Pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure,¹ PJM Interconnection, L.L.C. ("PJM") moves to dismiss the complaint filed by Public Service Electric and Gas Company ("PSEG") in this docket² and to postpone the date upon which an answer to the complaint otherwise would be due. The sole premise of the PSEG Complaint—that PJM did not properly apply its Order No. 1000 competitive solicitation tariff process to a solicitation for transmission solutions that predated the effective date of PJM’s competitive solicitation tariff—fails as a matter of law. The filed rate doctrine precludes binding PJM to a tariff that was not in effect at the time of the solicitation. Moreover, even if PJM’s competitive solicitation tariff were applicable here, the Commission still should dismiss the PSEG Complaint as impermissibly premature, as PJM is still in the midst of its evaluation of the competing transmission proposals and no selection of any entity to build facilities has yet to occur.

¹ 18 C.F.R. § 385.212.
² Complaint of Public Service Electric and Gas Company Against PJM Interconnection, L.L.C., Docket No. EL15-40-000 (Jan. 29, 2015) ("PSEG Complaint").
I. THE COMMISSION SHOULD DISMISS THE PSEG COMPLAINT WITH PREJUDICE FOR FAILURE TO STATE A VALID CLAIM UPON WHICH RELIEF CAN BE GRANTED

The Commission should dismiss the PSEG Complaint with prejudice. PSEG’s complaint is premised on an erroneous application of the law and, therefore, the Commission cannot grant it.

The sole basis of the PSEG Complaint is the assertion that PJM did not follow its filed Order No. 1000 tariff processes regarding its Artificial Island transmission solicitation, and therefore the Commission should direct PJM to do so. This claim is fatally flawed because it ignores that the Artificial Island solicitation commenced prior to the effective date of PJM’s competitive solicitation tariff and is therefore being conducted under PJM’s pre-Order No. 1000 planning process. Even if the Commission were to take all of PSEG’s factual allegations as true, they do not provide a basis for the relief PSEG seeks—requiring PJM to follow its Order No. 1000 tariff that became effective only on January 1, 2014, eight months after the Artificial Island solicitation commenced.

The Commission addressed the effective date of PJM’s competitive solicitation tariff in its orders on PJM’s compliance filings. In its initial filing to comply with Order

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3 As PSEG describes in its complaint, “Artificial Island” refers to the transmission and generation infrastructure associated with the nuclear complex that includes the Salem 1 and 2 and Hope Creek nuclear generating units. Artificial Island is stability-constrained and special operating procedures have been used to maintain stability in the area. PJM proposed to mitigate these limitations through a competitive transmission solicitation that commenced in April 2013. PSEG Complaint at 1-2.

4 See id. at 2-3.

5 Id. at 28-29.
No. 1000, PJM proposed modifications to its Operating Agreement and Tariff to establish a sponsorship model, with detailed solicitation processes, whereby developers could propose transmission projects for inclusion in PJM’s Regional Transmission Expansion Plan (“RTEP”). PJM explained that to accommodate the new Order No. 1000-compliant process, it was formalizing two planning cycles, a 12-month cycle and a 24-month cycle, and that it intended to “implement its complete set of revisions in the next full 12-month or 24-month planning cycle following a final Commission order approving this compliance filing and any associated subsequent compliance filings.”

PJM also committed that, so as not to delay pre-existing studies already being undertaken under PJM’s existing RTEP process, “projects, including proposals already received, under consideration in the planning cycle in which the Commission’s compliance order issues will be evaluated under the new rules to the extent feasible.” Because the timing of Commission action was uncertain, PJM further indicated that it would “clarify its exact transition upon receipt and review of the Commission’s final order on this compliance filing,” but that, in the interim, PJM would implement its “current RTEP process consistent with our tariffs.”

The Commission accepted PJM’s proposal to make its Order No. 1000 modifications effective at the start of the next full 12-month and 24-month planning cycle.

