

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

PPL Electric Utilities Corporation, <i>et al.</i>	)	Docket Nos. ER17-179-001
	)	
Monongahela Power Company, <i>et al.</i>	)	EL16-71-002
	)	(not consolidated)

**REQUEST FOR REHEARING BY AMERICAN MUNICIPAL POWER, INC.,  
OLD DOMINION ELECTRIC COOPERATIVE, THE DELAWARE DIVISION OF THE  
PUBLIC ADVOCATE, THE PJM INDUSTRIAL CUSTOMER COALITION, ILLINOIS  
CITIZENS UTILITY BOARD, OFFICE OF THE PEOPLE’S COUNSEL FOR THE  
DISTRICT OF COLUMBIA, AND PUBLIC POWER ASSOCIATION OF NEW JERSEY**

Pursuant to section 313(a) of the Federal Power Act (“FPA”)<sup>1</sup> and Commission Rule 713,<sup>2</sup> American Municipal Power, Inc. (“AMP”), Old Dominion Electric Cooperative, (“ODEC”), the Delaware Division of the Public Advocate (“DE DPA”), the PJM Industrial Customer Coalition (“PJMICC”), the Illinois Citizens Utility Board, the Office of the People’s Counsel for the District of Columbia (“DC-OPC”), and the Public Power Association of New Jersey (“PPANJ”) (collectively, “Load Group”) respectfully request rehearing of the February 15, 2018 Order Accepting in Part Proposed Tariff Revisions and Requiring Tariff Revisions Pursuant to Section 206 (“Order”) in this proceeding.<sup>3</sup> The Order found that the PJM Transmission Owners (“PJM TOs”) are implementing PJM Interconnection L.L.C.’s (“PJM”) Amended and Restated Operating Agreement (“Operating Agreement”) in a manner that is inconsistent with the requirements of Order

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<sup>1</sup> 16 U.S.C. § 825(a).

<sup>2</sup> 18 C.F.R. § 385.713.

<sup>3</sup> *Monongahela Power Co.*, 162 FERC ¶ 61,129 (2018).

No. 890<sup>4</sup> and, therefore, that the Operating Agreement and the PJM Open Access Transmission Tariff (“Tariff”) are not just and reasonable and are unduly discriminatory and preferential.<sup>5</sup> Further, the Order concluded that the PJM TOs have not fully met their burden under FPA section 205<sup>6</sup> to demonstrate that the modifications they proposed jointly with PJM in their Attachment M-3 Filing<sup>7</sup> are just and reasonable and not unduly discriminatory or preferential.<sup>8</sup> Therefore, the Commission accepted in part the PJM TOs’ Attachment M-3 Filing and, pursuant to the Commission’s authority under FPA section 206,<sup>9</sup> required revisions to both the Operating Agreement and Attachment M-3 to the Tariff.<sup>10</sup>

The Load Group applauds the Commission’s validation of the principles of Order No. 890 and the importance of timely and meaningful input and participation of stakeholders in the development of transmission plans. In its discussions throughout the Order, the Commission clearly understands the need for third parties to be able to replicate the conclusions of the PJM TOs. *See, for example,* Order at P 107. Nonetheless, the Load Group seeks rehearing of the Order because the PJM TOs’

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<sup>4</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>5</sup> Order at P 4.

<sup>6</sup> 16 U.S.C. § 824d.

<sup>7</sup> PJM TOs and PJM, Filing, Docket No. ER17-179-000 (Oct. 25, 2016).

<sup>8</sup> Order at P 4.

<sup>9</sup> 16 U.S.C. § 824e.

<sup>10</sup> Order at P 4.

Attachment M-3 and the Operating Agreement, even as revised by the Commission, will not comply with Order No. 890 and, thus, are unjust, unreasonable and unduly discriminatory.<sup>11</sup> Therefore, the Commission erred in accepting, in part Attachment M-3, directing revisions and additional provisions regarding dispute resolution, and ordering complying revisions to the Operating Agreement. The grounds for the Load Group's rehearing request are detailed below.

## I. STATEMENT OF ISSUES AND SPECIFICATION OF ERRORS

### A. Statement of Issues.

In compliance with Commission Rule 713(c)(2),<sup>12</sup> the Load Group provides the following statement of the issues raised on rehearing, the Load Group's position with respect to each issue, and representative authority on which the Load Group relies.

1. Issue: Was it error for the Commission to accept Attachment M-3 as an addition to the Tariff rather than the Operating Agreement? The Load Group's Position: Yes. The Commission ignored numerous compelling arguments in the record in accepting Attachment M-3 as an addition to the Tariff rather than the Operating Agreement and exceeded its authority under FPA sections 205 and 206. *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194 (D.C. Cir. 2005). *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304 (D.C. Cir. 2014). *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29 (1983). *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002). *NRG Power Marketing, LLC, v. FERC*, 862 F.3d 108 (D.C. Cir. 2017). *Western Resources v. FERC*, 9 F.3d 1568 (D.C. Cir. 1993). *City of Winnfield v. FERC*, 744 F.2d 871 (D.C. Cir. 1984).

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<sup>11</sup> AMP filed its doc-less intervention in Docket No. EL16-71 on August 30, 2016 and in Docket No. ER17-179 on November 2, 2016. AMP filed comments in Docket No. EL16-71 on October 25, 2016, and an answer on December 8, 2016. AMP filed a motion to dismiss in Docket No. ER17-179 on Nov. 15, 2016, which AMP also filed as an answer in Docket No. EL16-71. AMP filed a protest in Docket No. ER17-179 on November 22, 2016. ODEC filed its doc-less intervention in Docket No. EL16-71 on September 14, 2016 and in Docket No. ER17-179 on November 14, 2016. ODEC filed responses in Docket No. EL16-71 on October 25, 2016 and December 8, 2016. ODEC filed a protest on November 22, 2016 and a response on December 22, 2016 in both dockets. AMP and ODEC separately filed answers to a limited request for rehearing in Docket No. EL16-71 on October 11, 2016. AMP, ODEC and others jointly filed a motion to lodge on February 13, 2018 in both dockets.

<sup>12</sup> 18 C.F.R. § 385.713(c)(2).

