

131 FERC ¶ 61,243  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Central Transmission, LLC

v.

Docket No. EL10-52-000

PJM Interconnection, L.L.C.

ORDER ON COMPLAINT

(Issued June 17, 2010)

1. On March 25, 2010, Central Transmission, LLC (Central Transmission) filed a complaint (Complaint) against PJM Interconnection, L.L.C. (PJM) under section 206 of the Federal Power Act (FPA),<sup>1</sup> alleging that Schedule 6 of the PJM Operating Agreement and Schedule 12 of the PJM open access transmission tariff (OATT)<sup>2</sup> are unjust and unreasonable and unduly discriminatory insofar as these provisions could prevent PJM from designating Central Transmission to construct and own a transmission project that it proposes. Central Transmission alleges that PJM has indicated that it cannot designate Central Transmission to construct and own the line based on its interpretation of the tariff.

2. In response to Central Transmission's complaint, the Commission finds that Central Transmission is eligible to be designated by PJM to build the facilities in question under the OATT and Operating Agreement, consistent with our findings in *Primary Power*.<sup>3</sup> In *Primary Power*, the Commission interpreted the OATT and Operating

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<sup>1</sup> 16 U.S.C. § 824e (2006).

<sup>2</sup> PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Rev. Vol. No. 1 (OATT).

<sup>3</sup> *Primary Power, LLC*, 131 FERC ¶ 61,015 (2010) (*reh'g pending*) (*Primary Power*).

Agreement as permitting PJM to designate non-incumbent transmission developers to build economic expansion projects under the PJM Regional Transmission Enhancement Plan (RTEP), if approved through the RTEP process. In addition, the Commission found that once approved, these non-incumbent independent transmission developers would be eligible to seek cost-of-service rate treatment under Schedule 12 as would any other transmission owner. Based on our reading in *Primary Power*, we find that the Operating Agreement, Schedule 6 and OATT, Schedule 12 permit PJM to consider Central Transmission's proposal through the RTEP process and thus no revisions to the PJM Tariff and Operating Agreement, are needed.

## **I. Background**

### **A. Description of Central Transmission**

3. Central Transmission identifies itself as a member of the LS Power Group, a group involved in the development of power generation and transmission, including over 1,000 miles of transmission planned to deliver renewable resources to load, including projects in Idaho, Nevada, Texas, Wyoming and Colorado.

### **B. Description of the LaSalle Project**

4. Central Transmission proposes the LaSalle Project, an approximately 160-mile double circuit 345 kV transmission line connecting three PJM 345 kV substations: Commonwealth Edison Company's (Commonwealth Edison) Pontiac-Midpoint substation in Pontiac, Illinois; a proposed American Electric Power Company (AEP) substation to be constructed near the existing Reynolds, Indiana substation; and AEP's Dumont substation in Indiana.<sup>4</sup>

5. Central Transmission anticipates that the LaSalle Project will meet PJM's criteria as a market efficiency project by relieving congestion in Illinois and Indiana and reducing costs for customers. The LaSalle Project will connect the Commonwealth Edison and AEP zones, which are physically separated by an area served by several utilities, mostly cooperatives, operating in the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) system. Central Transmission predicts that LaSalle Project will create additional internal PJM transfer capacity between these zones and provide economic and reliability benefits. Central Transmission states that the LaSalle Project will provide transmission access to renewable generation under development in Illinois and Indiana and benefit approximately 27,000 MW of wind generation in the PJM interconnection

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<sup>4</sup> Central Transmission intends to interconnect to the high-side of the bus at Reynolds, which it describes as "the PJM side."

queues in addition to the wind generation located along the LaSalle Project that would otherwise be “stranded” between the Commonwealth Edison and AEP zones without a clear ability to access the PJM market.