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7 Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.
8 PJM Open Access Transmission Tariff.
9 Initial Compliance Filing at 81.
10 Id. at 82 (emphasis added).
11 Id.
12 Id.
cycles following the date of the order.\textsuperscript{13} The Commission therefore directed PJM in a further compliance filing to establish “an appropriate effective date to coincide with the beginning of a 12-month and 24-month planning cycle, and provid[e] further information regarding PJM’s transition to the revised regional transmission planning process.”\textsuperscript{14} In response, PJM established an effective date of \textbf{January 1, 2014}, for the revisions implementing PJM’s Order No. 1000 solicitation window process.\textsuperscript{15} It further explained that, as a result of this effective date, “solutions for reliability violations and economic constraints identified prior to [January 1, 2014] will be evaluated under PJM’s current regional transmission planning process.”\textsuperscript{16} While PJM also re-iterated its commitment to implement the new proposal window process “to the extent feasible and practicable” during the transition to the Order No. 1000 process, it made clear that the implementation would be “under its current process.”\textsuperscript{17} The Commission accepted PJM’s transition plan as compliant with its directives.\textsuperscript{18}

It is undisputed that PJM opened the Artificial Island solicitation window on April 29, 2013,\textsuperscript{19} eight months prior to the January 1, 2014 effective date of PJM’s Order

\textsuperscript{13} \textit{PJM Interconnection, L.L.C.}, 142 FERC \textsuperscript{ ¶ } 61,214, at P 32 (2013) (“First Compliance Order”), order on reh’g & compliance, 147 FERC \textsuperscript{ ¶ } 61,128 (2014), order on reh’g & compliance, 150 FERC \textsuperscript{ ¶ } 61,038 (2015).

\textsuperscript{14} First Compliance Order at P 32; \textit{see also id.} at P 34.

\textsuperscript{15} Compliance Filing of PJM Interconnection, L.L.C., Docket No. ER13-198-002, at 3 (July 22, 2013) (“Second Compliance Filing”).

\textsuperscript{16} \textit{Id.} (emphasis added).

\textsuperscript{17} \textit{Id.} (emphasis added); \textit{see also} Initial Compliance Filing at 81-82.

\textsuperscript{18} \textit{PJM Interconnection, L.L.C.}, 147 FERC \textsuperscript{ ¶ } 61,128, at P 30 (“We further find that PJM’s explanation of how it will transition to the revised regional transmission planning process complies with the Commission’s directive in the First Compliance Order.”).

\textsuperscript{19} \textit{See} PSEG Compliant at 12.
No. 1000 planning process revisions. The needs giving rise to the Artificial Island solicitation thus were identified prior to the planning cycle that commenced in January 2014, and, in accordance with PJM’s compliance filings and the Commission orders approving them, those needs “identified prior to [January 1, 2014] will be evaluated under PJM’s current [i.e. pre-Order No. 1000] regional transmission planning process.”

Contrary to the relief PSEG requests, PJM cannot be bound to a process that did not become a part of PJM’s filed Tariff and Operating Agreement until well after PJM opened the Artificial Island proposal window. See 18 C.F.R. § 35.2(f) (“[T]he effective date of a rate schedule, tariff, or service agreement shall mean the date on which a rate schedule . . . is permitted by the Commission to become effective as a filed rate schedule.”); see, e.g., Haviland Holdings, Inc. v. Pub. Serv. Co. of N.M., 107 FERC ¶ 61,034, at P 17 (2004) (“[W]e find that the events subject to Haviland’s complaint occurred prior to the January 20, 2004 effective date of Order No. 2003. As a result, the generation interconnection procedures in Order No. 2003 are not relevant to the Commission’s determination on the issues in this proceeding.”).

The Commission made clear in Order No. 1000 that the “requirements of this Final Rule will apply to the evaluation or reevaluation of any transmission facility that occurs after the effective date of the public utility transmission provider’s filing adopting the transmission planning and cost allocation reforms of the pro forma OATT required by this Final Rule.” Recognizing that “the issuance of this Final Rule is likely to fall in the

20 Second Compliance Filing at 3.
21 See also Ark. La. Gas Co. v. Hall, 453 U.S. 571, 577-78 (1981) (the filed rate doctrine forbids a regulated entity from charging rates other than those properly on file with the appropriate regulatory agency).
22 Order No. 1000 at P 65 (emphasis added).
middle of ongoing planning cycles,” the Commission left it to “public utility transmission providers to explain in their compliance filings how they will determine which facilities evaluated in their local and regional planning processes will be subject to the requirements of this Final Rule.”23 PJM did just that, stating in its compliance filings that “solutions for reliability violations . . . identified prior to [January 1, 2014] will be evaluated under PJM’s current regional transmission planning process.”24 The Artificial Island needs were identified before the effective date of PJM’s competitive solicitation tariff and are being evaluated “under PJM’s current [pre-Order No. 1000] regional transmission planning process.” While PJM is using the Order No. 1000 solicitation window process to the extent feasible in the evaluation of Artificial Island solutions, it is not bound to every particular of the Order No. 1000 process that did not become effective until January 1, 2014.25

