

173 FERC ¶ 61,242  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER20-2308-000

ORDER REJECTING PROPOSED TARIFF REVISIONS

(Issued December 17, 2020)

1. On July 20, 2020, PJM Interconnection, L.L.C. (PJM), pursuant to section 205 of the Federal Power Act (FPA), filed a proposal developed by PJM Stakeholders to revise Schedule 6 of the Amended and Restated Operating Agreement (Operating Agreement) to provide a structure for end-of-life (EOL)-driven transmission projects to be reviewed and developed under PJM's Regional Transmission Expansion Plan (RTEP) (PJM Stakeholder Proposal).<sup>1</sup> In this order, we reject the PJM Stakeholder Proposal, as discussed below.

**I. Background**

**A. PJM Transmission Owners Attachment M-3 Revisions Filing**

2. On August 11, 2020, the Commission accepted the PJM Transmission Owners' Attachment M-3 Revisions Filing, which expanded the applicability of the Attachment M-3 process.<sup>2</sup> Specifically, the Attachment M-3 Revisions Filing required each PJM Transmission Owner to present its criteria for assessing on at least an annual basis whether an existing Transmission Facility requires replacement. The PJM Transmission Owners stated that the Attachment M-3 Revisions Filing sought to achieve two goals.<sup>3</sup> First, by expanding the scope of the Attachment M-3 process, the PJM Transmission

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<sup>1</sup> The PJM Stakeholder Proposal was sponsored by American Municipal Power (AMP), Old Dominion Electric Cooperative (ODEC), and LSP Transmission Holding II LLC (LS Power) and approved by the PJM Members Committee on June 18, 2020. Pursuant to the PJM Operating Agreement, section 10.4(e), PJM filed these revisions on behalf of PJM Stakeholders.

<sup>2</sup> *PJM Interconnection, L.L.C.*, 172 FERC ¶ 61,136, at P 82 (2020) (August 2020 Order).

<sup>3</sup> PJM Transmission Owners Transmittal at 11 (Docket No. ER20-2046-000).

Owners stated that the filing will enhance transparency and increase opportunities for stakeholder review of EOL needs. Second, the PJM Transmission Owners stated that the proposed revisions will better coordinate the Transmission Owners' end of useful life asset management activities with PJM's planning to address RTEP planning criteria. The Attachment M-3 Revisions Filing included its own set of definitions used in Attachment M-3 and are related to the processes by which PJM Transmission Owners must identify, notify, and submit criteria related to the planning for transmission projects to address an EOL Condition.<sup>4</sup>

3. In the Attachment M-3 Revisions Filing, the PJM Transmission Owners explained that section 4 of the Consolidated Transmission Owners Agreement (CTOA) limits PJM's planning responsibilities to transmission projects that expand or enhance transmission facilities, and the PJM Transmission Owners retain responsibility for planning and constructing their own transmission facilities. Further, the PJM Transmission Owners noted that their role was to address the needs unique to their Transmission Zones and to maintain and build their transmission facilities consistent with the findings in *Atlantic City*.<sup>5</sup>

4. Protestors to the Attachment M-3 Revisions Filing argued over whether the Commission's findings in a series of Commission orders, the *California Orders*,<sup>6</sup> should apply to the Attachment M-3 Revisions Filing. In the *California Orders*, the Commission found that Order No. 890's transmission planning requirements do not apply to a transmission owner's "asset management project or activity" even if the project or

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<sup>4</sup> End of Life (EOL) Condition is defined as "the state of Transmission Facilities that are determined by a Transmission Owner, in accordance with the applicable EOL Look-ahead Program and EOL Criteria, to be such that it is not prudent to continue to maintain, repair or refurbish the Transmission Facilities and the Transmission Facilities are therefore projected to reach the end of operational life within the EOL Look-ahead Program period. End of operational life shall not be, for purposes of EOL Condition, determined by the Transmission Facilities' service life for accounting or depreciation purposes." PJM Intra-PJM Tariffs, E-F, OA Definitions E - F (19.0.0).

<sup>5</sup> *Id.* at 7-8 (Docket No. ER20-2046-000) (citing *Atl. City Elec. Co., v. FERC*, 295 F.3d 1, 6 (D.C. Cir. 2002) (*Atlantic City*) ("there was no transfer of ownership or even physical operation of their facilities . . . [and] each of the [transmission owners] retained both ownership and physical control of their facilities[.]")

<sup>6</sup> *So. Cal. Edison Co.*, 164 FERC ¶ 61,160, at P 33 (2018); *Cal. Pub. Utils. Comm'n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161, at P 68 (2018) (*California Orders*).

activity results in an “incidental increase in transmission capacity.”<sup>7</sup> The Commission then found that, although California Independent System Operator Corporation (CAISO) transmission owners’ definitions of asset management projects and activities varied slightly, “they all 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.”<sup>8</sup>

5. In accepting the Attachment M-3 Revisions Filing in the August 2020 Order, the Commission found that the PJM Transmission Owners’ filing was consistent with the exclusive responsibilities that the PJM Transmission Owners have reserved under the CTOA (i.e., the right to build, acquire, sell, dispose, retire, merge or otherwise transfer or convey all or any part of its assets). Specifically, the Commission relied on the language in Articles 4, 5, and 6 of the CTOA, which provides for the rights and responsibilities allocated to PJM or Transmission Owners.<sup>9</sup> Further, the Commission stated that PJM is limited to conducting planning for “expansions and enhancements” of transmission facilities.<sup>10</sup>

6. Additionally, in accepting the Attachment M-3 Revisions Filing, the Commission stated that the filing was consistent with the *California Orders* since the Order No. 890 planning principles apply only to transmission projects involving grid expansion and not to “asset management activities.”<sup>11</sup> The Commission found that the proposed revisions in

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<sup>7</sup> *So. Cal. Edison Co*, 164 FERC ¶ 61,160 at P 31 (“While Order No. 890 does not explicitly define the scope of “transmission planning,” the Commission adopted the transmission planning requirements in Order No. 890 to remedy opportunities for undue discrimination in *expansion* of the transmission grid.”). *See Preventing Undue Discrimination & Preference in Transmission Service*, Ord. No. 890, 118 FERC ¶ 61,119, at PP 57-58, 421-422, *order on reh’g*, Ord. No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh’g*, Ord. No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Ord. No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Ord. No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>8</sup> *So. Cal. Edison Co*, 164 FERC ¶ 61,160 at n.55; *Cal. Pub. Util. Comm’n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161 at n.119.

<sup>9</sup> August 2020 Order, 172 FERC ¶ 61,136 at P 82 (citations omitted).

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

<sup>11</sup> *Id.* PP 85, 89. As the Commission found in *Cal. Pub. Util. Comm’n*, “these asset management projects and activities include maintenance, repair, and replacement work, and infrastructure security, system reliability, and automation project.” *Cal. Pub. Util. Comm’n*, 164 FERC ¶ 61,161 at P 67.

the Attachment M-3 Revisions Filing 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>12</sup> In making this finding regarding asset management projects, the Commission stated that it is just and reasonable to use the Order No. 890-complaint Attachment M-3 process.<sup>13</sup>

## **II. PJM Stakeholder Proposal Filing Summary**

7. The PJM Stakeholders propose to revise the PJM Operating Agreement to provide a structure for transmission projects to address an EOL Condition to be reviewed and developed under PJM's RTEP. Briefly, the PJM Stakeholder Proposal would:

(1) obligate PJM Transmission Owners to submit a binding notification to PJM of facilities that will reach their EOL within six years; (2) require PJM Transmission Owners to develop an EOL program, including criteria, for facilities approaching EOL status; (3) require PJM Transmission Owners to provide PJM a 10-year, forward-looking list of facilities' EOL Conditions; (4) exclude the planning of EOL facilities from the RTEP reliability exemption for transmission facilities under 200 kV; and (5) revise Schedule 6 of the Operating Agreement to expressly remove the planning of EOL facilities from Attachment M-3 and include all EOL facilities under the PJM Operating Agreement, Schedule 6, RTEP planning process.<sup>14</sup>

8. Under the PJM Stakeholder Proposal, section 1.5.4 of Schedule 6 of the PJM Operating Agreement would be amended.<sup>15</sup> Under the proposed revisions, each PJM Transmission Owner shall provide PJM and the Transmission Expansion Advisory Committee, on an annual basis, their EOL Look-ahead Program,<sup>16</sup> including the EOL

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<sup>12</sup> *Id.* P 84.