6. Central Transmission reports that PJM is conducting interconnection studies in response to its December 1, 2009 interconnection request for the LaSalle Project. Also, Central Transmission reports that, on December 17, 2009, it submitted the LaSalle Project to PJM for study as an economic upgrade, in accordance with the procedures set forth in the PJM Operating Agreement, specifying that Central Transmission was seeking approval in the RTEP and to be eligible for construction, ownership and regulated rate-based recovery. According to Central Transmission, based on information and belief, including discussions with PJM, no similar projects have been proposed. Central Transmission states its belief that two wind generator interconnection requests have been submitted to PJM’s interconnection queue identifying the proposed LaSalle Project as their proposed point of interconnection.

## **II. Central Transmission Complaint**

### **A. Section 1.5.6(g)**

7. Central Transmission’s complaint seeks a finding that the PJM Operating Agreement, Schedule 6 and OATT, Schedule 12 are unjust and unreasonable to the extent that the provisions contained therein would assign cost responsibility for any project owned by an entity other than a transmission owner to that entity, while allowing regulated, rate-based recovery to incumbent transmission owners. Central Transmission requests the Commission to strike the language from Schedule 6, section 1.5.6(g) that states:

Notwithstanding the foregoing, with respect to any facilities that the [RTEP] designates to be owned by an entity other than a Transmission Owner, the plan shall designate that entity as responsible for the cost of such facilities.

8. Central Transmission notes that the PJM Operating Agreement defines a Transmission Owner as a member of PJM that owns or leases with rights equivalent to ownership transmission facilities and is a signatory to the PJM Transmission Owners Agreement. Central Transmission characterizes this definition as creating a paradox, in which it is impossible for entities other than transmission owners to build, own, and recover cost-based rates for, transmission under the tariff, and it is impossible to become a transmission owner without owning transmission. Central Transmission suggests that it cannot become a signatory to the PJM Transmission Owners Agreement until it actually owns transmission that is turned over to PJM, and anticipates that it could be found ineligible for regulated, rate-based treatment under the Operating Agreement, Schedule 6, section 1.5.6(g).

9. Central Transmission interprets section 1.5.6(g) (absent the language it finds objectionable) to provide for regulated, rate based treatment for any entity designated to construct an economic upgrade. Central Transmission notes that the language to which it objects was added to the Operating Agreement when PJM expanded its regional planning process to qualify as an RTO. Central Transmission argues that PJM's compliance filing in that proceeding indicated that the language was intended to clarify that cost of service rates under the PJM tariff would be limited to regulated, rate based projects that were identified as part of the RTEP process and would not apply to merchant transmission facilities or facilities proposed by an entity that "PJM otherwise would not have included in the RTEP." Central Transmission is concerned that the provision may be read broadly to exclude cost-of-service rate recovery for economic expansions included in the RTEP by PJM that are constructed and owned by an entity other than an incumbent transmission owner. Central Transmission states that such a result would be unjust and unreasonable. Central Transmission requests the Commission modify Section 1.5.6(g) to strike the sentence in its entirety, and add language to Schedule 12 to affirm cost recovery by non-incumbent transmission owners.

10. Central Transmission states that, to the extent that the PJM Operating Agreement can be read to limit cost recovery for economic upgrades only to projects constructed and owned by incumbent transmission owners, it violates the Federal Power Act. Central Transmission states that it is unjust and unreasonable and unduly discriminatory to adopt different cost recovery rules for an economic upgrade based solely on the identity of the entity that will construct and own the facility.

11. Central Transmission states that the language in section 1.5.6(g) creates barriers to entry and accompanying market inefficiencies and higher costs. Central Transmission states that terms that exclude a class of entities from participating in construction and ownership of transmission projects are anticompetitive and cites Commission precedent that the Commission has the responsibility to consider the anticompetitive effects of regulated aspects of interstate utility operations under FPA sections 205, 206 and 207.

#### **B. Designation to Build**

12. Central Transmission states that it does not believe that Schedule 6 currently limits which entities can be designated to own or construct economic expansions. However, Central Transmission reports that PJM communications indicate its belief that it can only designate incumbent transmission owners to construct economic expansions, despite the language permitting it to designate "other entities." Central Transmission concludes

therefore that the terms of section 1.5.6(f) give PJM all the authority it needs to designate Central Transmission Power to build the project.<sup>5</sup>

13. Central Transmission states its concern that, in the absence or clarification or additional explicit language in Schedule 6, PJM or other parties may take the position that Schedule 6 requires PJM to designate an incumbent transmission owner to construct and own the LaSalle Project. Central Transmission argues that, to the extent the PJM Operating Agreement can be read to prevent PJM from designating Central Transmission as the entity that will construct and own the LaSalle Project, it is unjust, unreasonable and unduly discriminatory.