That “PJM’s consideration of Artificial Island proposals extended well past the January 1, 2014 effective date of its Order No. 1000 compliance filing” and involved consideration of PJM “modifications to the proposals it had received” does not, as PSEG

23 Id.

24 Second Compliance Filing at 3 (emphasis added).

25 At least one other proposer has recognized that the Artificial Island solicitation is being conducted only on a “trial run” basis before full implementation of PJM’s competitive solicitation tariff. See, e.g., LSP Power Transmission, LLC and LSP Transmission Holdings, LLC Protest of Supplemental Compliance Filing of Southwest Power Pool, Inc., Docket No. ER13-366-002, at 2 n.6 (Dec. 16, 2013) (noting to the Commission that, in PJM, “staged request windows have been opened even before full implementation of Order No. 1000”); Request for Clarification and Rehearing of LSP Power Transmission, LLC and LSP Transmission Holdings, LLC, Docket Nos. ER13-366-001, ER13-367-001, at 10-11 (Aug. 19, 2013) (“PJM has initied [sic] project specific qualification for its Artificial Island RFP although its Order No. 1000 compliant process has not been finalized. . . . PJM’s Artificial Island process has acted as a test run for PJM from which it is regularly reporting to the PJM Planning Committee its “lessons learned.’’”) (emphasis added).
suggests, constitute a post-January 1, 2014 “reevaluation” under Order No. 1000 that “triggered” PJM’s post-January 1, 2014 “formal tariff process.” PJM has at no time approved any project for inclusion in the RTEP to address the needs identified in the Artificial Island solicitation and is still in the evaluation stage of that solicitation. PJM cannot “reevaluate” a decision that has never been made. To the contrary, a “reevaluation” of a transmission facility occurs when a facility already included in the RTEP is subsequently re-studied to determine if it is still required for reliability, economic, or operational performance needs. There are no RTEP-approved transmission facilities that PJM is “reevaluating” here. The continued consideration and evaluation of proposals responding to needs identified prior to January 1, 2014, does not constitute “reevaluation” of a transmission facility triggering PJM’s post-January 1, 2014 competitive solicitation tariff.

In Order No. 1000, the Commission recognized that transmission planning is a rolling process and that the changes proposed throughout Order No. 1000 could significantly impact that process. For this reason, the Commission provided flexibility to transmission providers to set forth their own transition plans to avoid the kind of legal challenges that PSEG attempts to prosecute in this case. It specifically did not find that projects begun before the effective date of Order No. 1000 changes and continued after

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26 PSEG Complaint at 28.

27 See, e.g., Operating Agreement, Schedule 6 § 1.5.7(b)(iii) (permitting reevaluation of an existing RTEP reliability-based enhancement or expansion to determine whether, if modified, it would relieve an economic constraint); id., Schedule 6 § 1.5.8(k) (providing for reevaluation of the need for a Long-term Project or Short-term Project included in the RTEP when the Designated Entity has failed to meet a milestone). See also PJM Interconnection, LLC, 141 FERC ¶ 61,177 (2012) (Commission accepting in part and rejecting in part abandoned cost recovery for project PJM reevaluated and removed from the RTEP).
the effective date would be subject to the new rules. In its Commission-approved transition plan, PJM made clear that, while prospectively it would evaluate violations identified after January 1, 2014, under its competitive solicitation tariff, for violations identified prior to that date, it would attempt to mimic its Order No. 1000 processes on a “trial run” basis. The competitive solicitation requirements of Order No. 1000 are complex and sweeping. PJM should not be penalized for making a good faith attempt to try out these processes during a transition period (and learn from the “trial run”) before the competitive solicitation tariff becomes effective. But PSEG’s approach would do just that—essentially using PJM’s good faith “trial run” as a legal sword to void the existing Artificial Island solicitation process rather than allowing that process to continue and inform future competitive solicitations under the tariff. PSEG’s attempt to impose on the Artificial Island “trial-run” solicitation a tariff that was not yet in effect should be rejected.