2. Issue: Was it error for the Commission to determine that Attachment M-3, as revised by the Commission, complies with Order No. 890? The Load Group's Position: Yes. The lack of coordination between the PJM TOs' Supplemental Project planning process and the regional transmission planning process makes the PJM Regional Transmission Expansion Plan ("RTEP") process non-compliant with Order No. 890. The Commission failed to recognize its departure from precedent and did not provide a reasoned explanation for its determination. *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29 (1983). Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007).
3. Issue: Was it error for the Commission to determine that Attachment M-3, as revised by the Commission, complies with Order No. 890? The Load Group's Position: Yes. The Commission failed to order remedies for deficiencies in Attachment M-3 that include process defects and inadequate information sharing. These deficiencies make the RTEP process non-compliant with Order No. 890. As a result, the Commission failed to demonstrate that its substitute rate (Attachment M-3) is just and reasonable. Further, the Commission failed to recognize its departure from precedent and did not provide a reasoned explanation for its determination. *Western Resources v. FERC*, 9 F.3d 1568 (D.C. Cir. 1993). *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29 (1983). 16 U.S.C. § 824e. Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007).
4. Issue: Was it error for the Commission to allow the PJM TOs to disregard their obligation to respond to comments from stakeholders? The Load Group's Position: Yes. The Commission's decision to allow PJM TOs to disregard their obligation to respond to comments from stakeholders is in error because it ignored numerous compelling arguments in the record and will result in the PJM TOs violating the coordination principles and comparability principles of Order No. 890. Further, the Commission failed to recognize its departure from precedent and did not provide a reasoned explanation for doing so. *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194 (D.C. Cir. 2005). *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304 (D.C. Cir. 2014). *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29 (1983). Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007).
5. Issue: Was it error for the Commission to fail to require the TOs to provide information and models so that stakeholders have the ability to replicate how the TOs identify the need for Supplemental Projects? The Load Group's Position: Yes. The Commission's failure to require the PJM TOs to provide sufficient information to allow stakeholders to replicate how the PJM TOs identify the need for Supplemental Projects will result in the PJM TOs violating the coordination principles and comparability principles of Order No. 890. The Commission failed to recognize its departure from precedent and did not provide a reasoned explanation for its determination. *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29 (1983). Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007).

6. Issue: Was it error for the Commission to fail to subject Supplemental Projects to the same obligation-to-build and milestone requirements that apply to RTEP baseline projects? The Load Group's Position: Yes. The Commission's failure to subject Supplemental Projects to the same obligation-to-build and milestone requirements that apply to RTEP baseline projects will result in the PJM TOs violating the comparability principles of Order No. 890 by treating Supplemental Projects differently than baseline RTEP projects. The Commission failed to recognize its departure from precedent and did not provide a reasoned explanation for its determination. *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29 (1983). Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007).
7. Issue: Was it error for the Commission to fail to require PJM to analyze Supplemental Projects for their impact on PJM markets and other concerns that go beyond reliability in the same manner that PJM analyzes baseline RTEP projects? The Load Group's Position: Yes. The Commission's failure to require PJM to analyze Supplemental Projects for their impact on PJM markets and other concerns that go beyond reliability in the same manner that PJM analyzes baseline RTEP projects will result in the PJM TOs violating the comparability principles of Order No. 890 by treating Supplemental Projects differently than baseline RTEP projects. The Commission failed to recognize its departure from precedent and did not provide a reasoned explanation for its determination. *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29 (1983). Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007).

## **B. Specification of Errors.**

In compliance with Commission Rule 713(c)(1),<sup>13</sup> the Load Group specifies the following errors in the Commission's Order:

1. The Commission committed error in finding that Attachment M-3, even as revised, complies with the Final Rule in Order No. 890, because the transmission planning process for Supplemental Projects should be contained in the Operating Agreement, not the Tariff.
2. The Commission committed error in finding that Attachment M-3, even as revised, complies with Order No. 890, because the failure to fully integrate the PJM TOs' Supplemental Project planning process in the PJM transmission planning process makes the PJM RTEP process non-compliant with Order No. 890.

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<sup>13</sup> 18 C.F.R. § 385.713(c)(1).

3. The Commission committed error in finding that Attachment M-3, even as revised, complies with the Final Rule in Order No. 890, because the Commission failed to order remedies for deficiencies in Attachment M-3 that include process defects and inadequate information sharing.
4. The Commission committed error in allowing the TOs to disregard their obligation to review and consider comments from stakeholders.
5. The Commission committed error in failing to require the TOs to provide information and models so that stakeholders have the ability to replicate how the TOs identify the need for Supplemental Projects.
6. The Commission committed error in failing to subject Supplemental Projects to the same obligation-to-build and milestone requirements that apply to RTEP baseline projects.
7. The Commission committed error in failing to require PJM to analyze Supplemental Projects for their impact on PJM markets and other concerns that go beyond reliability in the same manner that PJM analyzes baseline RTEP projects.

## II. ARGUMENT

### A. **The transmission planning process for Supplemental Projects should be contained in the Operating Agreement, not the Tariff.**

1. The Commission Approved Placement of the Attachment M-3 Requirements in the Tariff Based on the Erroneous Conclusion That This is Reasonable Because the PJM TOs are Responsible for Transmission Planning and Must File Any Revisions under FPA Section 205.

AMP, ODEC and others provided extensive arguments explaining the reasons why the requirements contained in Attachment M-3 should be included in the Operating

Agreement, rather than the Tariff. The Commission acknowledged receiving these.<sup>14</sup> These include, *inter alia*, the fact that the rest of the RTEP protocol resides there; the interdependence of RTO/ISO compliance with Order No. 890 and the PJM TOs' compliance with Order No. 890; the agreed allocation of filing rights under PJM's governing documents; the disruption of this allocation inherent in including Attachment M-3 in the Tariff; and, the limitations on the Commission's authority under FPA sections 205 and 206. In support of its succinct conclusion that, "[w]e are not persuaded," the Commission cited only that "PJM Transmission Owners bear primary responsibility to plan Supplemental Projects" and that any revisions filed by PJM TOs "can take effect only if the PJM Transmission Owners demonstrate to the Commission that they are just and reasonable and not unduly discriminatory or preferential."<sup>15</sup> As a result, the Commission erred in wholly failing to address the arguments presented in the record.<sup>16</sup> Further, the Commission erred by failing to articulate "a rational connection between the facts found and the choice made."<sup>17</sup>

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<sup>14</sup> See Order at P 58 n.132 (citing AMP, Motion to Dismiss and Answer, at 8 (Nov. 15, 2016); ODEC, Protest, at 10 (Nov 22, 2016); AMP, Protest, at 3-4 (Nov. 22, 2016)).

<sup>15</sup> Order at P 97.

<sup>16</sup> *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005) ("An agency's 'failure to respond meaningfully' to objections raised by a party renders its decision arbitrary and capricious." (citing *Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C.Cir.2001))).

<sup>17</sup> *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014) (quoting *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983)).

2. Attachment M-3 Should Be Part of the Operating Agreement Along With the RTEP Protocol.

Schedule 6 to the Operating Agreement (entitled “Regional Transmission Expansion Planning Protocol”) collects the PJM RTEP protocols and procedures in a single location within the PJM governing documents. Operating Agreement Schedule 6 describes the purpose of the RTEP protocol as governing the process by which PJM Members may “rely upon the Office of the Interconnection to prepare a plan for the enhancement and expansion of the Transmission Facilities in order to meet the demands for firm transmission service, and to support competition, in the PJM Region.”<sup>18</sup>

Operating Agreement Schedule 6 establishes the regional and subregional RTEP committees and governs conduct of the RTEP process, both procedurally and substantively.<sup>19</sup> Operating Agreement Schedule 6, for example, establishes the timing and information requirements that must be adhered to in order for PJM to develop the RTEP.<sup>20</sup> Although the TOs develop the Local Plans initially, it is the Subregional RTEP Committees—as facilitated by PJM and part of the regional planning process—where the Subregional RTEP Projects are developed and reviewed by stakeholders.<sup>21</sup> The Subregional RTEP Committees are also responsible for providing recommendations to the Transmission Expansion Advisory Committee concerning the Subregional RTEP Projects.

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<sup>18</sup> Operating Agreement, Schedule 6, section 1.1.

<sup>19</sup> See *id.* sections 1.3-1.5.