14. Central Transmission anticipates the argument that PJM must have procedures to address competing proposals before it can address its project. Central Transmission states that there is no need to wait for such procedures in this case, as it is not aware of competing projects. Central Transmission requests that the Commission either clarify or modify Schedule 6 to indicate that PJM may designate entities other than the incumbent transmission owners to construct and own economic expansions and enhancements that are identified in accordance with section 1.5.7.

### **III. Notice and Filings**

#### **A. Federal Register Notice**

15. Notice of Central Transmission's complaint was published in the *Federal Register*, 75 Fed. Reg. 16,449 (2010), with responses and interventions due on or before April 28, 2010, following extensions of time.

16. On April 28, 2010, PJM filed its answer to the complaint. The following parties filed a timely intervention with comments: American Municipal Power, Inc., on behalf of itself and its members (AMP); American Transmission Company, LLC (ATC); American Wind Energy Association and Solar Energy Industries Association (AWEA); Iberdrola Renewables, Inc. (Iberdrola); Indiana Utility Regulatory Commission (Indiana Commission); International Transmission Company;<sup>6</sup> NextEra Energy

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<sup>5</sup> Central Transmission cites the Operating Agreement, Schedule 6, section 1.5.6(f) as providing that, for any upgrades included in the RTEP, PJM shall "designate one or more Transmission Owners or other entities" to construct and own the upgrade. Central Transmission also cites section §1.5.7(c)(iii), which states that PJM "shall designate (a) the entity or entities that will be responsible for constructing and owning or financing the additional economic-based enhancements and expansions."

<sup>6</sup> D/b/a ITC Transmission, Michigan Electric Transmission Company, LLC, ITC

Generators;<sup>7</sup> Midwest ISO Transmission Owners;<sup>8</sup> and Old Dominion Electric Cooperative (ODEC). The PJM Transmission Owners Group (PJM Transmission Owners) filed a protest, but intervened separately, as noted in the following paragraph.<sup>9</sup>

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Midwest LLC, ITC Great Plains, LLC, and Green Power Express LP (collectively ITC Companies).

<sup>7</sup> Consisting of FPL Energy Marcus Hook, L.P., North Jersey Energy Associates, L.P., Doswell Limited Partnership, Backbone Mountain Windpower LLC, Mill Run Windpower LLC, Somerset Windpower LLC, Meyersdale Windpower LLC, Waymart Wind Farm, LP, and Pennsylvania Windfarms, Inc.

<sup>8</sup> Consisting of Ameren Services Company, for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Co., and Illinois Power Company; City of Columbia (Mo.) Water and Light Department; City Water, Light & Power (Springfield, Ill.); Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power and its subsidiary Superior Water, L&P; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company (NIPSCO.); Xcel Energy Inc. subsidiaries Northern States Power Company (Minnesota and Wisconsin); Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company d/b/a Vectren Energy Delivery of Indiana; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

<sup>9</sup> The PJM Transmission Owners identified in the protest are; American Electric Power Service Corporation on behalf of its affiliates, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company; Baltimore Gas and Electric Company (BGE); Exelon Corporation; FirstEnergy Service Company, on behalf of its affiliates Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company; Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, all doing business as Allegheny Power; Pepco Holdings, Inc. on behalf of its affiliates Potomac Electric Power Company, Delmarva Power & Light Company and Atlantic City Electric Company (PHI Companies); PPL Electric Utilities Corporation, PPL EnergyPlus, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, PPL University Park, LLC and Lower Mount Bethel Energy, LLC (PPL PJM Companies); Public Service Electric and Gas Company (PSEG); and Virginia Electric and Power Company, doing business as