<sup>13</sup> *Id.* P 88 (citing *Monongahela Power Co.*, 164 FERC ¶ 61,217 (2018)).

<sup>14</sup> PJM Stakeholder Proposal Transmittal at 10.

<sup>15</sup> PJM Intra-PJM Tariffs, OA Sched. 6 Sec 1.5, OA Sched. 6 Sec. 1.5 Procedure for Development of the Regi (25.0.0).

<sup>16</sup> End of Life (EOL) Look-ahead Program is defined as “the Transmission Owner-designed, specific program for transparently applying EOL Criteria to determine and to prioritize EOL Conditions and to make EOL Notifications for all Transmission Facilities. The EOL Look-ahead Program must cover a minimum of 10 years from the date of submission and be comprehensive and complete for the Transmission Facilities owned by the Transmission Owner.” PJM Intra-PJM Tariffs, E-F, OA Definitions E - F (19.0.0).

Criteria to be applied<sup>17</sup> and a description of any changes from prior submissions and the reasons for such changes. The Transmission Owner's EOL Look-ahead Program shall include identification of all Transmission Facilities forecasted to reach EOL Conditions in the 10 years subsequent to the EOL Look-ahead Program submittal. PJM Stakeholders state that the identification of Transmission Facilities forecasted to reach EOL Conditions must include sufficient detail so that PJM and stakeholders may understand and, to the extent possible, replicate results of individual EOL Notifications.<sup>18</sup> Further, PJM Stakeholders explain that, under their proposal, all PJM Transmission Owners would submit individual EOL Look-ahead Programs, including the EOL Criteria, guidelines, and documentation for declaring EOL Conditions to PJM and stakeholders.

9. PJM Stakeholders request an effective date of January 1, 2021 for the proposed revisions.<sup>19</sup>

### **III. Notice and Interventions**

10. Notice of the PJM Stakeholder Proposal was published in the *Federal Register*, 85 Fed. Reg. 41,236 (July 9, 2020), with interventions and protests due on or before July 23, 2020. Appendix A to this order lists the entities that filed notices of intervention, timely-filed motions to intervene, and out-of-time motions to intervene.

11. Comments were filed by PJM, LS Power, Joint Stakeholders,<sup>20</sup> ITC Interconnection, OCC, OH FEA, NJ BPU, EEI, Duquesne, Exelon, AEP, J-Power,

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<sup>17</sup> End of Life (EOL) Criteria is defined as “the posted standards, as contained in its applicable EOL Look-ahead Program, applied by a Transmission Owner for the purpose of determining whether a Transmission Facility or group of related Transmission Facilities have reached or will, within the applicable planning horizon, reach EOL Condition. The EOL Criteria shall also include the basis for which EOL Conditions will be prioritized.” PJM Intra-PJM Tariffs, E-F, OA Definitions E - F (19.0.0).

<sup>18</sup> End of Life (EOL) Notification shall mean “the notification, binding on the Transmission Owner for PJM planning purposes, and documentation required in Operating Agreement, Schedule 6 to be given by Transmission Owners to the Office of the Interconnection and stakeholders declaring Transmission Facilities to have reached the end of operational life and for which the Office of Interconnection shall plan an EOL Project, if necessary. Any EOL Notification is subject to Operating Agreement, Schedule 6, section 1.5.8(p). PJM Intra-PJM Tariffs, E-F, OA Definitions E - F (19.0.0).

<sup>19</sup> PJM Stakeholder Proposal Transmittal at 19.

<sup>20</sup> Joint Stakeholders consists of: AMP, ODEC, the PJM Industrial Customer Coalition, Public Power Association of New Jersey, LS Power and Central Transmission, LLC, Maryland Office of the People's Counsel, Office of the People's Counsel for the

WIRES, Indicated PJM Transmission Owners,<sup>21</sup> and the PJM IMM. LS Power filed supplemental comments.

12. On July 21, 2020, Indicated PJM Transmission Owners filed a motion for summary rejection of the PJM Stakeholders' filing. On August 4, 2020, Joint Stakeholders filed an answer to the Indicated Transmission Owners' Motion.

13. On August 7, 2020, PJM filed an answer. On August 11, 2020, Joint Stakeholders filed an answer. On August 17, 2020, LS Power filed an answer. On August 28, 2020, Indicated NY Transmission Owners filed an answer.<sup>22</sup> On September 14, 2020, PJM filed an informational report. On November 23, 2020, LS Power filed supplemental comments. On December 9, 2020, Indicated PJM Transmission Owners filed an answer.

**A. Motion for Summary Rejection of the PJM Stakeholder Proposal**

14. Indicated PJM Transmission Owners filed a motion for summary rejection of the PJM Stakeholder Proposal, arguing that the filing both (1) fails to comply with applicable statutory requirements and Commission rules, regulations, and orders, and (2) violates contractual rights that the PJM Transmission Owners reserved under the PJM governing

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District of Columbia, Delaware Division of the Public Advocate, West Virginia Consumer Advocate, and Blue Ridge Power Agency.

<sup>21</sup> The Indicated PJM Transmission Owners are American Electric Power Service Corporation on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company, Inc., AEP Kentucky Transmission Company, Inc., AEP Ohio Transmission Company, Inc., and AEP West Virginia Transmission Company, Inc. (AEP); The Dayton Power and Light Company; 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.; Exelon Corporation; The FirstEnergy Transmission Companies, including American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Mid-Atlantic Interstate Transmission LLC, West Penn Power Company, The Potomac Edison Company, Monongahela Power Company and Trans-Allegheny Interstate Line Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; UGI Utilities Inc.; and Virginia Electric and Power Company.

<sup>22</sup> The Indicated NY Transmission Owners are Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, and Orange and Rockland Utilities, Inc. Indicated NY Transmission Owner Mot. at 1.

documents.<sup>23</sup> First, they state that PJM's filing has not been shown to be just and reasonable since PJM Stakeholders state only that the proposed revisions were developed through a PJM stakeholder process and approved by a sector-weighted vote of the PJM membership.<sup>24</sup> Second, Indicated PJM Transmission Owners assert that PJM's filing is deficient as a matter of law because PJM concedes the proposed revisions are not just and reasonable. Indicated PJM Transmission Owners note that PJM has filed comments in this proceeding to make clear that it disagrees with the proposed revisions, elaborating its contractual, legal and technical concerns and that the revisions task PJM with responsibilities that are outside of its planning responsibility under the CTOA.<sup>25</sup> Third, Indicated PJM Transmission Owners assert that PJM did not make the showings required under the Commission's regulations to demonstrate that it has obtained all requisite agreements necessary to make the filing, including any agreement required by contract.<sup>26</sup> Finally, Indicated PJM Transmission Owners argue that, as part of the package of governing agreements establishing PJM as the Independent System Operator (ISO), the PJM Transmission Owners transferred to PJM the responsibility to prepare the RTEP to only plan for the enhancement and expansion of the PJM transmission system.<sup>27</sup> They request that PJM Stakeholders' Proposal be summarily rejected with prejudice.<sup>28</sup>

15. Indicated PJM Transmission Owners contend that stakeholders cannot rely on section 4.1.4 of the CTOA, under which the PJM Transmission Owners transfer to PJM the responsibility to prepare the RTEP "in accordance with the [PJM] Operating Agreement," to shift responsibility for EOL planning by simply modifying the PJM Operating Agreement. Indicated PJM Transmission Owners argue that the reference to the Operating Agreement does not give license to PJM or members to transfer to PJM planning responsibilities that the PJM Transmission Owners reserved under the CTOA. To the contrary, Indicated PJM Transmission Owners assert, the PJM Operating Agreement recognizes PJM's responsibility to ensure that each RTEP "take[s] into account the legal and contractual rights and obligations of the [PJM] Transmission

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<sup>23</sup> See PJM, Rate Scheds., Attachment A, TOA-42 Attachment A to the Consolidated Transmission Owners Agreement (18.1.0) (listing transmission owners in the PJM).