The bottom line is that PJM followed both the filed rate and its Order No. 1000 transition plan with regard to the Artificial Island solicitation. The PSEG Complaint, which alleges that PJM did not follow to the letter a process that was not yet in effect, is unsustainable and should be dismissed with prejudice.

II. IN ANY EVENT, THE COMMISSION SHOULD DISMISS THE PSEG COMPLAINT AS PREMATURE

Even if the Commission does not dismiss the PSEG Complaint for failure to state a valid claim, it nevertheless should dismiss the complaint as premature. PJM has not yet completed the evaluation and designation process relating to the Artificial Island solicitation. No project has yet been selected for inclusion in the RTEP. Nor has any entity been designated to construct the necessary upgrades to address the Artificial Island
needs. Therefore, neither PSEG nor any other party is currently aggrieved. Until PJM has completed the evaluation process, selected the projects to address the Artificial Island needs, and designated entities to construct the RTEP projects, any allegation of harm to a participant in the solicitation process is speculative and premature.  

The Commission routinely dismisses complaints as premature when an applicable process has yet to be completed. See Wis. Pub. Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc., 114 FERC ¶ 61,277, at P 25, order on clarifications, 115 FERC ¶ 61,185 (2006) (rejecting as premature complaint seeking to compel Midcontinent Independent System Operator, Inc. and PJM to develop a joint and common market, indicating that the Commission had left the details of how such a market would be developed to the regional transmission organization and its stakeholders); Hot Spring Power Co. v. Entergy Ark., Inc., 119 FERC ¶ 61,277, at P 15 (2007) (dismissing as premature complaint asking that Entergy be obliged to reclassify certain facilities under an Interconnection Agreement, on the basis that the Entergy Independent Coordinator of Transmission was still in the process of reviewing and reclassifying facilities on the Entergy system); High Prairie Pipeline, LLC, v. Enbridge Energy, Ltd. P’ship, 149 FERC ¶ 61,004, at P 22 (2014) (dismissing a complaint regarding the justness and reasonableness of terms of service before terms were

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28 See 18 C.F.R. § 385.206(b)(4) (requiring complainant to quantify financial impacts or burdens); see also El Paso Natural Gas Co. v. FERC, 50 F.3d 23, 26 (D.C. Cir. 1995) (holding that parties seeking access to the federal courts must satisfy the requirement of establishing, at a minimum, “injury in fact” to a protected interest,” which entails alleging “an invasion of legally protected interests that is both (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical”) (citation omitted); S. Cal. Edison Co., Opinion No. 284-A, 50 FERC ¶ 61,275, at 61,872 (1990) (“[I]f it cannot be shown that some real harm (actual or potential) is probable, there is little point in wasting the scarce resources of the Commission and the parties by litigating . . . .”).
known). At this point, the Commission does not know who PJM will select to construct facilities to address the Artificial Island needs. Nor does it know what processes PJM ultimately will apply to choose the entities to address those needs. Thus, PSEG’s complaint essentially seeks an inappropriate advisory opinion from the Commission relative to future possible actions. Plainly, the Commission would benefit from having the solicitation facts and outcomes available before addressing complaints regarding either the process or the selection of particular projects. The Commission should follow its precedent and dismiss the PSEG Complaint as premature, allowing the Artificial Island solicitation process to take its course, rather than speculating about processes that may or may not be applied and potential outcomes.

Moreover, to allow prosecution of the PSEG Complaint at this time would require PJM to offer substantive responses to PSEG’s allegations. A substantive answer at this time—one that necessarily would require PJM to explain its views as to the merits and demerits of competing proposals in order to defend actions and decisions that PSEG has challenged—would compromise, if not defeat outright, the still pending solicitation process. One might surmise that preventing the process from coming to conclusion is indeed the unstated but overriding goal of PSEG’s complaint in the first place. But even assuming otherwise, having active litigation that will undoubtedly involve not just PJM and PSEG, but other bidding parties, places PJM in an untenable decision-making position and creates the unavoidable speculation that any ultimate decision was colored