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17. The following parties also filed timely motions to intervene and/or a notice of intervention: Allegheny Power; Ameren Services Co.; BGE; Dominion; Dayton Power and Light Co.; Duke Energy Corp.; Duquesne Light Company; Exelon Corp.; FirstEnergy Service Company on behalf of its affiliates, Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co., and American Transmission Systems, Inc.; H-P Energy Resources LLC (HP Energy); Illinois Commerce Commission; Invenergy LLC; MidAmerican Energy Holdings Co.; Monitoring Analytics, LLC; New Jersey Board of Public Utilities; North Carolina Electric Membership Corp.; NRG Companies;<sup>10</sup> Pennsylvania Public Utility Commission; PHI Companies; PPL PJM Companies; Primary Power, LLC; PSEG, PSEG Power LLC and PSEG Energy Resources & Trade LLC; Public Service Commission of Maryland; Southern California Edison Co.; and Xcel Energy Services.

18. The Public Utilities Commission of Ohio filed a motion to intervene one day out of time.

19. On May 13, 2010, Central Transmission filed a motion for leave to answer and answer responding to the PJM answer and the comments and protests. HP Energy filed a motion for leave to answer and answer responding to ODEC's comments.

**B. PJM's Answer**

20. PJM states that the Commission recently interpreted these tariff provisions in *Primary Power* making the challenges in this case moot. PJM concludes that the Commission should dismiss the complaint and permit PJM to evaluate Central Transmission as a potential economic project. However, PJM requests that, if the Commission grants the relief requested, the Commission limit the relief to economic projects and direct PJM to conduct stakeholder processes to develop a process for evaluating independent developer projects and designating construction responsibility.<sup>11</sup>

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Dominion Virginia Power (Dominion).

<sup>10</sup> Consisting of NRG Power Marketing LLC, Conemaugh Power LLC, Indian River Power LLC, Keystone Power LLC, NRG Energy Center Dover LLC, NRG Energy Center Paxton LLC, NRG Rockford LLC, NRG Rockford II LLC, and Vienna Power LLC.

<sup>11</sup> PJM proposes that such a compliance filing would address the following: (1) how to choose among two or more competing projects that meet the minimum threshold of the OATT; (2) how to assign a project in a non-discriminatory manner when it is a hybrid of competing proposals; (3) how to choose the best entity to construct and own the

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21. To the extent that the Complaint seeks a determination that PJM must designate Central Transmission to build the project, PJM states that Central Transmission's complaint should be denied because there is no support in Order No. 890 or the PJM OATT or Operating Agreement for the proposition that PJM is required to designate a specific entity to construct and own a cost-based project simply because the entity proposed the project. PJM summarizes the reforms made in Order No. 890, noting that it uses its expertise as the central planning body to conduct studies and develop the recommended RTEP, which it sends to the PJM Board. PJM notes that the final recommendations in the plan may resemble any proposed upgrade submitted by market participants, but may not be identical. PJM states that, unlike the interconnection queue, there is no first in time priority in the RTEP development process. PJM states that incumbent transmission owners likewise receive no entitlement to be designated to construct a proposed project.

22. PJM characterizes Central Transmission's complaint as an attempt to override the process and secure some entitlement to be designated to build the project.<sup>12</sup> PJM states that affirming such a priority will encourage developers to make their proposals as broad as possible in order to lay claim to construction rights, including cost recovery. PJM objects to turning the RTEP process into a queue process, similar to generator interconnection, where significant projects are proposed and enter the queue in order to establish a position and secure ownership rights, with the potential to drop out of the queue without a replacement.<sup>13</sup>

23. PJM argues that permitting transmission developers to submit competing projects, many of which will not be built, akin to the competitive generation interconnection queue, is not consistent with integrated and centralized planning. PJM states that the right to build projects, being distinct from the right to provide input into the planning process, should arise only after the planning authority has analyzed all relevant information and decided on the most optimal solution to address the identified system need.

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project without PJM finding itself in litigation with the loser (PJM suggests as suitable criteria: site control, financing and credit assurances); (4) how to address multiple different sets of state laws (14 in the PJM territory), including eligibility for certificates of public convenience and necessity and state siting permits.

