Projects. The PJM Transmission Owners have not transferred this planning authority to PJM. As we found in the August 2020 Order, the Attachment M-3 Revisions ensure transparency for these projects pursuant to the procedures established in Order No. 890.<sup>110</sup>

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<sup>107</sup> Protesting Parties Reh’g Req. at 29.

<sup>108</sup> PJM Intra-PJM Tariffs, OATT ATT M-3, OATT Attach. M-3 (1.0.0), § (c) 7.

<sup>109</sup> Protesting Parties Reh’g Req. at 30-32.

<sup>110</sup> August 2020 Order, 172 FERC ¶ 61,136 at P 88.

## 8. Interconnection Studies Impact

57. The Protesting Parties argue that the Commission failed to address arguments that the proposed transmission planning changes will necessarily impact the timing and results of interconnection studies by adding uncertainty to the transmission planning process.<sup>111</sup> As PJM explained, the interconnection process will not be affected by this filing.<sup>112</sup> We thus agree with the PJM Transmission Owners that this concern is beyond the scope of this proceeding.<sup>113</sup> Further, as noted above, we find that the Attachment M-3 Revisions add transparency to asset management activities that the PJM Transmission Owners had been conducting.

### I. Form No. 715 Filing Requirement

58. The Protesting Parties contend that the Commission erred in interpreting the Form No. 715 filing requirement as voluntary.<sup>114</sup> They argue that Attachment M-3 Revisions, section (d) coupled with the definition of Form No. 715 EOL Planning Criteria, gives the PJM Transmission Owners the right to determine that a PJM-identified project does not address the “projected EOL need. . . [and] propose a project to address the Form No. 715 EOL Planning Criteria.”<sup>115</sup>

59. We disagree. The Attachment M-3 Revisions effect no change in the treatment of Form No. 715 filings. PJM will continue to plan for all transmission projects to address Form No. 715 planning criteria. The Attachment M-3 Revisions are very clear that “‘Attachment M-3 Project’ does not include a project to address Form No. 715 EOL Planning Criteria.”<sup>116</sup> The Commission pointed out that a PJM Transmission Owner “may voluntarily include end of life criteria in its Form No. 715.”<sup>117</sup> This statement reflected the current tariff provisions under which PJM Transmission Owners may include end of life criteria in their Form No. 715 in which case PJM will continue to plan

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<sup>111</sup> Protesting Parties Reh’g Req. at 32 (citing Cmts. of J-Power USA Development Co., LTD at 5).

<sup>112</sup> PJM Limited Answer, Docket No. ER20-2046-000 (July 21, 2020).

<sup>113</sup> PJM Transmission Owner Answer to Protest at 52.

<sup>114</sup> Protesting Parties Reh’g Req. at 66 (Statement of Errors 14).

<sup>115</sup> *Id.* at 67.

<sup>116</sup> PJM Intra-PJM Tariffs, OATT ATT M-3, OATT Attach. M-3 (1.0.0), § (b)(2).

<sup>117</sup> August 2020 Order, 172 FERC ¶ 61,136 at P 86.

for all EOL Projects. But a PJM Transmission Owner may choose not to include end of life criteria in its Form No. 715 in which case the transmission project will be planned under the Attachment M-3 Revisions.

60. Nothing in paragraph (d) of Attachment M-3 Revisions changes PJM's responsibility to address Form No. 715 planning criteria. Under paragraph (d)(2)(ii) of Attachment M-3 Revisions, if (1) PJM determines that a substantial electrical overlap exists between a PJM proposed Required Transmission Enhancement project and a projected EOL Need, including a transmission project to address a Form No. 715 planning criteria, such that one project can resolve both issues, and (2) if a PJM Transmission Owner determines that the projected EOL Need is not met by the PJM's proposed Required Transmission Enhancement, the PJM Transmission Owner has the right to "*plan* an Attachment M-3 Project to address the projected EOL Need or *propose* a project to address the Form No. 715 EOL Planning Criteria," together with documentation of the reasons for its determination.<sup>118</sup> The important distinction here is between the right to "plan" an Attachment M-3 Project and the ability to only "propose" a transmission project to address a Form No. 715 planning criteria. PJM will still plan transmission projects to address Form No. 715 planning criteria and if it disagrees with the PJM Transmission Owner's justification, PJM may determine that a single project resolves both the PJM Planning Criteria and the end of life criteria.