<sup>20</sup> *Id.* section 1.5.

<sup>21</sup> See PJM Manual 14B, section 1.2.

3. Transmission Owners Must Participate in Regional Planning and Failures by the TOs to Satisfy their Order No. 890 Obligations Can Preclude the RTO/ISO from Meeting its Order No. 890 Obligations.

The PJM TOs must participate in regional planning and their participation must meet the requirements of Order No. 890. As the Commission stated in Order No. 890:

transmission owning members of ISOs and RTOs must participate in the planning processes adopted in this Final Rule. In order for an RTO's or ISO's planning process to be open and transparent, transmission customers and stakeholders must be able to participate in each underlying transmission owner's planning process. This is important because, in many cases, RTO planning processes may focus principally on regional problems and solutions, not local planning issues that may be addressed by individual transmission owners. These local planning issues, however, may be critically important to transmission customers, such as those embedded within the service areas of individual transmission owners. Consequently, the intent of the Final Rule will not be realized if only the regional planning process conducted by the RTOs and ISOs is shown to be consistent with or superior to the Final Rule. To ensure full compliance, individual transmission owners must, to the extent that they perform transmission planning within an RTO or ISO, comply with the Final Rule as well.<sup>22</sup>

Transmission owner compliance with Order No. 890 is the foundation for RTO/ISO compliance with Order No. 890. The Commission has stated that RTO/ISO planning processes will not comply with the requirements of the Final Rule:

to the extent they incorporate and rely on information prepared by underlying transmission owners that, in turn, have not complied with the Final Rule. Accordingly, as part of their compliance filings in this proceeding, RTOs and ISOs must indicate how all participating transmission owners within their footprint will comply with the planning requirements of this Final Rule. While we leave the mechanics of such compliance to each RTO and ISO, we emphasize that the RTO's or ISO's planning processes will be insufficient if its

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<sup>22</sup> Order No. 890 at P 444.

underlying transmission owners are not also obligated to engage in transmission planning that complies with Final Rule.<sup>23</sup>

Even facilities for which the RTO lacks operational control must be included in the planning process.<sup>24</sup> Transmission planning done by the RTO must be based on the most comprehensive information available to ensure that RTO planning is effective. The Commission observed that, at the time the Final Rule was issued, there remained some transmission owners in RTOs that continued to have tariffs on file pursuant to which they provide service over certain transmission facilities that they did not turn over to the operational control of the RTO. Nevertheless, the Commission specified that:

[L]ike any other transmission provider, those entities must submit a compliance filing to their OATTs that satisfies all requirements of this Final Rule, including the inclusion of an attachment governing their own planning procedures.<sup>25</sup>

No PJM TO availed itself of the opportunity to modify its tariff to satisfy all of the Order No. 890 requirements. Rather, every PJM TO signed the PJM Operating Agreement, which contains the PJM transmission planning process in full.

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<sup>23</sup> *Id.* at P 445.

<sup>24</sup> Many of the Supplemental Projects are under PJM's operational control. See, "*PJM Transmission Facilities in PJM Planning*" available at: <http://www.pjm.com/~media/committees-groups/committees/pc/20141104/20141104-item-07-monitored-facilities-in-pjm-planning.ashx>.

<sup>25</sup> *Id.* at P 440.

4. The Commission Should not Disturb the Balance of Filing Rights Reflected in the PJM Governing Documents.

The PJM Members Committee has the authority to file revisions to the Operating Agreement under FPA section 205,<sup>26</sup> while the PJM Board has section 205 filing authority over the Tariff. Importantly, however, the PJM TOs have exclusive control over certain provisions of the Tariff relating to transmission revenue requirements and transmission rate design.<sup>27</sup> The RTEP transmission planning process does not fall into the province of either transmission revenue requirements or rate design and, therefore, is properly situated in the Operating Agreement. The same is true for the substantive revisions to the RTEP protocol contained in Attachment M-3 that the PJM TOs improperly filed as a Tariff revision.

Among the PJM governing documents, Schedule 6 to the Operating Agreement is where all of the PJM RTEP protocols and procedures are set forth. Had the PJM TOs made the substantive changes to the RTEP process they propose in the provisions governing the RTEP process, where they naturally belong, the PJM stakeholders, including but not limited to the PJM TOs, would have had authority to control the transmission planning process that is applied to Supplemental Projects. But, rather than making changes to the transmission planning process in the governing document entitled “Regional Transmission Expansion Planning Protocol,” or even in the subsection called “Procedure for Development of the Regional Transmission Expansion Plan,” the PJM TOs

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<sup>26</sup> See, *Operating Agreement* section 11.5, “Member Right to Petition”, and section 8.4, “Manner of Acting.” See also, <https://www.pjm.com/~media/about-pjm/newsroom/fact-sheets/federal-power-act-sections-205-and-206.ashx>.

<sup>27</sup> Tariff, section 9.1.

forced the round peg of “Additional Procedures for Planning of Supplemental Projects” into a newly devised square hole (Attachment M-3 to the Tariff).

The proposed Attachment M-3, however, consists of little more than cross-references to the Operating Agreement. Amendments to the Operating Agreement, which is what Attachment M-3 amounts to, must be approved by the PJM Members Committee. However, by submitting Attachment M-3 as a Tariff amendment, the PJM TOs improperly evaded the allocation of filing rights in the PJM governing documents. *Atlantic City*<sup>28</sup> made clear that FERC has no power to force public utilities to file particular rates unless it first finds that the existing filed rates are unlawful. Additionally, under *Atlantic City*, FERC cannot prohibit public utilities from filing rate changes in the first instance. Rather, the power to initiate rate changes rests with the utility and cannot be appropriated by FERC in the absence of a finding that the existing rate was unlawful. However, *Atlantic City* also made clear that utilities may choose to voluntarily give up, by contract, some of their rate-filing freedom under section 205.

Here, in signing the Operating Agreement, the PJM TOs voluntarily agreed to both the PJM transmission planning process and an arrangement sharing section 205 filing responsibilities, including filing rights related to the planning process. The TOs agreed that, in “PJM’s governance process, the Members Committee has Section 205 filing authority over the Operating Agreement, while the PJM Board has Section 205 filing authority over the Open Access Transmission Tariff (with the exception of certain

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<sup>28</sup> *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002).

provisions that are under the exclusive control of the PJM transmission owners) and the Reliability Assurance Agreement.”<sup>29</sup>

There is no evidence in the record that the PJM TOs’ Attachment M-3 filing was motivated by anything other than the intent to amend the transmission planning procedures set forth in the Operating Agreement—*without the requisite supermajority vote required therein*. Of course, the PJM TOs are free to amend their tariffs or their respective portions of the PJM Tariff to include a transmission planning process that satisfies all requirements of Order No. 890, which would require including provisions governing their own planning procedures. But they did not do that. Rather, they submitted Attachment M-3 to the PJM Tariff, which explicitly states that it merely “provides additional details of the process that PJM and the PJM Transmission Owners will follow in connection with planning Supplemental Projects, as defined in section 1.42A.02 of the Operating Agreement, in accordance with Schedule 6 of the Operating Agreement.”<sup>30</sup> The Commission should not endorse the PJM TOs’ efforts to avoid their commitment to the allocation of filing rights reflected in the Operating Agreement—but that is what accepting Attachment M-3 as an amendment to the PJM Tariff does.