<sup>12</sup> PJM Answer at 9 (citing the Complaint at 2).

<sup>13</sup> *Id.* at 9-10.

### C. Responsive Pleadings

24. Several parties support Central Transmission's complaint. They object to PJM's practice of classifying all independent transmission developer projects as merchant projects whether the developer wishes to pursue such a business model; further, they argue that disparate treatment is unjustified, when the benefits to the system would be the same, regardless of who builds the facility.<sup>14</sup> These parties contend that unjustified barriers to independent transmission development are inconsistent with the goals of building out the national transmission system and opening corridors to renewable resources.

25. Several parties support PJM's position that the Commission's findings in *Primary Power* make the issues raised in the complaint moot.<sup>15</sup> Others however do not support a case-by-case approach to right of first refusal, and characterize this approach as a "piecemeal" one that could undermine PJM's ability to carry out its role as an independent transmission provider.

26. ITC Transmission supports the complaint, noting difficulties it has faced in building facilities in other RTOs.<sup>16</sup> ITC Transmission advocates a time-limited right of first refusal, followed by a selection process based on the qualifications on entities seeking to be designated to construct transmission. ITC Transmission states that criteria can include whether the project sponsor is in possession of all state regulatory authority permits necessary to construct, own, and operate transmission facilities in the state where the project is to be located, whether the project sponsor meets creditworthiness requirements, and whether the project sponsor has all other required technical, financial, and managerial qualifications.

27. The Indiana Commission, while acknowledging the current PJM stakeholder efforts to develop evaluation criteria, requests that the effort not delay ongoing consideration of transmission projects in the RTEP. The Indiana Commission adds that PJM's selection of the entity to build any project is contingent on applicable state laws,

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<sup>14</sup> See Iberdrola, AMP, AWEA and ODEC Comments. See also Indiana Commission Comments (generally supporting complaint but noting that it has not made a determination under Indiana law, whether Central Transmission is eligible to operate as a public utility and obtain siting approvals).

<sup>15</sup> See AMP, AWEA, Indiana Commission, and ITC Transmission Comments.

<sup>16</sup> ITC Transmission Comments at 5 (citing *Southwestern Power Pool*, 128 FERC ¶ 61,018 (2009)).

regulations, and approvals and notes that it has not made a determination under Indiana law whether Central Transmission is eligible to operate as a public utility and obtain siting approvals.

28. PJM Transmission Owners argue that Central Transmission failed to demonstrate undue discrimination, which requires a showing that similarly-situated customers are being treated differently. PJM Transmission Owners state that third party developers and incumbent transmission owners are not similarly situated. They distinguish incumbent transmission owners as having obligations under state law to provide safe and reliable service to retail consumers, assuring that they will complete the projects they are assigned to build and be around to operate and maintain those facilities throughout their service life. They argue that independent transmission developers lack obligations under state law to provide safe and reliable service, and carry the risk of project abandonment and failure to operate and maintain facilities throughout their service life.

29. Also, the PJM Transmission Owners state that the Commission misinterpreted the Operating Agreement in *Primary Power* by focusing only on the reference to “other entities” in Schedule 6, section 1.5.6(f). In contrast, they continue to press their claim that the language highlighted below establishes a right of first refusal for incumbent transmission owners:

For each enhancement or expansion that is included in the recommended plan, the plan shall . . . designate one or more Transmission Owners or other entities to construct, own and, unless otherwise provided, finance the recommended transmission enhancement or expansion. To the extent that one or more Transmission Owners are designated to construct, own, or finance a recommended transmission enhancement or expansion, **the recommended plan shall designate the Transmission Owner that owns transmission facilities located in the Zone where the particular enhancement or expansion is to be located.**