<sup>24</sup> Indicated PJM Transmission Owners Motion at 5-8.

<sup>25</sup> *Id.* at 8-9.

<sup>26</sup> *Id.* at 10.

<sup>27</sup> *Id.* at 11-15 (citing Transmission Owners Agreement dated as of June 2, 1997, § 2.2.3 (filed June 2, 1997) (Original TOA); PJM Rates Scheds., TOA-42 (1.0.0), § 4.5).

<sup>28</sup> *Id.* at 1-3, 5-6.

Owners.” Indicated PJM Transmission Owners argue that stakeholders can neither use the stakeholder process to reverse well-established contractual rights by giving PJM additional planning responsibility beyond what the PJM Transmission Owners transferred to it, nor can they use the stakeholder process to modify the PJM Operating Agreement in a manner that is inconsistent with Commission precedent.<sup>29</sup>

16. Indicated PJM Transmission Owners argue that summary rejection of PJM’s filing is supported by *Atlantic City*,<sup>30</sup> which found that the Commission cannot compel PJM Transmission Owners to cede additional rights or responsibilities to PJM other than those voluntarily transferred and that each PJM Transmission Owner retained ownership and physical control of its facilities. Under the PJM Stakeholder Proposal, Indicated PJM Transmission Owners argue that PJM Transmission Owners would be required to cede planning responsibility for transmission projects to address an EOL Condition to PJM without their consent. Further, Indicated PJM Transmission Owners argue that the PJM Transmission Owners’ retention of responsibility for transmission projects to address an EOL Condition and asset management is consistent with the *California Orders*. Specifically, they argue that their responsibility for replacing their existing transmission assets is consistent with the distinction between transmission expansion planning and asset management activities and projects that the Commission adopted in the *California Orders*.<sup>31</sup>

17. In their answer to the Indicated PJM Transmission Owners’ motion, PJM Stakeholders contend that arguments that the filing is not just and reasonable are appropriate in a protest of a filing pursuant to section 205 of the FPA, not in a motion for summary rejection. The PJM Stakeholders state that PJM did not violate any of its governing documents by making the section 205 filing on behalf of the Joint Stakeholders. Instead, the Joint Stakeholders state that PJM filed the PJM Stakeholder Proposal pursuant to section 10.4(xiii) of the PJM Operating Agreement on behalf of and

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<sup>29</sup> *Id.* at 15-17. Indicated PJM Transmission Owners point to recent Commission orders where, they argue, the Commission has affirmed the PJM Transmission Owners’ retention of planning responsibility for projects that are not needed to satisfy the criteria PJM addresses in its preparation of the RTEP. Indicated PJM Transmission Owners Motion at 18-21 (citing *Monongahela Power Co.*, 162 FERC ¶ 61,129, at PP 30-31, 117, *order on reh’g*, 164 FERC ¶ 61,217, at PP 13-14 (2018); *Appalachian Power Co.*, 170 FERC ¶ 61,196, at PP 57-59, 64 (2020)).

<sup>30</sup> 295 F.3d 1, 9-11.

<sup>31</sup> Indicated PJM Transmission Owners Motion at 22-25.

at the direction of the PJM Members Committee in the performance of its ministerial responsibilities under the PJM Operating Agreement.<sup>32</sup>

18. The PJM Stakeholders argue that the Indicated PJM Transmission Owners' reliance on *Atlantic City* is misplaced and irrelevant to the PJM Stakeholder Proposal. The PJM Stakeholders state that, in *Atlantic City*, the D.C. Circuit confirmed that the CTOA transferred "the administration of the tariff and *regional transmission planning* and operations to [PJM]."<sup>33</sup> The PJM Stakeholders contend that the PJM Stakeholder Proposal does not interfere with or supplant PJM Transmission Owners' obligations to undertake routine transmission or substation equipment maintenance and repair activities, and ensures that transmission projects to address an EOL Condition are properly considered in the performance of PJM's RTEP responsibilities and duties as an independent regional planner. As such, the PJM Stakeholders contend that PJM has both the right and the obligation to plan new transmission that expands and enhances the transmission grid.<sup>34</sup>

## **B. PJM Stakeholder Proposal Proceeding Pleadings**

### **1. PJM CTOA**

19. In support of the PJM Stakeholder Proposal, LS Power argues that it is consistent with the CTOA, respects the PJM Operating Agreement, and reflects an appropriate balancing between a Transmission Owner managing an existing asset and PJM planning regional needs arising from aging infrastructure. Further, LS Power argues that a PJM Board of Managers letter, which LS Power states the PJM Transmission Owners relied heavily upon for their proposal in the PJM Transmission Owners' Attachment M-3 Revisions Filing, provides no independent legal analysis that the PJM Transmission Owners are able to make exclusive decisions regarding replacing transmission

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<sup>32</sup> *Id.* at 21.

<sup>33</sup> *Id.* at 22-23 (emphasis in original).

<sup>34</sup> *Id.* at 23-24.

infrastructure on a local planning level.<sup>35</sup> LS Power adds that the PJM Stakeholder Proposal is consistent with Articles 4.14, 5.2, 4.4 and 5.6 of the CTOA.<sup>36</sup>

20. Joint Stakeholders argue that PJM's assertions regarding the rights and responsibilities retained by the Transmission Owners pursuant to the CTOA overlooks other CTOA provisions and Commission precedent. Joint Stakeholders argue that nothing in the CTOA reserves the rights to plan and develop replacement transmission facilities to Transmission Owners.<sup>37</sup>

21. PJM states that the PJM Stakeholder Proposal breaches the CTOA because under the CTOA the PJM Transmission Owners retain replacement decisions associated with the retirement of existing infrastructure. PJM claims that the PJM Stakeholder Proposal modifications to the PJM Operating Agreement run counter to PJM's authority under the CTOA, which only permits PJM to plan for expansion of the transmission system to serve demands in the PJM footprint for firm transmission service. PJM states that including the definition of Supplemental Projects in the PJM Operating Agreement does not grant stakeholders the right to remove project categories from that definition if such a removal runs contrary to section 10.4(xviii) of the PJM Operating Agreement.<sup>38</sup>

22. Exelon, EEI, AEP, Indicated PJM Transmission Owners, and Duquesne argue that the PJM Transmission Owners retained the authority per the CTOA regarding issues related to transmission facilities that have reached EOL status.<sup>39</sup> Both Exelon and Indicated PJM Transmission Owners explain that the PJM Stakeholder Proposal violates the terms of the CTOA, under which the PJM Transmission Owners have retained both the right and responsibility to maintain their transmission facilities, and these rights cannot be transferred to PJM absent the PJM Transmission Owners' explicit consent. EEI argues that EOL asset management decisions must remain with PJM Transmission

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<sup>35</sup> LS Power Comment at 39-40 (citing PJM Comments at 10 (“Essentially, through the CTOA the Transmission Owners acknowledged the need to cooperate with PJM in the determination of regional transmission needs through the [RTEP] Protocol but did not turn over to PJM replacement decisions, which are local in nature, associated with the retirement of existing infrastructure.”)).