5. The Commission Exceeded its Authority Under FPA Sections 205 and 206 in Conditionally Accepting the Attachment M-3 Filing.

The Commission notes that it may transform a section 205 filing into a section 206 filing by making three findings: “first, it must conclude . . . that [the filing entity] failed to

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<sup>29</sup> PJM TOs, Filing, Docket No. ER17-179-000 (Oct. 25, 2016). See Operating Agreement, section 11.5, Member Right to Petition; Operating Agreement, section 8.4, Manner of Acting.

<sup>30</sup> PJM TOs, Filing, Docket No. ER17-179-000 (Oct. 25, 2016).

carry its burden of proof that the proposed rate was just and reasonable; second, it must itself demonstrate that the default position, the prior rate, is no longer just and reasonable; and third, it must establish that its substitute rate is just and reasonable.”<sup>31</sup> The Commission argues that it made each of the requisite findings: (1) that the “transmission planning practices currently employed by the PJM Transmission Owners are unjust and unreasonable and unduly discriminatory and preferential insofar as they violate Order No. 890’s coordination and transparency principles as well as the PJM Operating Agreement and the PJM OATT”; (2) that Attachment M-3 is also unjust and unreasonable for the same reasons the Operating Agreement is unjust and unreasonable; and (3) the Commission’s revisions to the Operating Agreement and Attachment M-3 result in both being just and reasonable.<sup>32</sup>

The Commission’s logic that it met the three-part *Western Resources* test is flawed. The Commission found that PJM’s Operating Agreement was unjust and unreasonable. However, the Commission did not have before it a section 205 proposal from the PJM TOs (or, more properly from the PJM Membership) to modify the Operating Agreement. Rather, the PJM TOs asserted that no changes to the Operating Agreement were required because it was just and reasonable as-is. The Commission disagreed. The Commission also found that the PJM TOs’ Attachment M-3 was unjust and unreasonable as filed. However, Attachment M-3 was not a proposal to reform an existing tariff (or “default position”)—it was proposed as an entirely new section of the PJM Tariff

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<sup>31</sup> Order at P 71.

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

“in an effort to offer refinements and improvements to the existing Commission-approved transmission planning process”<sup>33</sup> (*i.e.*, the RTEP in the Operating Agreement). Therefore, there is no underlying provision in the PJM Tariff that was found to be no longer just and reasonable. Without making such a finding, the Commission’s decision to modify the PJM Tariff (rather than the Operating Agreement alone) exceeded its authority under FPA section 205.

As the Court found in *NRG Power Marketing, LLC v. FERC*,<sup>34</sup> there are limits on FERC’s authority to propose modifications under section 205 even when the utility consents to those modifications. The Court reasoned:

In *City of Winnfield*, we indicated that FERC would violate Section 205 if “the Commission proposal accepted by the utility involved the Commission’s own original notion of a new form of rate” or an “entirely new rate scheme.” As we noted, “it might be argued” in those circumstances “that the power to initiate change through such rejection-plus-proposal removes the Commission from an essentially passive and reactive role envisioned by § 205.”<sup>35</sup>

In *NRG*, the Court held that its decisions in *City of Winnfield* and *Western Resources* indicate that section 205 does not allow FERC to suggest modifications that result in an “entirely different rate design” than the utility’s original proposal or the utility’s prior rate scheme.<sup>36</sup> Having failed to make the requisite findings supporting action under section 206, the Commission’s modification and approval of Attachment M-3 after finding that it is unjust and unreasonable as-filed cannot be upheld under section 205 because it

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<sup>33</sup> PJM TOs, Filing, Docket No. ER17-179-000 (Oct. 25, 2016).

<sup>34</sup> *NRG Power Marketing, LLC, v. FERC*, 862 F.3d 108 (D.C. Cir. 2017).

<sup>35</sup> *Id.* at 115 (quoting *City of Winnfield v. FERC*, 744 F.2d 871, 875-76 (D.C. Cir. 1984)).

<sup>36</sup> *Id.* (quoting *Western Resources v. FERC*, 9 F.3d 1568, 1578 (D.C. Cir. 1993)).

would constitute the same type of error that occurred in *NRG*. Rather, the Commission should have rejected Attachment M-3 in its entirety and made the requisite modifications to the Operating Agreement in Docket No. EL16-71 under the Commission's FPA section 206 authority.

**B. The failure to integrate the regional and local transmission planning processes into PJM's overall transmission planning makes the PJM RTEP process non-compliant with Order No. 890.**

Although one of the options provided in the August 26, 2016 Show Cause Order was for the PJM TOs to comply with Order No. 890 by revising their portion of the PJM Tariff,<sup>37</sup> the Commission's expectation has been that regardless of the method of compliance, the PJM TOs would develop a Supplemental Project transmission planning process that fits within the PJM RTEP process and results in a PJM planning process that complies with Order No. 890.<sup>38</sup> The Commission has stated that PJM as:

the RTO should have ultimate responsibility for both transmission planning and expansion within its region. The rationale for this requirement is that a single entity must coordinate these actions to ensure a least cost outcome that maintains or improves existing reliability levels. In the absence of a single entity performing these functions, there is a danger that separate transmission investments will work at cross-purposes and possibly even hurt reliability.<sup>39</sup>

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<sup>37</sup> *Monongahela Power Co.*, 156 FERC ¶ 61,134, at P 15 (2016) ("Show Cause Order").

<sup>38</sup> The Commission stated: "we explain the revisions required in these appendices and how they will bring Attachment M-3 and the PJM Operating Agreement into compliance with Order No. 890 and will, therefore, constitute a transmission planning process for Supplemental Projects that is just and reasonable and not unduly discriminatory or preferential." Order at P 105 (emphasis added).

<sup>39</sup> *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,164 (1999).

Thus, while the Commission gave PJM considerable flexibility in how to design a transmission planning and expansion process that fits the needs of the region it serves, PJM is ultimately responsible and accountable for the transmission planning function, not the PJM TOs. Accordingly, as PJM promised the Commission, its procedures would require that “the regional and local transmission planning processes be fully integrated into PJM’s overall transmission planning process” and its “Local Plan is a product of the Subregional RTEP Committees rather than of the transmission owners alone.”<sup>40</sup>

Thus, even if the PJM TOs use an Attachment M-3, the Local Plan and the Supplemental Project transmission planning process must work with the PJM regional planning process; the Commission must ensure that the TOs do not continue to handle their local planning in a vacuum, divorced from the broader PJM RTEP planning process as set forth in the Operating Agreement. The Operating Agreement and Attachment M-3 as revised by the Commission fail to integrate the regional and local transmission planning processes into PJM’s overall transmission planning process, rendering the PJM RTEP noncompliant with Order No. 890.

Attachment M-3, even as revised by the Commission’s Order, fails to align the Supplemental Project planning process with the RTEP process or existing planning and budgeting processes of the PJM TOs. For example, there is no definition of “planning cycle” as it pertains to the Supplemental Project planning cycle. The RTEP planning cycle is complete when, following PJM Board approval, the Regional Transmission Expansion Plan is documented, posted publicly and provided to the Applicable Regional Entities. There does not appear to be any clearly defined end to the Supplemental Project planning

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<sup>40</sup> Show Cause Order at P 8.

cycle. The lack of clarity regarding the Supplemental Project planning cycle results in an inability to know whether there is a single Needs Meeting each year, at which the need for all Supplemental Projects will be identified, versus multiple Needs Meetings wherein the PJM TOs bring forth new Supplemental Projects over the course of the year, each time the TOs identify new Supplemental Projects drivers.