30. In support of this position, the PJM Transmission Owners cite the PJM compliance filing proposing this provision where PJM explained that “[e]xcept with respect to merchant transmission facilities, such responsibility generally will be allocated to the PJM Transmission Owner(s) that own facilities in the Zone(s) where the new facilities will be built.” The PJM Transmission Owners state that the right of a transmission owner to build RTEP projects in its zone is further evidenced by the provision of the PJM Transmission Owners Agreement precluding the formation of transmission rate zones or subzones smaller than those shown in Attachment J of the Tariff. The PJM Transmission Owners state that new zones can only be added to the PJM Tariff if PJM’s footprint is further increased. The PJM Transmission Owners state

that this prohibition against creation of zones within existing zones is consistent with the PJM Transmission Owners right and obligation to build within their zones.<sup>17</sup>

31. The PJM Transmission Owners dispute Central Transmission's claim that there are no competing projects. They identify a Commonwealth Edison Co. proposal for a new 345 kV transmission line from their Pontiac-Midpoint substation to a new substation in Iroquois County, Illinois, and another proposal for a line from that new substation to the Reynolds Substation. The PJM Transmission Owners argue that portions of the LaSalle Project mirror this project.<sup>18</sup>

32. The Midwest Transmission Owners and the PJM Transmission Owners (jointly, the Transmission Owners) defend a right of first refusal as fundamental to the "benefit of the bargain" for transmission owners to join RTOs.<sup>19</sup> Thus, they claim that, along with their obligation to build, came a corresponding right to build. Given that the obligation to build in order to maintain reliability within their franchised service territories is left to the zonal transmission owners, the corresponding contractual right to build should not be taken away. The Transmission Owners argue that doing so alters the regulatory compact unilaterally, deprives them of a contractually bargained for right and implicates due process and the takings clause of the Constitution in the process.

33. The PJM Transmission Owners suggest that taking away their right of first refusal will lead to fragmentation and lack of cooperation in grid development and operation (i.e., balkanization), duplication of infrastructure (such as control centers), and compromise reliability. The PJM Transmission Owners state that this will contravene the Commission's public policy objectives in RTO formation -- which were intended to achieve efficiencies in grid management and reliability.<sup>20</sup> The PJM Transmission Owners argue that increasing the number of entities responsible for physical operation and maintenance of the transmission system without expanding the RTO footprint increases reliability threats due to fragmentation.

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<sup>17</sup> PJM Transmission Owner Comments at 19.

<sup>18</sup> *Id.* at 11-12 (discussing results of Midwest ISO Regional Generation Outlet Study Indicative Design Workshop, held July 28-30, 2009).

<sup>19</sup> Midwest Transmission Owner Comments at 8, PJM Transmission Owner Comments at 16, 22.

<sup>20</sup> PJM Transmission Owner Comments at 23-27.

34. The PJM Transmission Owners predict that without a right of first refusal incumbent transmission owners will be required to bear a disproportionate share of upgrade costs as a “provider of last resort.” As such they will be obligated to undertake more difficult projects that independent developers do not wish to undertake. The Transmission Owners also argue that taking away the right of first refusal would put incumbent transmission owners in RTOs at a financial disadvantage, compared to non-RTO transmission owners who retain the right to build. They predict that such a scenario would discourage RTO membership and cause existing transmission-owning RTO members to reevaluate their continued membership.

35. The Midwest Transmission Owners take no position on any interpretation of the PJM OATT or Operating Agreement. However, they indicate that a Midwest ISO right of first refusal is implicated because the Reynolds substation is owned by a Midwest ISO Transmission Owner, NIPSCO.<sup>21</sup> Consequently, they request the Commission to affirm the right and responsibility of the Midwest Transmission Owners to construct and own facilities connected to their systems and direct Central Transmission to take appropriate actions for its project under the Midwest ISO Joint Operating Agreement, OATT, and processes. The Midwest Transmission Owners note that the Commission accepted right of first refusal language similar to that in effect for the Midwest ISO in Southwest Power Pool’s Order No. 890 compliance filing.<sup>22</sup>

36. The Midwest Transmission Owners assert that the LaSalle project causes no problems if it is classified as a merchant project bearing all costs. However, to obtain cost-of-service rates for the project, they state that Midwest ISO and PJM must (1) agree that the project is subject to the Joint Operating Agreement, and (2) each determine that the benefits meet joint planning process requirements.