<sup>36</sup> *Id.* at 40-47.

<sup>37</sup> Joint Stakeholders Comments at 30-43 (citing PJM Rates Schedules, TOA-42, §§ 4.1.4, 4.4., 5.2, 5.6, 6.2, 6.3.1., 6.3.4).

<sup>38</sup> PJM Cmts. at 9-11.

<sup>39</sup> Exelon Protest at 3-4; EEI Comments at 4, 6; AEP Protest at 1-2; Indicated PJM Transmission Owners Mot. at 23-24; Duquesne Protest at 7.

Owners, who bear the ultimate responsibility to manage assets for reliable provision of service; both AEP and Duquesne assert that any attempt by parties other than the PJM Transmission Owners and PJM to change this violates the spirit of the fundamental bargain struck upon formation of the Regional Transmission Organization (RTO), would be unlawful, and would discourage new RTO formations and membership going forward.

23. Further, Duquesne states that the *Mobile-Sierra* doctrine precludes PJM from submitting, and the Commission from accepting, a unilateral FPA section 205 filing that violates the CTOA.<sup>40</sup> Duquesne claims that PJM may not submit amendments to the PJM Operating Agreement pursuant to FPA section 205 on its own behalf or on behalf of stakeholders that would fundamentally alter the CTOA. Duquesne claims the CTOA must remain in effect as filed until the Commission determines in a section 206 proceeding that it is no longer just and reasonable because a complainant has demonstrated that the agreement “seriously harms the public interest.”<sup>41</sup>

## **2. PJM’s Role as Regional Planner**

24. Ohio FEA, LS Power, PJM IMM, and Joint Stakeholders argue the PJM Stakeholder Proposal appropriately recognizes PJM as the regional planner for replacements of transmission facilities that have reached EOL status.<sup>42</sup> Ohio FEA believes that PJM’s designation should extend to all facilities represented in transmission service charges and rates subject to the Commission’s jurisdiction, including transmission projects to address an EOL Condition. LS Power argues that the PJM Stakeholder Proposal is consistent with Order No. 2000 since the PJM Stakeholder Proposal, by assigning the responsibility to PJM, fulfills Order No. 2000’s statements that an “RTO must have the ultimate responsibility for both transmission planning and expansion within its region.” Joint Stakeholders contend that PJM fails to explain why PJM is barred from planning, on a regional basis, replacements for transmission facilities that have reached the end of their useful life.

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<sup>40</sup> Duquesne Protest at 10 (citing *Papago Tribal Util. Auth. v. FERC*, 628 F.2d 235, 244-45 (D.C. Cir. 1980); *Richmond Power & Light Co. v. FPC*, 481 F.2d 490, 493 (D.C. Cir. 1973)); see *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) (*Mobile*); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Sierra*).

<sup>41</sup> *Id.* at 13 (citing *Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527, 530 (2008)).

<sup>42</sup> Ohio FEA Comments at 5, 7-8; LS Power Comments at 32-33 (citations omitted); PJM IMM Comments at 3-5; Joint Stakeholders Comments at 43-45 (citations omitted).

25. PJM claims that Order No. 890 did not require Transmission Owners to permit an RTO to perform all planning for local projects. PJM states that, by citing this precedent in the August 2020 Order, the Commission reinforced that the PJM Transmission Owners retain responsibility for planning Supplemental Projects and retain the associated filing rights to make changes to the Attachment M-3 Supplemental Projects planning provisions. PJM states that the PJM Stakeholder Proposal contravenes Commission orders relative to planning and allocating costs of RTEP projects addressing EOL criteria included in individual Transmission Owners Form No. 715. PJM contends that the proposal fails to address how transmission projects to address an EOL Condition would be allocated costs under the Tariff, Schedule 12.<sup>43</sup>

26. Exelon, WIRES, Indicated PJM Transmission Owners, and EEI argue that PJM lacks the expertise and specialized knowledge necessary to determine that an asset has reached the end of its useful life or to modify the need-by date of a transmission project to address an EOL Condition.<sup>44</sup> Exelon states that PJM's regional transmission planning process will lead to less cost-effective replacement projects than would planning to meet EOL needs through the relevant local transmission planning process, since PJM is not familiar with local transmission system needs and would apply regional planning criteria. WIRES states that end of useful life decisions include assessments and analysis, but also technical and expert engineering judgment. EEI contends that, unlike the RTO/ISO, Transmission Owners have the technical expertise and knowledge of their systems which enables them to make decisions that maximize the efficiency of their system for the benefit of their customers.

27. PJM states that the *California Orders* are the relevant precedent on asset management activities and planning for transmission facilities. PJM claims that the *California Orders* establish that projects that increase transmission capacity are subject to the planning requirements of Order No. 890 and must be submitted to the RTO planning process but that projects that do not expand the grid are not subject to the RTO planning process, including local projects.<sup>45</sup>

28. Regarding the *California Orders*, both LS Power and the PJM IMM argue that they are not applicable to the instant filing.<sup>46</sup> LS Power states, in the *California Orders*,

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<sup>43</sup> PJM Comments at 12-15 (citing *Monongahela Power Cos.*, 164 FERC ¶ 61,217 at P 14).

<sup>44</sup> Exelon Protest at 18-20; WIRES Comments at 2; Indicated PJM Transmission Owners Protest at 15-16; EEI Comments at 4.

<sup>45</sup> PJM Comments at 15-17.

<sup>46</sup> LS Power Comments at 51-52; PJM IMM Comments at 3-5.

the Commission made it clear that PJM is different from CAISO. PJM IMM argues that reference to the *California Orders* is misplaced and irrelevant because those orders concern projects amounting to the management of existing assets, not retirement.

### **3. EOL Terms and Process**

29. Ohio FEA, NJ BPU, PJM IMM, and LS Power support the PJM Stakeholder Proposal's EOL six-year look-ahead period.<sup>47</sup> NJ BPU contends that the provisions of the PJM Stakeholder Proposal requiring Transmission Owners to share anticipated EOL needs for the next ten years and to submit a binding list of EOL needs for the next six years actively encourages transparency, whereas the PJM Transmission Owners' Attachment M-3 Revisions Filing shuts stakeholders out of the process entirely. PJM IMM adds that, if PJM can demonstrate that it is necessary or beneficial to align the EOL Notifications deadline with the ten-year planning horizon, then it should develop and support such rule changes. LS Power counters that a six-year timeframe is appropriate since Transmission Owners are already comfortable with a five-year EOL notification timeframe. Ohio FEA recommends that, beyond accepting the PJM Stakeholder Proposal, the Commission should require that Transmission Owners provide both physical and cost-based analysis as part of its Look-Ahead program and EOL criteria to support its determination of end of operational life of a facility or plant.

30. Regarding the PJM Stakeholder Proposal's terms and processes, PJM argues that binding EOL notifications would unreasonably restrict Transmission Owners; the proposal does not contemplate the potential need to replace Transmission Facilities in six years or less; the proposal lacks an alignment of timing for transmission projects to be included in PJM's RTEP; and the proposal does not contemplate how such projects would allocate costs pursuant to Schedule 12 of the Tariff.<sup>48</sup>

31. Exelon, EEI, WIRES, Indicated PJM Transmission Owners and AEP argue that a proposed six-year forecast of EOL needs is unreasonable.<sup>49</sup> Exelon explains that a Transmission Owner is unlikely to be able to forecast with certainty whether a particular asset will need to be retired in the next ten years. EEI contends that any time-bound requirements restrict Transmission Owner flexibility to address system conditions and that nothing in Order No. 890 or the *California Orders* obligates Transmission Owners to provide strict forecasting and notification requirements regarding system conditions.

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<sup>47</sup> Ohio FEA Comments at 6, 10-11; NJ BPU Comments at 2; PJM IMM Comments at 5-7; LS Power Comments at 38-39.