Additionally, without more specific coordination and integration, it is not clear how PJM will be able to model the Supplemental Projects in its RTEP baseline process. With a large volume of Supplemental Projects and the time it takes PJM to run cases, coupled with the lack of start/stop dates for TOs to identify projects, it is entirely unclear how the Local Plan can be completed with sufficient time for PJM to take the Supplemental Projects into account in the baseline RTEP.

There is no obligation for PJM and the TOs to coordinate Supplemental Projects with RTEP projects in the same area. This results in potentially duplicative and inefficient planning processes and unnecessary expenses to customers. This is exactly the risk identified by the Commission in Order No. 2000 that could result from the lack of a single, coordinated transmission planning process.

The Commission erred by failing to recognize how the lack of coordination between the PJM TOs' Supplemental Project planning process and the regional transmission planning process makes the PJM RTEP process non-compliant with Order No. 890. As a result the Commission departed from precedent without providing a reasoned explanation for doing so.<sup>41</sup> The Commission should direct PJM and the PJM TOs to make a compliance filing that revises the Operating Agreement in a manner that resolves the lack

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<sup>41</sup> *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29 (1983).

of coordination between the local planning process and the RTEP process and fully integrates the transmission planning processes to comply with the principles of Order No. 890.

**C. Attachment M-3 Contains Deficiencies that Include Process Defects and Inadequate Information Sharing.**

Under a Commission-initiated FPA section 206 proceeding, the Commission must demonstrate that the substitute rate being imposed is just and reasonable.<sup>42</sup> The Court of Appeals for the District of Columbia Circuit has stated that where the Commission imposes a new rate under FPA section 206, “this court has assumed an active stance, requiring that the Commission’s conclusion be supported by substantial evidence and reached by reasoned decision-making.”<sup>43</sup> The Commission has failed to demonstrate that Attachment M-3, as revised, is just and reasonable and results in a transmission planning process for Supplemental Projects that complies with Order No. 890 because the Commission erred in not remedying the significant remaining deficiencies in Attachment M-3.

Paragraph 2 of Attachment M-3 provides for one Subregional RTEP Committee meeting to review the TO criteria, assumptions and models.<sup>44</sup> Under the same paragraph, the TOs will provide the information to PJM for posting at least ten days in advance of the Assumptions Meeting.<sup>45</sup> Stakeholders may provide comments on the criteria,

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<sup>42</sup> *Western Resources*, 9 F.3d at 1579.

<sup>43</sup> *Id.* at 1580.

<sup>44</sup> PJM TOs, Filing, Docket No. ER17-179-000 (Oct. 25, 2016).

<sup>45</sup> *Id.*

assumptions, and models either before or after the Assumptions Meeting.<sup>46</sup> This Paragraph lacks clarity and is unreasonable.

There are forty-six PJM TOs identified in the Show Cause Order, twenty PJM TO zones, and three Subregional RTEP committees. It is not clear whether all PJM TOs will provide their individual criteria, assumptions and models at a single Subregional RTEP committee meeting or stagger the presentations over time. Nonetheless, given the number of PJM TOs, the Commission should require each PJM TO to provide the criteria, assumptions and models to PJM for posting a sufficient minimum number of days in advance of the Assumptions Meeting (a minimum of twenty days) and the TOs should take comments for a minimum of twenty days after the Assumptions Meeting.

Additional clarity as to the specific information that will be provided to stakeholders at the Assumptions Meeting is also required. As currently drafted, the type of information required from the PJM TOs by Attachment M-3 is not adequate to “allow stakeholders to replicate their planning studies, as Order No. 890 requires,” and should be expanded.<sup>47</sup> For example, stakeholders should understand how assets have been prioritized for replacement, how the replacement versus maintenance decision is made, how assets rank relative to other assets on the system, and the system average values. This type of information should be readily available to the PJM TOs as a normal part of good business practices in prioritizing the use of a finite resource (capital) and in the level of detail of that is required by FERC Form 715, Part 6:

drawn from existing utility transmission planning studies and the experience and judgment of the TOs’ transmission system

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

<sup>47</sup> Order at P 77.

planners, including a narrative evaluation or assessment of the performance of its transmission system in future time periods based on the application of its reliability criteria, a clear understanding of existing and likely future transmission constraints, their sources, how the TO identified these constraints, and a description of any plans to mitigate the constraints, the existing and expected system performance of the TO's local transmission system, a description of all existing transmission stability limits that the transmitting utility has uncovered through dynamic system simulation studies and the results of those studies.<sup>48</sup>

Additionally, as discussed herein, the PJM TOs should define and include the TO-specific models they utilize and not simply network models.

Attachment M-3 also fails to provide an opportunity for stakeholders to have meaningful input by not providing sufficient time to review the needs identified that serve as the basis for Supplemental Projects. Under Attachment M-3, a minimum number of days after the Assumptions Meeting, each Subregional RTEP Committee shall schedule and facilitate a minimum of one Subregional RTEP Committee meeting per planning cycle to review the identified criteria violations and resulting system needs, if any, that may drive the need for a Supplemental Project ("Needs Meeting").<sup>49</sup> In order to give stakeholders sufficient time to review the needs identified, the Subregional RTEP Committee meetings should be scheduled no sooner than thirty days after the Assumptions Meeting. The PJM TOs should post the criteria violations and drivers no fewer than twenty days in advance of the Needs Meetings. Stakeholders should be permitted to provide comments on the criteria violations and drivers up to ten days after the Needs Meetings. Additionally, in accord with the spirit of the Order No. 890 planning

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<sup>48</sup> 18 C.F.R. § 141.300.

<sup>49</sup> Order at Appendix A, P 3.

principles, the TOs should clarify that the system needs will be developed well before project solutions are proposed.

The Commission must require the PJM TOs to share all potential drivers of Supplemental Projects so stakeholders can clearly understand how proposed alternative solutions could account for and resolve developing drivers for a more comprehensive process that does not address needs on a piecemeal basis. For example, a project may be proposed to address only one of two transmission lines in the same area as a result of a more immediate need on one line in spite of a developing issue on the second transmission line. With a comprehensive view of all potential drivers, a solution to address both the more immediate and the emerging need with one project could be developed that may be more cost effective than two piecemeal solutions. Without being informed of the second line's issues, stakeholders could not be aware that a single project could resolve the issues on both facilities. Finally, if a need has been identified related to the system's configuration, an asset's design, or a TO standard, the TO should provide the applicable documentation related to the identification of this need.

A minimum of twenty-five days after the Needs Meeting, each Subregional RTEP Committee shall schedule and facilitate a minimum of one Subregional RTEP Committee meeting per planning cycle to review potential solutions for the identified criteria violations ("Solutions Meeting").<sup>50</sup> However, potential solutions must be posted at least ten days before the Solutions Meetings, meaning that TOs and stakeholders have a minimum of fifteen days to develop solutions after the needs have been identified. This is an unrealistically short timeline even assuming all of the models, criteria and needs are

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<sup>50</sup> *Id.*

shared with all stakeholders sufficiently in advance to develop alternatives. The time between the Needs and Solutions Meetings should be based on the amount of time TOs need to incorporate comments received during the Needs Meeting and develop proposed solutions that reflect consideration of those comments.