37. ODEC asks the Commission to clarify that an independent transmission project that receives cost of service rate treatment should not also receive financial transmission rights, which are otherwise generally reserved for load.

38. Several parties echo PJM’s requests to limit any remedy to economic projects and condition any finding on a right of first refusal on PJM submitting a compliance filing with OATT provisions defining appropriate rules and criteria.

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<sup>21</sup> Midwest Transmission Owner comments at 7 (citing the Midwest ISO transmission owners agreement, FERC Electric Tariff, First Revised Rate Schedule No. 1, Appendix B, Section VI).

<sup>22</sup> Midwest Transmission Owner comments at 11 (citing *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,171 at P 42).

**D. May 13, 2010 Answers**

39. In its answer, Central Transmission responds to the Midwest Transmission Owners' claim that its project will connect to Midwest ISO facilities, clarifying that the LaSalle Project will connect exclusively to PJM facilities governed by the PJM OATT. Central Transmission notes that it is negotiating with AEP and PJM to interconnect through a new substation at Reynolds, to be owned by AEP. Central Transmission further responds to the Indiana Commission that nothing in the Complaint disturbs the Indiana Commission's jurisdiction.<sup>23</sup> Central Transmission states that contrary to the PJM's assertions, it does not seek to require PJM to designate it as the entity to construct and own the LaSalle project. But rather, it seeks a PJM determination that Central Transmission is eligible to be considered for such a designation in a not unduly discriminatory manner.<sup>24</sup>

40. In its answer, Central Transmission requests that the Commission reject both PJM and the PJM Transmission Owners' rationale for seeking dismissal or denial of its Complaint. In light of the PJM Transmission Owners' request for rehearing in *Primary Power*, Central Transmission argues that it cannot protect its ability to construct and own the LaSalle Project by sitting back and hoping the attacks on *Primary Power* are unsuccessful. Central Transmission asserts that PJM's apparent satisfaction with the Commission's ruling in *Primary Power* compared with the PJM Transmission Owners' different reading illustrates the need for the Commission to direct revisions to the PJM OATT and Operating Agreement in this proceeding.<sup>25</sup>

41. Central Transmission contests the PJM Transmission Owners' claim of a contractual foundation for their right of first refusal, and characterizes such claims as being motivated by a desire to maintain monopoly interests. Central Transmission also contests the PJM Transmission Owners' assertions that incumbent transmission owners have a unique obligation to maintain reliable service end-use customers and their claim that third party developers would be unreliable. According to Central Transmission third-party developers have historically made significant contributions to the grid.<sup>26</sup>

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<sup>23</sup> Central Transmission answer at 9.

<sup>24</sup> *Id.* at 15-16.

<sup>25</sup> *Id.* at 4.

<sup>26</sup> Central Transmission answer at 25-26 (citing statement of Chairman Joseph T. Kelliher on Technical Conference Regarding Barriers to Entry, Docket No. AD08-13-000 (Oct. 14, 2008) and *Neptune Regional Trans. Sys., LLC*, 96 FERC ¶ 61,147 (2001)).

Central Transmission argues that allowing cost recovery for one company but not for the other, when the service provided and the costs of providing the services are the same, is the very definition of undue discrimination.<sup>27</sup>

42. Central Transmission requests that the Commission deny PJM and the PJM Transmission Owners' requests for a compliance filing for further revisions to the procedures to address competing proposals, stating that such a requirement is unnecessary for the LaSalle project and could prevent Central Transmission from being designated to construct the LaSalle project.<sup>28</sup>

43. HP Energy argues that ODEC's concern that an independent transmission developer could receive both cost-of-service compensation and financial transmission rights under the PJM OATT is unfounded, because only customer-funded upgrades (such as generator interconnections and merchant transmission upgrades) receive financial transmission rights and not upgrades funded through cost of service rate recovery.

#### **IV. Discussion**

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

44. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2009), the Commission will grant the Ohio Commission's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

45. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept Central Transmission's and HP Energy's answers because they have provided information that assisted us in our decision-making process.