<sup>48</sup> PJM Comments at 19-23.

<sup>49</sup> Exelon Protest at 7-9; EEI Comments at 9-10; WIRES Comments at 2; Indicated PJM Transmission Owners Protest at 9-13; AEP Protest at 5.

Indicated PJM Transmission Owners state that the loss of flexibility to make transmission asset retirement decisions could jeopardize reliability and increase costs to the customers by creating a “run-to-failure” scenario that requires the Transmission Owner or PJM to employ special procedures to maintain reliable services or engage in costly accelerated replacement efforts. AEP also argues that the EOL notification process would require that AEP publicly advertise weakness and imminent failures of its transmission facilities before they can be properly mitigated.

#### **4. PJM Stakeholder Proposal Impacts**

32. OCC, NJ BPU, LS Power, PJM IMM, and Joint Stakeholders argue the PJM Stakeholder Proposal would create efficiencies in transmission planning.<sup>50</sup> NJ BPU argues that the Commission should accept the PJM Stakeholder Proposal because it will promote transparency as required by Order 890, promote competition and efficiency in replacing facilities which have reached an EOL Condition within PJM, and more closely align with cost causation principles. LS Power argues that shifting EOL planning for transmission facilities to PJM brings: (i) PJM independence; (ii) replacement projects, only if needed in PJM’s independent judgment; (iii) the ability to combine multiple drivers; (iv) competition with the (a) sponsorship model bringing innovation, and (b) the consumer savings of competition; (v) discipline; (vi) transparency; (vii) accountability through Designated Entity Agreement (DEA) execution as a RTEP Project. Rather than reducing flexibility, the Joint Stakeholders contend that the PJM Stakeholder Proposal expressly retains flexibility and leaves to each Transmission Owner application of its own sound engineering judgement. Additionally, Joint Stakeholders contend that the arguments that the PJM Stakeholder Proposal increases PJM’s liability or jeopardizes reliability are based on a false premise because the PJM Transmission Owner, *not* PJM, makes the EOL determination and PJM Transmission Owners properly maintain *exclusive* authority to determine whether a transmission asset has reached its EOL.

33. Exelon, EEI, AEP, Indicated PJM Transmission Owners and ITC argue that, if accepted, the PJM Stakeholder Proposal would negatively impact planning of asset management activities.<sup>51</sup> Indicated PJM Transmission Owners state that the proposal would result in the public dissemination of highly confidential critical bulk power system information. They contend that the proposal would require that all EOL Notifications be submitted to the PJM Transmission Expansion Advisory Committee, which is open to a wide array of parties, including “any interested entities or persons.” Sharing this EOL information and discussing it in public meetings is negligent and inconsistent with PJM’s

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<sup>50</sup> OCC Comments at 5-6; NJ BPU Comments at 1-2, 6; LS Power Comments at 12, 54-56; PJM IMM Comments at 2-3; Joint Stakeholders Comments at 5-6, 9-11.

<sup>51</sup> Exelon Protest at 14-15, 17-18; EEI Comments at 7; AEP Protest at 5; Indicated PJM Transmission Owners Protest at 13-18; ITC Comments at 1-2.

NERC responsibilities and goes against a national priority to protect physical infrastructure from physical and cyber threats. ITC asserts that the proposal seeks competition for its own sake and would deliver negligible benefits to PJM customers while imposing significant, unnecessary burdens and costs.

## 5. Cost-Causation Principles

34. NJ BPU and LS Power argue the PJM Stakeholder Proposal is consistent with cost-causation principles.<sup>52</sup> In support of their argument, LS Power includes an analysis examining a group of Supplemental Projects put forward by Transmission Owners to address EOL needs. LS Power states that there are eight Supplemental Projects whose costs were erroneously allocated above the threshold that the D.C. Circuit found violative of cost causation in *ODEC*. LS Power adds that in *ODEC* the Court of Appeals for the District of Columbia Circuit held the cost causation principles do not depend on the planning criteria from which the project arose, rather, the court stated “[T]he cost causation principle focuses on project benefits, not on how particular planning criteria are developed.”<sup>53</sup> LS Power notes that the PJM Stakeholder Proposal would apply the same, existing cost allocation structure to EOL transmission projects that apply to FERC Form No. 715 transmission projects.<sup>54</sup> Conversely, Exelon points out that there is no justification for this change in cost allocation and it would impact customers.<sup>55</sup> Finally, PJM IMM states that the issue with cost allocations under PJM Tariff Schedule 12 for projects relying on EOL Notification as the driver can be addressed on compliance.<sup>56</sup>

### C. Responsive Pleadings

35. PJM states that the PJM Stakeholder Proposal would require it to make asset management decisions regarding the EOL status of Transmission Owners’ transmission assets. PJM states that, although Transmission Owners would retain the decision of when to include a facility in an EOL Notification, once the Transmission Owner does, the

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<sup>52</sup> NJ BPU Comments at 7; LS Power Comments at 36-37 (citing *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254, *reh'g denied*, 905 F.3d 671 (D.C. Cir. 2018) (*ODEC*)), *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,133 (2019)).

<sup>53</sup> LS Power Comments at 37 (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 87 (D.C. Cir. 2014); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004); *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992)).

<sup>54</sup> *Id.* at 50-51.

<sup>55</sup> Exelon Protest at 21-22.

<sup>56</sup> PJM IMM Comments at 9-10.

Transmission Owner is barred from making decisions regarding its transmission asset. PJM explains that this may result in all parties, including the Commission, being placed in a position of having to adjudicate the Transmission Facility's replacement at a time when the safety and reliability of the transmission system may be at risk. Additionally, PJM states that the binding six-year notification and non-binding EOL Condition requirements may transfer liability from the Transmission Owners to PJM. Finally, PJM states that if the revisions are accepted, additional compliance would be necessary to clarify that only certain transmission projects to address an EOL Condition with regional impact and increased transmission capability would come under the RTEP for cost allocation purposes. PJM states that all other projects would be treated as Supplemental Projects, consistent with the *California Orders*.<sup>57</sup>

36. In their answer, LS Power argues that the current ad hoc, short-term planning for transmission facilities that have reached EOL status is inappropriate considering that nearly two-thirds of PJM transmission facilities are over 40 years old. In response to Indicated PJM Transmission Owner concerns that a six-year timeframe for notifying PJM is too long, LS Power argues that notion sharply contrasts with the CTOA requirement that PJM conduct transmission planning over a ten year horizon.<sup>58</sup> Second, in support of the PJM Stakeholder Proposal six-year notification timeframe, LS Power argues that PJM's current, ad hoc practices related to replacing aging transmission infrastructure is not consistent with Good Utility Practice.<sup>59</sup> Finally, LS Power explains that the six-year EOL notification timeframe supports the Commission's regional planning requirements. By seeking to subject EOL Need transmission projects to the Attachment M-3 process, LS Power asserts, the Transmission Owners are attempting to avoid the regional planning requirements of Order No. 1000 and, thereby, creating a new right of first refusal, which constitutes a collateral attack on Order No. 1000.<sup>60</sup>

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<sup>57</sup> PJM Answer at 2-4 (citing Joint Stakeholders Comments at 20-21; LS Power Comments at 19-20), 5-8, 11-14.

<sup>58</sup> LS Power Answer at 3-5 (citations omitted).

<sup>59</sup> *Id.* at 8-9.

<sup>60</sup> *Id.* at 24-25 (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 221 (2013) ("We find that PJM's OATT and Agreements are not in compliance with Order No. 1000's requirement to eliminate any federal right of first refusal from Commission-jurisdictional tariffs and agreements, and, therefore, we direct PJM to revise its OATT and Agreements to address any provision that could be read as supplying a federal right of first refusal for any type of transmission project that is selected in the regional transmission plan for purposes of cost allocation.")).