Moreover, there should be a minimum of two Solutions Meetings: the first where the TO initial solutions are provided, and the second where the final solution, including alternatives considered, are provided. The first Solutions Meeting should be no sooner than ninety days after the Needs Meeting, consistent with PJM's feasibility study/report process, which takes three-to-four months to generate and review solutions.<sup>51</sup> The second Solutions Meeting should be no sooner than thirty days after the first Solutions Meeting. A single Solutions Meeting fails to allow for any discussion of the proposed solutions or alternatives and effectively prohibits meaningful input. At a minimum, the TOs should post their potential solutions and alternatives no fewer than fifteen days in advance of the Solutions Meetings.

Finally, if there is only one Solutions Meeting (which there should not be), additional clarity regarding how alternatives were developed by stakeholders should be posted and evaluated during that single Solutions Meeting. Otherwise, the Solutions Meeting process is unreasonable.

Pursuant to Attachment M-3, each PJM TO will finalize for submittal to PJM Supplemental Projects for inclusion in the Local Plan in accordance with section 1.3 of Schedule 6 of the Operating Agreement and the schedule established by PJM.<sup>52</sup>

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<sup>51</sup> Tariff, section 36.2

<sup>52</sup> Order at Appendix A, P 5.

Stakeholders may provide comments on the Supplemental Projects in accordance with section 1.3 of Schedule 6 of the PJM Operating Agreement before the Local Plan is integrated into the RTEP.<sup>53</sup> Each PJM TO shall review and consider comments that are received at least ten days before the Local Plan is submitted for integration into the RTEP.<sup>54</sup> The timing or deadline of when the Local Plan is submitted for integration into the RTEP should be defined. Otherwise, it is not clear when the ten-day window for stakeholders to provide comments ends.

The Commission erred by failing to recognize how these procedural and informational deficiencies make the PJM RTEP process non-compliant with Order No. 890. As a result the Commission departed from precedent without providing a reasoned explanation for doing so.<sup>55</sup> The Commission should direct PJM and the PJM TOs to make a compliance filing that revises the Operating Agreement and Tariff in a manner that resolves these procedural and informational deficiencies to comply with the principles of Order No. 890.

**D. The PJM TOs should not be permitted to disregard their obligation to respond to comments from stakeholders.**

The Commission erred in permitting the PJM TOs to elect whether or not to respond to comments submitted by stakeholders. The Commission acknowledged that AMP, ODEC and the Delaware Commission raised concerns with the absence of an

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

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

<sup>55</sup> *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29 (1983).

obligation for the TOs to respond to comments.<sup>56</sup> The Commission mischaracterizes these concerns as simply an “alternate proposal.”<sup>57</sup> Then, without providing any analysis, the Commission erroneously declared that it is under no obligation to address AMP’s concerns.<sup>58</sup> Additionally, the Commission erred in allowing PJM TOs to disregard their obligation to respond to comments from stakeholders because it will result in the PJM TOs violating the coordination principles and comparability principles of Order No. 890. As a result, the Commission failed to recognize its departure from precedent and did not provide a reasoned explanation for doing so.<sup>59</sup>

The Commission is not free to ignore problems with a section 205 filing that a party identifies simply because that party proposed an alternative to particular filed terms and conditions.<sup>60</sup> But that is precisely what the Commission did in the Order.<sup>61</sup>

AMP’s October 25, 2016 Comments emphasized that *an information exchange must include give-and-take* and not just the deposit of superfluous information on a website without explanation or response to feedback received from stakeholders.<sup>62</sup>

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<sup>56</sup> See Order at PP 61, 117.

<sup>57</sup> *Id.* at P 117.

<sup>58</sup> *Id.*

<sup>59</sup> *Motor Vehicle Mfrs. Ass’n. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29 (1983).

<sup>60</sup> *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005) (“An agency’s ‘failure to respond meaningfully’ to objections raised by a party renders its decision arbitrary and capricious.” (citing *Canadian Ass’n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C.Cir.2001))).

<sup>61</sup> See Order at P 117 (“having determined just and reasonable revisions, outlined above, we need not address the merits of alternative proposals.” (citing *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1981))).

<sup>62</sup> AMP, Comments, Docket No. EL16-71-000, at 16 (Oct. 25, 2016).

Further, AMP identified that, pursuant to Order No. 1000, TOs are required to evaluate, in consultation with stakeholders, alternative transmission solutions that may meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process.<sup>63</sup> AMP noted Commission Staff's position that comparability principles require transmission providers to consider comments supplied by customers in order to meet customer needs and treat similarly situated customers comparably while conducting transmission system planning.<sup>64</sup> Finally, AMP concluded that evaluating compliance with comparability principles would be facilitated by its proposed changes to the Operating Agreement, which included requiring that the TOs respond to stakeholder comments.<sup>65</sup>

The Commission's substantive error results from allowing the PJM TOs to use the permissive "may" instead of "shall" with regard to each TO's response to comments from stakeholders.<sup>66</sup> The error occurs in three places in Attachment M-3—in sections 2, 3, and 4. In each case, the Commission modified Attachment M-3 to state that the TO "may respond or provide feedback as appropriate." These provisions respectively apply in the case of comments provided in relation to the TO's Assumptions Meetings, Needs Meetings, and Solutions Meetings. Additionally, section 5 of Attachment M-3 requires each TO to "review and consider comments that are [timely] received before the Local

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<sup>63</sup> *Id.* See Order No. 1000 at P 6.

<sup>64</sup> AMP, Comments, Docket No. EL16-71-000, at 17 (Oct. 25, 2016).

<sup>65</sup> *Id.*

<sup>66</sup> Order, Appendix B, Attachment M-3 (revised), sections 2, 3, and 4.

Plan is submitted for integration into the Regional Transmission Expansion Plan.” However, section 5 does not mention any response to comments.

The absence of a response obligation renders the Order No. 890 requirement to allow stakeholders “meaningful input” meaningless.<sup>67</sup> The record demonstrates the PJM TOs will use their discretion to deprive stakeholders of the ability to participate effectively in the planning process.<sup>68</sup> The Commission acknowledged that Order No. 890’s coordination principle seeks “to eliminate the potential for undue discrimination in planning by opening appropriate lines of communication between transmission providers and stakeholders.”<sup>69</sup> Given the PJM TOs’ track record in failing to meet their obligations under Order No. 890, the PJM TOs should be required to respond to stakeholder comments. Otherwise, stakeholders will have no way of knowing whether the TOs have honored their obligation to consider these comments. Leaving stakeholders in the dark regarding whether their comments have been given any consideration whatsoever is not just and reasonable and is unduly discriminatory.

The absence of a response requirement is a disincentive toward stakeholder participation in the planning process because it makes it difficult for stakeholders to determine whether participation adds any value to the planning process or yields any benefits to stakeholders. Conversely, the absence of a response may prompt assertive

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<sup>67</sup> See *id.* at P 89 (“Order No. 890 did require that transmission planners provide adequate detail regarding the meeting schedule and opportunities for comment so that stakeholders have an opportunity to participate meaningfully in the transmission planning process.” (citing Order No. 890 at P 452)).