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29 See also Cargill-Alliant, LLC v. Midwest Indep. Transmission Sys. Operator, Inc., 98 FERC ¶ 61,148, at 61,506 (2002) (“We will dismiss Cargill-Alliant’s complaint with respect to its objections to the draft Business Practices. We find it premature to consider these allegations, as Midwest ISO is still in the process of developing its Business Practices, which are objections to draft and not final Business Practices.”).
by the ongoing litigation. While PJM has not committed any tariff violation or acted contrary to its Order No. 1000 transition plan, the Commission should at a minimum dismiss the PSEG Complaint as unripe, recognizing that to allow it to proceed would cause grave and irreparable harm to the as yet unfinished solicitation process.\(^{30}\)

III. THE COMMISSION SHOULD POSTPONE THE ANSWER DATE

In view of the foregoing, PJM further moves that the Commission postpone the date upon which its answer to the PSEG Complaint otherwise would be due until after the Commission acts on PJM’s motion to dismiss. See 18 C.F.R. § 385.2008(a) (“[T]he time by which any person is required or allowed to act . . . may be extended by the decisional authority for good cause, upon a motion made before the expiration of the period prescribed . . . ”). Good cause for postponing the answer date is present here. PJM has moved to dismiss the PSEG Complaint for failure to state a valid claim and as premature. As the need for an answer would be rendered moot if the Commission grants PJM’s motion to dismiss, there is no reason for PJM to submit an answer at this time. Postponing an answer date under these circumstances is consistent with the Federal Rules

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\(^{30}\) See Cal. Indep. Sys. Operator Corp., 87 FERC ¶ 61,016, at 61,050 (1999) (in dismissing as moot a complaint, the Commission noted that it agreed with intervenors that conducting “a hearing would undermine the ongoing stakeholder process, which will assist the ISO in developing a consensus with the stakeholders to formulate” a revised rate.)
of Civil Procedure, 31 and it would avoid wasteful utilization of PJM and Commission resources. 32

IV. CORRESPONDENCE

The following individuals are designated for inclusion on the official service list in this proceeding and for receipt of any communications regarding this filing: 33

Craig Glazer
Vice President – Federal Government Policy
PJM Interconnection, L.L.C.
1200 G Street, N.W., Suite 600
Washington, D.C. 20005
Ph: (202) 423-4743
craig.glazer@pjm.com

Barry S. Spector
Wright & Talisman, P.C.
1200 G Street, NW, Suite 600
Washington, D.C. 20005
Ph: (202) 393-1200
spector@wrightlaw.com

Carrie L. Bumgarner
PJM Interconnection, L.L.C.
1200 G Street, N.W., Suite 600
Washington, D.C. 20005
Ph: (202) 423-4743
bumgarner@wrightlaw.com


32 In the event that the Commission does not dismiss the PSEG Complaint, PJM then asks that the Commission postpone the answer date until after the Artificial Island solicitation process is completed. Postponing the answer date in these circumstances would be appropriate because the final outcome of the Artificial Island solicitation process may materially impact elements of the complaint or even moot some issues. See, e.g., N. Ind. Pub. Serv. Co. v. Midcontinent Indep. Sys. Operator, Inc., 145 FERC ¶ 61,256, at P 21 (2013) (concluding that it was premature to act on a complaint when determinations on other pending matters could materially affect elements of a complaint). If the Commission does not dismiss the complaint, it should postpone the answer date until thirty days after PJM has completed its evaluation and approved projects for inclusion in the RTEP to address the Artificial Island needs.

33 To the extent necessary, PJM respectfully requests waiver of Rule 203(b)(3) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.203(b), to permit all of the persons listed to be placed on the official service list for this proceeding.
V. CONCLUSION

For the foregoing reasons, the Commission should (i) dismiss the PSEG Complaint with prejudice for failure to state a valid claim; or, (ii) in the alternative, dismiss the PSEG Complaint, without prejudice, as premature; and (iii) postpone the date for PJM’s answer to the complaint.

Respectfully submitted,

Craig Glazer  
Vice President – Federal Government Policy  
PJM Interconnection, L.L.C.  
1200 G Street, N.W., Suite 600  
Washington, D.C. 20005  
Ph: (202) 423-4743  
craig.glazer@pjm.com

Barry S. Spector  
Carrie L. Bumgarner  
Wright & Talisman, P.C.  
1200 G Street, NW, Suite 600  
Washington, D.C. 20005  
Ph: (202) 393-1200  
spector@wrightlaw.com  
bumgarner@wrightlaw.com

February 13, 2015
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 13th day of February, 2015.

Carrie L. Bumgarner