37. Indicated PJM Transmission Owners explain that shifting the authority to plan for transmission projects to address an EOL Condition from the Transmission Owners that own the transmission facilities requiring replacement to PJM would expose PJM to liability if a Transmission Facility fails before PJM authorizes its retirement or replacement.<sup>61</sup> Indicated PJM Transmission Owners allege that, under the rigid six-year binding notice requirement, a Transmission Owner will not be able to replace an aging facility that fails prior to the end of the six-year period, which invariably will undermine reliability and lead to costly work-arounds, such as redispatch.<sup>62</sup> Indicated PJM Transmission Owners state that the Commission clarified in Order No. 1000-A that the planning reforms do not eliminate “the right of an owner of a Transmission Facility to improve its own existing Transmission Facility” and that Order No. 1000 does not apply to an “improvement to, addition to, or *replacement* of a part of, an existing Transmission Facility.”<sup>63</sup>

38. In response to LS Power’s reference to *ODEC*, Indicated PJM Transmission Owners assert that the Commission has distinguished *ODEC* by noting that *ODEC* involved high-voltage projects that the Commission had previously recognized produce significant regional transmission benefits.<sup>64</sup> Indicated PJM Transmission Owners assert, however, that the projects at issue here are exempt from required regional planning and subsequently are not subject to regional cost allocation.<sup>65</sup> Additionally, Indicated PJM Transmission Owners dispute PJM Stakeholders’ claim that the court in *Atlantic City* confirmed that PJM Transmission Owners transferred regional transmission planning to PJM.<sup>66</sup> Indicated PJM Transmission Owners assert that *Atlantic City* stated that “there was no transfer of ownership or even physical operation of their facilities . . . [and] each of the [PJM Transmission Owners] retained both ownership and physical control of their

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<sup>61</sup> Indicated PJM Transmission Owners Answer at 7-8.

<sup>62</sup> *Id.* at 10, 12-13, 30-32 (citing PJM Rates Schedules, TOA-42, § 6.3.4 (0.0.0)).

<sup>63</sup> *Id.* at 13 (citing *Transmission Planning and Cost Allocation by Transmission Owning and Operating Pub. Utils.*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 426 (emphasis added)).

<sup>64</sup> *Id.* at 15 (citing *Coal. of MISO Transmission Customers*, 172 FERC ¶ 61,099, at P 93 (2020)).

<sup>65</sup> *Id.* at 15-16 (citing *So. Cal. Edison Co.*, 164 FERC ¶ 61,160 at P 33, *order denying reh’g*, 168 FERC ¶ 61,170; *Cal. Pub. Utils. Comm’n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161 at P 68, *order on reh’g*, 168 FERC ¶ 61,171).

<sup>66</sup> *Id.* at 43 (citing Joint Stakeholders Answer at 22-23).

facilities and certainly not non-expansion projects and activities.”<sup>67</sup> Finally, Indicated PJM Transmission Owners disagree with claims that the *California Orders* do not apply to the PJM Stakeholder Proposal. Indicated PJM Transmission Owners assert that the *California Orders* interpret the reach of Order No. 890, which applies to PJM. Indicated PJM Transmission Owners state that PJM Transmission Owners, like their CAISO counterparts, engage in asset management replacement work to address EOL needs. Thus, according to Indicated PJM Transmission Owners, the *California Orders* remove any doubt that asset management activities beyond the planning scope of Order No. 890 include replacing aging transmission facilities.<sup>68</sup>

39. Indicated PJM Transmission Owners assert that the PJM Operating Agreement explicitly precludes the Members Committee from amending the PJM Operating Agreement in a manner that contravenes the CTOA or causes PJM to violate its contractual obligations. Indicated PJM Transmission Owners state that CTOA section 2 states that it transfers only “certain planning and operating responsibilities to PJM” and that CTOA section 5.6 explicitly reserves all rights to Transmission Owners that are not “specifically transferred” to PJM.<sup>69</sup> Thus, according to Indicated PJM Transmission Owners, the CTOA leaves no question that, unless the planning responsibility has been expressly transferred to PJM, that responsibility remains with the PJM Transmission Owner.<sup>70</sup> Indicated PJM Transmission Owners also cite CTOA section 5.2, which they state explicitly retains for Transmission Owners “the right to *build*, finance, own, acquire, sell, dispose, *retire*, merge or otherwise transfer or convey all or any part of its assets, including any Transmission Facilities . . . .”<sup>71</sup>

40. Joint Stakeholders maintain, however, that PJM is the regional planner and that transmission projects to address an EOL Condition are regional projects. Joint Stakeholders state that PJM’s role as the regional planner is introduced in the proposed EOL process only after a Transmission Owner has determined that a Transmission Facility should no longer be maintained, is predicted to reach the end of its life, and informs PJM that the Transmission Facility must be replaced. Joint Stakeholders contend that the Indicated PJM Transmission Owners mischaracterize the PJM Stakeholder Proposal as a loss of flexibility. Joint Stakeholders state that under the PJM Stakeholders’ Proposal, each PJM Transmission Owner develops unique EOL Criteria to

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<sup>67</sup> *Id.* (citing *Atlantic City*, 295 F.3d at 11).

<sup>68</sup> *Id.* at 23-25.

<sup>69</sup> *Id.* at 22.

<sup>70</sup> *Id.* at 17-19 (citing Indicated Transmission Owners Mot. at 11-29).

<sup>71</sup> *Id.* at 20-21 (emphasis added).

reflect its specific Transmission Facilities and topology to determine whether and when a Transmission Facility or group of related Transmission Facilities will reach an EOL Condition. Thus, rather than reducing flexibility, the Joint Stakeholders contend that the PJM Stakeholder Proposal expressly retains flexibility and leaves to each Transmission Owner application of its own sound engineering judgement consistent with existing practices. Joint Stakeholders contend that the argument that the PJM Stakeholder Proposal increases PJM's liability or jeopardizes reliability is based on a false premise because the Transmission Owner, *not* PJM, makes the EOL determination.<sup>72</sup>

41. Joint Stakeholders contend that the Indicated PJM Transmission Owners misinterpret PJM's authority and the *California Orders*. Joint Stakeholders contend that neither PJM nor the PJM Transmission Owners have identified any legal or evidentiary support in the CTOA or elsewhere that replacement decisions have only localized impacts and, therefore, must remain with the Transmission Owners. Joint Stakeholders maintain that regional planning is a core function of an RTO, and PJM retains the authority to determine whether a replacement Transmission Facility is a local project or a regional project. Regarding the *California Orders*, Joint Stakeholders contend that the Indicated PJM Transmission Owners rely on an overbroad application of the *California Orders* to EOL transmission planning. Joint Stakeholders contend that the asset management activities in the *California Orders* are broader than the EOL determinations and process in the PJM Stakeholder Proposal.<sup>73</sup>

42. In their answer, Indicated NY Transmission Owners state that the LS Power Answer mischaracterizes certain New York transmission planning efforts and processes. Indicated NY Transmission Owners state that they are filing to correct the record in this proceeding regarding LS Power's references to the New York START Phase II Study Report (STARS Report) and the New York Congestion Assessment and Resource Integration Study (CARIS) Process and their impacts on transmission planning.<sup>74</sup>

43. In their supplemental comments, LS Power reiterates that there are several transmission projects that provide regional benefits that are currently under development in PJM that address Transmission Owner-identified EOL Conditions but the costs of these transmission projects are allocated entirely to the zone in which the transmission project is located.<sup>75</sup>

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<sup>72</sup> Joint Stakeholder Answer at 3, 5-6, 9-11.

<sup>73</sup> *Id.* at 13-15.

<sup>74</sup> Indicated NY Transmission Owners Answer at 1-2.