**J. No Revisions to the Cost Allocation Provisions of Schedule 12 of the PJM Tariff**

**1. Rehearing Request**

61. The Protesting Parties and the New Jersey Board contend that the August 2020 Order errs in not providing a reasoned explanation for departing from Commission precedent on regional planning and cost allocation. They argue that this restriction from regional cost allocation for projects that provide regional benefits is inconsistent with the United States Court of Appeals for the D.C. Circuit (D.C. Circuit) order in *Old Dominion*.<sup>119</sup>

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<sup>118</sup> PJM Intra-PJM Tariffs, OATT ATT M-3, OATT Attach. M-3 (1.0.0), § (d)(2)(ii) (emphasis added).

<sup>119</sup> Protesting Parties Reh'g Req. at 49 (Statement of Errors 11); New Jersey Board Reh'g Req. at 11 (citing *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254, *reh'g denied*, 905 F.3d 671 (remanding order accepting PJM Transmission Owner proposed revisions to Schedule 12 of the PJM Tariff to allocate one 100% of costs for reliability projects that are included in the PJM RTEP solely to address individual transmission owner Form No. 715 local planning criteria to the transmission zone of the transmission owner whose Form No. 715 local planning criteria underlie each project); *PJM*

62. The New Jersey Board posits that while the Attachment M-3 Revisions may not amend Schedule 12 on their face, they clearly control which type of cost allocation these projects will receive under Schedule 12 of the PJM Tariff. Therefore, the New Jersey Board argues that the cost implications cannot be fairly divorced from the Attachment M-3 Revisions.<sup>120</sup>

63. The New Jersey Board states that the D.C. Circuit has stated that nothing prevents PJM from “amending the Tariff, the Operating Agreement, or PJM's own planning criteria . . . to establish appropriate end-of-life planning criteria . . . as long as any amendment respects the cost-causation principle.”<sup>121</sup> Because changes to planning criteria, including EOL planning criteria, may have some effect on costs, the New Jersey Board argues that any changes to planning criteria must comport with the cost-causation principle.

## 2. Commission Determination

64. In the August 2020 Order, the Commission stated that the cost allocation provisions of Schedule 12 of the PJM Tariff assign cost responsibility for Required Transmission Enhancements,<sup>122</sup> and that the Attachment M-3 Revisions included no revisions to Schedule 12 of the PJM Tariff and cost allocation. The Commission found that since this FPA section 205 filing proposes no change to cost allocation, that issue is beyond the scope of this proceeding.<sup>123</sup>

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*Interconnection, L.L.C.*, 168 FERC ¶ 61,133 (2019), *reh'g denied*, 171 FERC ¶ 61,012 (2020) (order on remand rejecting the PJM Transmission Owner revisions to Schedule 12 of the PJM Tariff)).

<sup>120</sup> New Jersey Board Reh'g Req. at 9, 14.

<sup>121</sup> *Id.* at 11 (citing *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254 at 1263).

<sup>122</sup> Required Transmission Enhancements are defined as “enhancements and expansions of the Transmission System that (1) a [RTEP] developed pursuant to PJM Operating Agreement, Schedule 6 or (2) any joint planning or coordination agreement between PJM and another region or transmission planning authority set forth in Tariff, Schedule 12-App. B (‘Appendix B Agreement’) designates one or more of the Transmission Owner(s) to construct and own or finance.” PJM, Intra-PJM Tariffs, OATT Definitions – R - S, OATT Definitions – R - S (18.2.0).

<sup>123</sup> See *ANR Pipeline Co. v. FERC*, 771 F.2d 507, 514 (D.C. Cir. 1985) (finding the Commission cannot revise an “unchanged part” of a rate under section 4 of the Natural Gas Act, the counterpart to section 205 of the Federal Power Act); *Appalachian Power Co.*, 170 FERC ¶ 61,196 at P 61 (where the filing did not propose changes to

65. The New Jersey Board claims that cost allocation must be considered because the filing controls which type of cost allocation transmission projects planned pursuant to the Attachment M-3 Revisions will receive under Schedule 12 of the PJM Tariff. First, we do not agree that simply because a filing has a tangential relationship to cost allocation, the Commission can amend the cost allocation provisions under section 205 of the FPA. Second, as discussed earlier, the Attachment M-3 Revisions have not changed the current planning for any facilities; transmission projects planned pursuant to the Attachment M-3 Revisions currently are planned by the Transmission Owners and the Attachment M-3 Revisions merely regularizes and enhances the transparency of that planning.