<sup>68</sup> See, e.g., *id.* at P 88 (“In many cases, the PJM Transmission Owners are not providing stakeholders with sufficient opportunity to comment on the different stages of the transmission planning process for Supplemental Projects and, in other cases, the PJM Operating Agreement may not provide stakeholders with the detail necessary to take advantage of such opportunities even if they are available.”).

<sup>69</sup> *Id.* at P 81 (quoting Order No. 890 at P 452).

stakeholders to pursue dispute resolution any time the PJM TOs do not incorporate changes contained in their comments. This would be necessary at the outset to determine whether their comments were received and considered and why they were disregarded. In the event the Commission required a response to stakeholder comments, this dynamic would be obviated.

In any case, dispute resolution regarding the criteria, assumptions, models, needs and proposed solutions, and not just the process, should be provided for. Stakeholders need to see this dispute resolution process to fully understand whether PJM's planning process for Supplemental Projects will work, or not. The Commission has allowed the PJM TOs the opportunity to "clarify[] what dispute resolution procedures apply to disputes arising under Attachment M-3."<sup>70</sup> The Commission should ensure that any such process is robust and offers stakeholders recourse if their comments are ignored.

**E. The PJM TOs should be required to provide information and models that allow stakeholders to replicate how the TOs identify the need for Supplemental Projects.**

In directing the PJM TOs to hold a separate meeting to discuss needs before a separate meeting to discuss potential solutions to meet those needs, the Commission noted that the Needs Meeting would "allow stakeholders to evaluate the outputs of the PJM Transmission Owners' studies—*i.e.*, the transmission needs—on their own...."<sup>71</sup> The Commission further elaborated that by focusing on the needs by themselves, rather than reviewing those needs at the same time as potential solutions, stakeholders will: (i) have the meaningful opportunity to provide the input; (ii) ensure that the standards

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<sup>70</sup> *Id.* at P 114.

<sup>71</sup> *Id.* at P 108.

provided by the PJM TOs are consistently applied; and, (iii) be able to mitigate concerns that Supplemental Projects may be structured to avoid or replace regional transmission projects that would otherwise be subject to competitive transmission development under Order No. 1000.<sup>72</sup>

The Load Group applauds the Commission's recognition that stakeholders need to review, fully understand, and have the ability to provide input into the asserted need for Supplemental Projects in order for the transmission planning process to be fully compliant with Order No. 890. Furthermore, the Load Group strongly agrees that in order to review and evaluate the asserted need, stakeholders must have access to the PJM TOs' studies to have the ability to replicate the manner in which the PJM TOs identified the need for each Supplemental Project.

However, given the record of the PJM TOs' resistance to providing any more information than they are specifically and explicitly required by the Commission to provide, the Commission must specify the information required to be provided to stakeholders regarding the PJM TOs' determination of need for Supplemental Projects. Failure to require the PJM TOs to provide sufficient information to allow stakeholders to replicate how the PJM TOs identify the need for Supplemental Projects will result in the PJM TOs violating the coordination principles and comparability principles of Order No. 890. The Commission failed to recognize its departure from precedent and did not provide a reasoned explanation for its determination.<sup>73</sup>

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<sup>72</sup> *Id.*

<sup>73</sup> *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29 (1983).

The Commission should direct that the PJM TOs provide models consisting of more than generic or high-level network models, as well as power flow models and power system analysis. The PJM TOs have made clear that they currently utilize a number of proprietary transmission line reliability analysis tools to evaluate the conditions of their assets and determine the need for new and replacement transmission projects. For example, PECO uses the Component Health Indicator Program (“CHIP”), PPL Electric Utilities uses the Transmission Line Reliability Analysis Tool, and AEP uses the Asset Health Center, each of which are proprietary tools for monitoring equipment health and enabling the PJM TOs to prioritize asset replacement based on conditions and performance.<sup>74</sup> This is not surprising as the PJM TOs, in the regular course of business, must make determinations involving Supplemental Project transmission planning to maintain the safety and reliability of their local systems. The point, however, is that in order to “allow stakeholders to evaluate the outputs of the PJM Transmission Owners’ studies—*i.e.*, the transmission needs—on their own,”<sup>75</sup> the PJM TOs must be required to provide the models themselves as well as quantifiable criteria and the associated criteria thresholds contributing to the determination that a Supplemental Project is needed, including asset scoring data inputs, analysis, cost/benefit ratios and final results, as well as facility performance, condition and risk for replacement of aging infrastructure. The PJM TOs should provide quantifiable values pertaining to what is driving the selection of the facility. Without such clarity, it is unlikely that stakeholders will receive the models,

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<sup>74</sup> See presentations at: <http://www.pjm.com/committees-and-groups/task-forces/trpstf.aspx>. See also, “An In-Depth Look at AEP’s Asset Health Center,” available at: <http://www.tdworld.com/asset-managementservice/depth-look-aeps-asset-health-center>.

<sup>75</sup> Order at P 108.

data and information necessary to evaluate on their own the outputs of the PJM TOs' studies that determine the transmission needs behind Supplemental Projects.

The Commission should also specify that, subject to nondisclosure agreements, the PJM TOs may not withhold models based upon a claim that they constitute Critical Energy Infrastructure Information ("CEII") or are copyrighted or otherwise proprietary. To comply with the Order No. 890 transparency principle, the PJM TOs must "reduce to writing and make available the basic methodology, criteria, and processes they use to develop their transmission plans."<sup>76</sup> The Commission also noted that the information required by the PJM TOs should "enable customers, other stakeholders, or an independent third party to *replicate the results of planning studies....*"<sup>77</sup> The Commission correctly concluded that without the ability to identify the "underlying transmission needs identified in the planning studies performed by the PJM Transmission Owners," stakeholders are unable to provide timely and meaningful input on those needs or the transmission solutions proposed to meet those needs in accordance with the Order No. 890 principles.<sup>78</sup>

Paragraph 6 of Attachment M-3, as revised, provides that information relating to Supplemental Projects will be provided in accordance with and subject to the limitations in Section 1.5.4 of Schedule 6 of the Operating Agreement.<sup>79</sup> Section 1.5.4(e) of Schedule 6 of the Operating Agreement provides that PJM will provide access through

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<sup>76</sup> *Id.* at P 73 (citing Order No. 890 at P 471).

<sup>77</sup> *Id.* (citing Order No. 890 at PP 424, 471) (emphasis added).

<sup>78</sup> *Id.* at P 77.

<sup>79</sup> Order at Appendix A, P 6.

its website to the TOs' local planning information, including all criteria, assumptions and models used by the TOs "in their internal planning processes, including the development of Supplemental Projects ('Local Plan Information')." <sup>80</sup> However, the following sentence limits the information posted by PJM if the information is confidential, CEII or copyrighted, in accordance with Section 18.17 of the Operating Agreement. This section states further that PJM *may* share confidential information subject to: (i) agreement by the disclosing PJM TO; and, (ii) an appropriate non-disclosure agreement executed by PJM, the disclosing PJM TO and the requesting third-party. <sup>81</sup>

The Load Group fully agrees that CEII information and other confidential information should be protected and appropriately managed. As noted, this can be accomplished through a nondisclosure agreement between PJM, the disclosing PJM TO and the requesting stakeholder. PJM already has a process in place for CEII requests that includes non-disclosure provisions. <sup>82</sup> However, the Operating Agreement makes clear that, even with a nondisclosure agreement, the PJM TOs have the option to withhold their agreement to disclose information necessary for stakeholders to replicate their planning studies.