<sup>75</sup> LS Power Supplemental Comments at App. A.

44. In their answer, Indicated PJM Transmission Owners respond to LS Power's assertions that the development of transmission projects that address EOL Conditions may have regional benefits requiring a regional cost allocation. Indicated PJM Transmission Owners state that the Commission has determined that planning for transmission facilities at issue address EOL Conditions that are outside of the scope of PJM's regional planning authority and responsibility.<sup>76</sup> Indicated PJM Transmission Owners argue LS Power's argument is beyond the scope of this proceeding.

#### **IV. Determination**

##### **A. Procedural Matters**

##### **1. Interventions and Pleadings**

45. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>77</sup> the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

46. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,<sup>78</sup> we grant the late-filed motions to intervene of Avangrid, Inc., Long Island Lighting Company, a subsidiary of the Long Island Power Authority, the New Jersey Division of Rate Counsel, and, Indicated NY Transmission Owners given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

47. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>79</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers as they have provided information that assisted us in our decision-making process.

##### **2. Motion for Summary Rejection**

48. We deny the motion for summary rejection. We disagree with the Indicated PJM Transmission Owners that the PJM Stakeholder Proposal should be summarily rejected as patently deficient and not consistent with statutory or regulatory requirements of a filing

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<sup>76</sup> Indicated PJM Transmission Owners Answer at 7-9 (citing August 2020 Order, 172 FERC ¶ 61,136 at PP 83-84, 86) (Dec. 9, 2020).

<sup>77</sup> 18 C.F.R. § 385.214.

<sup>78</sup> *Id.* § 385.214(d).

<sup>79</sup> *Id.* § 385.213(a)(2).

pursuant to section 205 of the FPA, as discussed in the Motion for Summary Rejection section above.

49. Section 10.4(xiii) of the PJM Operating Agreement requires PJM to “[f]ile with FERC on behalf of the Members” any amendments or schedules and make any other regulatory filings on behalf of the members necessary to implement the PJM Operating Agreement.<sup>80</sup> Further, section 11.5(b) of the PJM Operating Agreement preserves the members’ rights to make a filing pursuant to section 205 of the FPA and does not require any agreement by PJM to make the filing:

Nothing herein shall be construed as affecting in any way the right of the Members, acting pursuant to a vote of the Members Committee as specified in Operating Agreement, section 8.4, unilaterally to make an application to FERC for a change in any rate, charge, classification, tariff or service, or any rule or regulation related thereto, under section 205 of the Federal Power. . . .<sup>81</sup>

50. Under section 8.4 of the PJM Operating Agreement, if the requisite stakeholder majority is achieved, then pursuant to section 10.4(xiii) of the PJM Operating Agreement, PJM is required to make a filing with the Commission on behalf of its stakeholders.<sup>82</sup> Nothing in section 10.4(xiii) or section 11.5(b) allows PJM to limit its filing obligations.<sup>83</sup> Thus, we find no merit in the Indicated PJM Transmission Owners’ argument that the fact that PJM does not support the PJM Stakeholder Proposal preempts PJM’s obligations to make the filing pursuant to the PJM Operating Agreement. Accordingly, we find that filing the PJM Stakeholder Proposal is consistent with the obligations of section 10.4(xiii) of the PJM Operating Agreement and deny the motion

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<sup>80</sup> PJM Intra-PJM Tariffs, 10.4, OA 10.4 Duties and Responsibilities (2.0.0), §10.4(xiii).

<sup>81</sup> PJM Intra-PJM Tariffs, 11.5, OA 11.5 Member Right to Pet. (1.0.0), § 11.5(b).

<sup>82</sup> PJM Intra-PJM Tariffs, 8.4, OA 8.4 Manner of Acting (1.0.0) (“[t]he sum of affirmative Sector Votes necessary to pass a pending motion in a Senior Standing Committee shall be greater than (but not merely equal to) the product of .667 multiplied by the number of sectors that have at least five Members and that participated in the vote”); *see also* PJM Intra-PJM Tariffs, 10.4, OA 10.4 Duties and Responsibilities (2.0.0), §10.4(xiii).

<sup>83</sup> *See* PJM Intra-PJM Tariffs, 18.6, OA 18.6 Amend. (1.0.0), § 18.6(a).

requesting that it be summarily rejected. We address the Indicated PJM Transmission Owners' arguments for rejection on the merits below.

## **B. Substantive Matters**

51. We reject the PJM Stakeholder Proposal. As discussed below, the threshold issue is whether the PJM Transmission Owners have transferred the planning responsibilities at issue in this proceeding to PJM. Consistent with the August 2020 Order,<sup>84</sup> we find here that the PJM Transmission Owners retain the right to “maintain” their transmission facilities, and generally reserve all rights not specifically granted to PJM.<sup>85</sup>

52. In *Atlantic City*,<sup>86</sup> the Court of Appeals for the District of Columbia Circuit determined that the Commission could not require transmission owners to relinquish their section 205 filing rights when they formed an RTO: “nothing in section 206 sanctions denying petitioners their right to unilaterally file rate and term changes.”<sup>87</sup> The Court recognized, however, that “[o]f course, utilities may choose to voluntarily give up, by contract, some of their rate-filing freedom under section 205.”<sup>88</sup> While *Atlantic City* dealt with changes to rate design, it also applied to denial of rights to file “term changes,”<sup>89</sup> such as the changes to planning procedures at issue here.

53. The PJM Transmission Owners and PJM signed the CTOA to memorialize the division of responsibility between the PJM Transmission Owners and PJM. As the Commission found in the August 2020 Order, under the terms of the CTOA, the PJM Transmission Owners retain all rights that they have not specifically granted to PJM. Specifically, under the CTOA, the PJM Transmission Owners agree to “transfer to PJM . . . the responsibility to prepare a Regional Transmission Expansion Plan and to provide

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<sup>84</sup> August 2020 Order, 172 FERC ¶ 61,136 at P 82.

<sup>85</sup> *Id.* PP 83, 85. As the Commission found in *Cal. Pub. Util. Comm'n.*, “these asset management projects and activities include maintenance, repair, and replacement work, and infrastructure security, system reliability, and automation project.” *Cal. Pub. Util. Comm'n.*, 164 FERC ¶ 61,161 at P 67.

<sup>86</sup> *Atlantic City*, 295 F.3d 1.

<sup>87</sup> *Id.* at 10.

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

<sup>89</sup> *Id.* (referring to “rate and term changes”); *id.* at 9 (“Section 205 of the Federal Power Act gives a utility the right to file rates and terms for services rendered with its assets.”).

information reasonably requested by PJM to prepare the Regional Transmission Expansion Plan and shall otherwise cooperate with PJM in such preparation.”<sup>90</sup> Pursuant to the CTOA, PJM is limited to “[c]onduct[ing] its planning for the expansion and enhancement of transmission facilities.”<sup>91</sup> The PJM Transmission Owners specifically retain the right to “maintain” their transmission facilities<sup>92</sup> and the right to determine when facilities should be retired.<sup>93</sup> Section 10.4(xviii) of the PJM Operating Agreement recognizes that PJM is authorized only to “perform those functions and undertake those responsibilities transferred to it under the Consolidated Transmission Owners Agreement including: (A) directing the operation of the transmission facilities of the parties to the Consolidated Transmission Owners Agreement; (B) administering the PJM Tariff; and (C) administering the Regional Transmission Expansion Planning Protocol set forth in PJM Operating Agreement, Schedule 6.”<sup>94</sup>

54. The proposed revisions in this filing address transmission projects to replace any transmission facilities that have reached the end of their useful lives, which goes beyond the scope of planning responsibilities delegated to PJM in the PJM Operating Agreement. A transmission project to address EOL Conditions that is limited to replacing existing equipment, or that involves only an incidental increase in transmission capacity, does not involve expansion or enhancement of the regional transmission system.<sup>95</sup> Such a replacement project does not fall under regional transmission planning under the PJM Operating Agreement as it relates solely to maintenance of existing facilities, and it does

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<sup>90</sup> PJM, Rate Scheds., 4.1.4, TOA-42, 4.1.4, Planning Information (0.0.0).