66. While the D.C. Circuit in *Old Dominion* indicated that nothing prevents PJM from amending the PJM Tariff, the PJM Operating Agreement, or PJM's own planning criteria to establish appropriate end-of-life planning criteria as long as any amendment respects the cost-causation principle, the D.C. Circuit's dicta was related to the planning for transmission projects to address Form No. 715 planning criteria, which are within PJM's planning responsibility and stands for the proposition that any amendment to the planning criteria for these projects must respect the court's ruling, and the Commission found that the cost allocation provisions in Schedule 12 of the PJM Tariff would apply to transmission projects to address Form No. 715 planning criteria.<sup>124</sup> The decision did not expand the scope of the Commission's authority under section 205 of the FPA to enable the Commission to revise the unchanged cost allocation provisions of Schedule 12 of the PJM Tariff.

**K. Duquesne Arguments Regarding Allocation of Transmission Owner Planning Responsibility**

**1. Rehearing Request**

67. Duquesne contends that the August 2020 Order fails to address its concern that the Attachment M-3 Revisions reflect a fundamental deviation from the existing allocation of responsibility between PJM's regional planning responsibilities and an individual transmission owner's local planning responsibilities.<sup>125</sup> Specifically, Duquesne requests that the Commission address its contention that under the Attachment M-3 Revisions, PJM would be required to look for electrical overlap with EOL Need projects to determine if the EOL Need could be met by a regional transmission enhancement project,

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Schedule 12, issues related to assignment of cost responsibility for Attachment M-4 are beyond the scope of the proceeding).

<sup>124</sup> *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,133 at P 27 (order on remand rejecting the PJM Transmission Owner revisions to Schedule 12 of the PJM Tariff).

<sup>125</sup> Duquesne Reh'g Req. at 3.

and as such the Attachment M-3 Revisions infringe on Duquesne's rights as a transmission owner.<sup>126</sup>

## 2. Commission Determination

68. First, we note that under the provisions of the CTOA, Duquesne agreed to the filing provisions when the other transmission owners reach the required consensus to submit a tariff revision.<sup>127</sup> Second, we cannot find these additional planning procedures unjust and unreasonable. The Attachment M-3 Revisions require only that PJM and the Transmission Owner "consult" in the event that PJM identifies a single solution to address a validated PJM Planning Criteria Need and address a projected EOL Need.<sup>128</sup> But the provision in question does not permit PJM to prevent the PJM Transmission Owner from building its project. It permits the PJM Transmission Owner to construct the project as long as the PJM Transmission Owner provides documentation to PJM and stakeholders on the rationale supporting its determination at the next appropriate meeting of the Transmission Expansion Advisory Committee or subregional RTEP Committee.<sup>129</sup> We find that the PJM Transmission Owners' Attachment M-3 Revisions, in agreeing to provide this additional process within the RTEP, are consistent with the CTOA and reasonable.

### L. Consolidation Not Appropriate

#### 1. Rehearing Request

69. The Protesting Parties argue that the Commission erred in not addressing the motion to consolidate the proposed Attachment M-3 Revisions with proposed revisions to the PJM Operating Agreement developed in the PJM Stakeholders Proposal filed in Docket No. ER20-2308-000.<sup>130</sup>

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<sup>126</sup> *Id.* at 3-4.

<sup>127</sup> PJM, Rates Schedules, TOA-42 Art. 3, TOA-42 Article 3 – Participation in this Agreement (0.0.0); TOA-42 8.5.1 Action by Two-thirds Majority (1.0.0).

<sup>128</sup> PJM Intra-PJM Tariffs, OATT ATT M-3, OATT Attach. M-3 (1.0.0), § (d)(2).

<sup>129</sup> Of course, in any proceeding to recover the cost of such a project, the PJM Transmission Owner would be subject to a prudency challenge.

<sup>130</sup> Protesting Parties Reh'g Req. at 57 (Statement of Errors 12).

## 2. Commission Determination

70. The Commission generally considers consolidation only when a trial-type evidentiary hearing is instituted to resolve common issues of law and fact, and where consolidation will ultimately result in greater administrative efficiency.<sup>131</sup> Here, the Commission found that a hearing was not required and that consolidation was not necessary to resolve the issues in this proceeding. The issues in this proceeding related to the PJM Transmission Owners' authority to file the Attachment M-3 Revisions and whether those provisions were just and reasonable. The Commission concluded that the PJM Transmission Owners had the right to make the filing at issue this proceeding and that the Attachment M-3 Revisions were just and reasonable.

### The Commission orders:

In response to the requests for rehearing, the August 2020 Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission. Commissioner Clements is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>131</sup> See *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 25 (2008); *Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,241, at P 43 (2020).