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<sup>27</sup> *Id.* at 6-7, 10-12, 16-21.

<sup>28</sup> *Id.* at 8, 14 (quoting the Notice of Proposed Rulemaking that preceded Order No. 888, FERC Stats. & Regs., Proposed Regs. Preamble, ¶ 32,514 at 33,070-71, "[Denial] can occur through outright denial of transmission access or, as is more likely, through access that is discriminatory as to rates, terms, or conditions of service").

## B. Commission Determination

46. Central Transmission alleges that the PJM Operating Agreement, Schedule 6 and OATT, Schedule 12 are unjust and unreasonable and unduly discriminatory insofar as these provisions could prevent PJM from designating Central Transmission to construct and own a transmission project that it proposes or prevent Central Transmission from seeking cost based rate treatment. In the recent *Primary Power* order,<sup>29</sup> in response to a request for a declaratory order, the Commission determined that the OATT and Operating Agreement as written permit PJM to designate non-incumbent transmission developers to build RTEP projects and that non-incumbent developers are eligible to seek cost-of-service rate treatment under Schedule 12 similar to other transmission owners providing service under Schedule 12. Based on that finding, we similarly find in this proceeding that Central Transmission is eligible to be designated to build the facilities under the OATT and Operating Agreement and eligible to seek cost of service rate treatment for the facilities. Therefore, based on the facts in this case, we dismiss the complaint and find it unnecessary to enter into a proceeding under section 206 with respect to the justness and reasonableness of the application of PJM's tariff. In light of *Primary Power*, we determine that ordering changes under section 206 is unnecessary, since the tariff already provides a means to resolve the issues raised in the complaint with the possibility of having the Central Transmission project approved by PJM. In *Primary Power*, we found that PJM's OATT and Operating Agreement contain no prohibition on a non-incumbent party becoming a transmission owner eligible to receive cost-based rates.<sup>30</sup> In light of our decision in *Primary Power*, we see no need to address similar issues raised by the PJM Transmission Owners, including cost allocation or zone determination. Consistent with *Primary Power*, we reiterate that, to the extent that PJM believes that additional tariff language would be helpful in processing such filings, it may make a filing under FPA section 205 to clarify its tariff.

47. The Midwest Transmission Owners raise an issue concerning where the Reynolds substation is located, and ask the Commission to affirm that steps need to be taken under the Midwest ISO OATT should the LaSalle Project seek to interconnection to facilities within its footprint. We find that these arguments beyond the scope of Central Transmission's complaint, which is limited only to the terms and conditions of specific provisions of the PJM OATT and Operating Agreement. Moreover, Central Transmission clarifies that it intends to interconnect exclusively with PJM facilities and is discussing

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<sup>29</sup> *Primary Power*, 131 FERC ¶ 61,015.

<sup>30</sup> *Id.* P 70.

with PJM and AEP the possibility of interconnecting through a new substation to be owned by AEP.<sup>31</sup>

48. Several parties contend the Commission should establish a proceeding to develop procedures for evaluating competing cost-of-service projects. As we explained in *Primary Power*, we expect PJM to apply its existing tariff provisions for evaluating competing projects in a non-discriminatory manner.<sup>32</sup> The Commission had previously dismissed a claim that the PJM Operating Agreement lacks a test for determining which competing project to choose.<sup>33</sup> Consistent with our precedent in *Primary Power*, we see no reason at this point to institute a proceeding under section 206 with respect to analysis of competing projects.

The Commission orders:

The Commission finds that Central Transmission is eligible to be designated by PJM, on a non-discriminatory basis, to build the facilities in question under the OATT and Operating Agreement and seek cost of service rates, as discussed in the body of this order; consequently, the Commission dismisses the complaint on the basis that no changes are necessary to respond to the issues raised herein.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>31</sup> See Central Transmission May 13, 2010 answer at 33..

<sup>32</sup> *Primary Power*, 131 FERC ¶ 61,015, at P 71 & n.60.

<sup>33</sup> *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,051, at P 41-42, 63-80 (2008).