<sup>91</sup> PJM, Rate Scheds., 6.3.4, TOA-42, 6.3.4 (0.0.0).

<sup>92</sup> PJM, Rate Scheds., 4.5, TOA-42, 4.5, Operation and Maintenance (1.0.0) (reservation of right to conduct maintenance).

<sup>93</sup> PJM, Rate Scheds., 5.2, TOA-42, 5.2, Facility Rights (1.0.0) (rights to determine retirement).

<sup>94</sup> PJM Intra-PJM Tariffs, 10.4, OA 10.4, Duties and Responsibilities (2.0.0), § 10.4(xviii).

<sup>95</sup> Under the CTOA, transmission projects to address an EOL Condition that also expand or enhance the transmission system beyond an incidental increase in transmission capacity would be planned either by PJM as part of RTEP or by the PJM Transmission Owner depending on whether such projects address regional transmission requirements. PJM, Rate Scheds., 6.3.4, TOA-42, 6.3.4 (0.0.0) (PJM delegated authority to plan for “expansion and enhancement” of transmission facilities); PJM, Rate Scheds., 4.1.4, TOA-42, 4.1.4, Planning Information (0.0.0) (transferring to PJM the responsibility for developing a *regional transmission expansion plan*) (emphasis added).

not “expand” or “enhance” the PJM grid as the CTOA requires for transmission planning responsibilities transferred to PJM.<sup>96</sup> Transmission projects to address an EOL Condition that replace existing equipment involve decisions regarding retirement and maintenance of existing equipment, a responsibility that the PJM Transmission Owners specifically retained.<sup>97</sup> Indeed, PJM and the PJM Board of Directors agree that PJM does not have authority to plan for transmission projects to address an EOL Condition that are related to replacement: “through the CTOA the Transmission Owners acknowledged the need to cooperate with PJM in the determination of regional transmission needs through the [RTEP] Protocol but did not turn over to PJM replacement decisions, which are local in nature, associated with the retirement of existing infrastructure.”<sup>98</sup> PJM further points out that transmission projects to address an EOL Condition that are related to replacement are outside the scope of its planning responsibilities as they relate to local planning determinations, not regional planning determinations.<sup>99</sup>

55. 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 addressed by individual transmission owners.”<sup>100</sup> In *Monongahela Power Co.*, the Commission found 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>101</sup> The Commission went on to explain:

[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

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<sup>96</sup> August 2020 Order, 172 FERC ¶ 61,136 at P 83.

<sup>97</sup> Replacement of facilities is part of the continuum of maintenance as the transmission owner weighs the ongoing costs of repair compared with the costs of retiring and replacing the equipment.

<sup>98</sup> PJM Comments at 9-10.

<sup>99</sup> *Id.* at 10-11.

<sup>100</sup> Order No. 890, 118 FERC ¶ 61,119 at P 440.

<sup>101</sup> *Monongahela Power Co.*, 164 FERC ¶ 61,217 at P 13.

transmission projects and to initiate under section 205 any proposed revisions.<sup>102</sup>

56. Transmission projects that address EOL Conditions also 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*. As the Commission found in *Cal. Pub. Util. Comm'n.*, “these asset management projects and activities include maintenance, repair, and replacement work, and infrastructure security, system reliability, and automation project.”<sup>103</sup> Our 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,” as long as these projects result in only an “incidental increase in transmission capacity that is not reasonably severable from the asset management or activity.”<sup>104</sup>

57. Because the rights and responsibilities (e.g., planning for projects that maintain the existing infrastructure by repairing or replacing equipment) have been retained by the PJM Transmission Owners under the CTOA, as found in the August 2020 Order, we reject the PJM Stakeholder Proposal as PJM does not have the authority to perform these planning activities. Given this finding, we need not address the merits of the PJM Stakeholder Proposal. We thus reject the proposed tariff records revising the PJM Operating Agreement.<sup>105</sup>

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<sup>102</sup> *Id.* P 14.

<sup>103</sup> *Cal. Pub. Utils. Comm'n.*, 164 FERC ¶ 61,161 at P 67.

<sup>104</sup> *So. Cal. Edison Co.*, 164 FERC ¶ 61,160 at P 33; *Cal. Pub. Util. Comm'n.*, 164 FERC ¶ 61,161 at P 68.

<sup>105</sup> *See* App. B.

The Commission orders:

The PJM Stakeholders' proposed revisions, as listed in Appendix B, are rejected, as discussed in the body of this order.

By the Commission. Commissioner Clements is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.

**Appendix A – Intervenors**

Ameren Services Company  
American Electric Power Service Corporation (AEP)  
American Municipal Power, Inc.  
Avangrid, Inc. (out-of-time)  
Blue Ridge Power Agency  
Buckeye Power, Inc.  
Calpine Corporation  
Delaware Division of the Public Advocate  
Dominion Energy Services, Inc.  
Duke Energy Corporation  
Duquesne Light Company (Duquesne)  
East Kentucky Power Cooperative, Inc.  
Edison Electric Institute (EEI)  
Exelon Corporation  
Public Utilities Commission of Ohio's Office of the Federal Energy Advocate (Ohio FEA)  
GridLiance Holdco LP  
Hudson Transmission Partners, LLC  
Illinois Commerce Commission  
Independent Market Monitor for PJM (PJM IMM)  
Indiana Office of Utility Consumer Counselor  
ITC Interconnection LLC  
J-POWER USA Development Co., Ltd. (J-Power)  
Linden VFT, LLC  
Long Island Lighting Company (out-of-time)  
LSP Transmission Holdings II, LLC (LS Power)  
Maryland Office of People's Counsel  
Neptune Regional Transmission System, LLC  
New Jersey Board of Public Utilities (NJ BPU)  
New Jersey Division of Rate Counsel (out-of-time)  
New York Transmission Owners, et al. (out-of-time) ( Indicated NY Transmission Owners)  
North Carolina Electric Membership Corporation  
NRG Power Marketing LLC  
Office of the Ohio Consumers' Counsel (OCC)  
Office of the People's Counsel for the District of Columbia  
Pennsylvania Public Utility Commission  
PJM Industrial Customer Coalition  
PPL Electric Utilities Corporation  
Public Service Electric and Gas Company

Rockland Electric Company  
Southern Maryland Electric Cooperative, Inc.  
The Dayton Power and Light Company  
The FirstEnergy Transmission Companies  
WIRES

## **Appendix B – Tariff Records Rejected**

PJM Interconnection, L.L.C.  
Intra-PJM Tariffs

[E-F, OA Definitions E - F, 19.0.0](#)

[I-L, OA Definitions I - L, 17.0.0](#)

[M-N, OA Definitions M - N, 16.0.0](#)

[Q-R, OA Definitions Q - R, 15.0.0](#)

[S–T, OA Definitions S – T, 18.0.0](#)

[OA Schedule 6 Sec 1.1, OA Schedule 6 Sec 1.1 Purpose and Objectives, 1.0.0](#)

[OA Schedule 6 Sec 1.2, OA Schedule 6 Sec 1.2 Conformity with NERC and Other  
Applic, 3.0.0](#)

[OA Schedule 6 Sec 1.3, OA Schedule 6 Sec 1.3 Establishment of Committees, 7.0.0](#)

[OA Schedule 6 Sec 1.4, OA Schedule 6 Sec 1.4 Contents of the Regional Transmission,  
3.0.0](#)

[OA Schedule 6 Sec 1.5, OA Schedule 6 Sec 1.5 Procedure for Development of the Regi,  
25.0.0](#)