The existing PJM CEII nondisclosure agreement planning process adequately addresses concerns regarding protection of CEII, proprietary or otherwise confidential models and information. Moreover, so long as stakeholders adhere to the PJM CEII

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<sup>80</sup> *Id.* at Appendix B, Revised Operating Agreement, schedule 6, Section 1.5.4(e).

<sup>81</sup> *Id.*

<sup>82</sup> See Non-Disclosure Agreement for Critical Energy Infrastructure Information, *available at* <http://www.pjm.com/library/request-access/form-ceii-nda.aspx>.

nondisclosure agreement process, a PJM TO's refusal to agree to the disclosure of its models or other information necessary for stakeholders to replicate the results of a needs determination for a Supplemental Project is a violation of Order No. 890's transparency principle, which "require[s] transmission providers to disclose to all customers and other stakeholders the basic criteria, assumptions, and data that underlie their transmission system plans."<sup>83</sup>

**F. Supplemental Projects should be subjected to the same obligation-to-build and milestone requirements that apply to RTEP Baseline Projects.**

In the Order No. 890 compliance process, PJM provided the Commission with assurances that Supplemental Projects would be subject to the same regional planning process as baseline RTEP projects. The Commission previously relied on these assurances and has, in the instant proceeding, taken action to remedy PJM's failure to ensure that Supplemental Projects are planned consistent with Order No. 890 in a manner comparable to PJM's RTEP process for baseline projects. However, the planning process for Supplemental Projects remains inconsistent and inferior to the current process for baseline RTEP projects in two critical aspects: obligations to build Supplemental Projects and market impact analysis for Supplemental Projects.

The Commission's failure to subject Supplemental Projects to the same obligation-to-build and market impact analysis that apply to RTEP baseline projects will result in the PJM TOs violating the comparability principles of Order No. 890 by treating Supplemental Projects differently than baseline RTEP projects. The Commission failed to recognize its

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<sup>83</sup> Order at P 73 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 461, 471).

departure from precedent and did not provide a reasoned explanation for its determination.<sup>84</sup> On rehearing, the Commission should clarify that Supplemental Project planning must follow the planning process for baseline RTEP projects in these two respects.

The Commission previously relied on PJM's clarification that "Supplemental Projects will be subject to the same regional planning process under the RTEP as baseline regional projects."<sup>85</sup> There are two aspects of PJM's baseline RTEP process which are not reflected in the Attachment M-3 and should be included in the Supplemental Project planning process: obligation-to-build and market impact analysis.

Because Supplemental Projects are included in the RTEP, it is necessary for PJM to require the same assurances of construction and project tracking as required for baseline RTEP projects. Otherwise, PJM cannot accurately study and model the transmission system for long-term planning that is the foundation of the PJM RTEP. For baseline RTEP projects, the Operating Agreement provides that PJM TOs or Designated Entities designated to construct a facility are obligated to do so and must execute a Designated Entity Agreement ("DEA").<sup>86</sup> Further, entities designated to construct a transmission enhancement must meet milestones in the project development schedule.<sup>87</sup> These requirements are necessary for Supplemental Projects, so that PJM can accurately plan its system, taking into account the timing of Supplemental Projects going into service

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<sup>84</sup> *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29 (1983).

<sup>85</sup> *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163, at P 138 (2008) (cited in Show Cause Order at P 14 n.29).

<sup>86</sup> Operating Agreement, Schedule 6, sections 1.5.8(i) and (j).

<sup>87</sup> *Id.* section 1.5.8(k).

and with an assurance that the PJM TO for that Supplemental Project will complete the Supplemental Project per the DEA. On rehearing, the Commission should ensure that Supplemental Projects must be subject to the same requirements regarding the obligation-to-build and milestone requirements as currently apply to RTEP baseline projects.

**G. PJM should be required to analyze Supplemental Projects for their impact on PJM markets and other concerns that go beyond reliability—in the same manner that PJM analyzes baseline RTEP Projects.**

The Commission should require PJM to analyze Supplemental Projects for their impact on PJM markets and in areas beyond reliability, in the same manner that PJM analyzes baseline RTEP projects. PJM's RTEP process includes enhancement and expansion studies for "identification, evaluation and analysis of potential enhancements and expansions for the purposes of supporting competition, market efficiency, operational performance and Public Policy Requirements in the PJM Region,"<sup>88</sup> as well as supporting the feasibility of Auction Revenue Rights.<sup>89</sup> Transmission projects—both baseline and Supplemental Projects—have the potential to impact PJM markets, including effects on clearing prices for the PJM capacity auctions, annual valuations of Auction Revenue Rights and Firm Transmission Rights, and locational marginal prices for real-time energy. As part of its market efficiency analysis, PJM considers transmission plans resulting from its reliability analysis, along with new plans that economically relieve historical or projected congestion.<sup>90</sup> Additionally, PJM's current limited approach in evaluating

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<sup>88</sup> *Id.* section 1.5.3 (d).

<sup>89</sup> *Id.* section 1.5.3(h).

<sup>90</sup> See PJM Manual 14B, section 1.5.2.

Supplemental Projects' impact on the system ("do no harm"), leads to the possibility that Supplemental Projects may preclude competitive transmission projects and/or generate baseline criteria violations in the near term planning horizon.

The Commission's failure to require PJM to analyze Supplemental Projects for their impact on PJM markets and other concerns that go beyond reliability in the same manner that PJM analyzes baseline RTEP projects will result in the PJM TOs violating the comparability principles of Order No. 890 by treating Supplemental Projects differently than baseline RTEP projects. The Commission failed to recognize its departure from precedent and did not provide a reasoned explanation for its determination.<sup>91</sup> The Commission should ensure that PJM conduct a similar impact analysis for Supplemental Projects, so that the PJM RTEP reflects a transmission plan that addresses as many of the drivers behind these transmission projects as possible—including reliability and resilience, public policy, economics, and market efficiency.

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<sup>91</sup> *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29 (1983).

### III. CONCLUSION

For the reasons and to the extent stated above, the Load Group seeks rehearing of the February 15, 2018 Order. On rehearing, the Commission should: (i) find that PJM's Operating Agreement and Attachment M-3 are unjust, unreasonable and unduly discriminatory; (ii) require PJM to make a compliance filing that revises the Operating Agreement in a manner that resolves the issues identified in this request for rehearing; and (iii) take such other action as the Commission may deem warranted in the circumstances presented.

Respectfully submitted,

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March 19, 2018

## CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused a copy of the foregoing document to be served on each person included on the official service list maintained for this proceeding by the Commission's Secretary, by electronic mail or such other means as a party may have requested, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Washington, D.C., this 19th day of March, 2018.

By:           /s/ Anna Williamson            
Anna Williamson  
Administrative Legal Assistant