UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Public Service Electric and Gas Company, )
) Complainant,
) )
v. ) Docket No. EL15-40-000
) )
PJM Interconnection, L.L.C., )
) Respondent.
) )

ANSWER OF PJM INTERCONNECTION L.L.C.

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March 11, 2015
ANSWER OF PJM INTERCONNECTION L.L.C.

Pursuant to Rule 213 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.213, and the Commission’s Notice for Extension of Time,1 PJM Interconnection, L.L.C. (“PJM”) submits this answer to the Complaint of Public Service Electric and Gas Company (“PSEG”) filed on January 29, 2015 (“Complaint”).2 For the reasons set forth below, the Commission should deny the Complaint. Alternatively, the Commission should hold the Complaint in abeyance until PJM completes the Artificial Island solicitation.

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1 Notice of Extension of Time, Docket No. EL15-40-000 (Feb. 24, 2015).

2 Complaint of Public Service Electric and Gas Company Against PJM Interconnection, L.L.C., Docket No. EL15-40-000 (Jan. 29, 2015) ("Complaint").
I. EXECUTIVE SUMMARY

PSEG’s Complaint is premised on one claim—that PJM did not follow its Order No. 1000 competitive solicitation process in conducting the Artificial Island solicitation. If this claim fails, which it does for several reasons, the Complaint fails.

Because the Artificial Island solicitation commenced prior to the effective date of the Operating Agreement and tariff provisions that establish PJM’s new competitive solicitation tariff, PJM was not bound to those provisions in conducting the solicitation. Instead, PJM has been conducting the Artificial Island solicitation consistently with its Commission-approved transition for implementing its Order No. 1000 process. As PJM made clear in its Order No. 1000 compliance filings, which the Commission accepted, in transitioning to its Order No. 1000-compliant process, solutions for reliability violations and economic constraints identified “prior to [the effective date of its competitive solicitation tariff]” would be evaluated “under PJM’s current regional transmission planning process,” and PJM would implement the new proposal window process only “to the extent feasible and practicable” under its current process.


4 Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., Rate Schedule FERC No. 24 (“Operating Agreement”).

5 Compliance Filing of PJM Interconnection, L.L.C., Docket No. ER13-198-001, at 3 (July 22, 2014) (“July 22 Filing”) (emphasis added). PJM Interconnection, L.L.C., 147 FERC ¶ 61,128, at P 30 (2014) (“We further find that PJM’s explanation of how it will transition to the revised regional transmission planning (Cont’d . . .)
PJM opened its Artificial Island proposal window in April 2013, more than eight months before the January 1, 2014 effective date of its competitive solicitation tariff. Consistent with its representations in its accepted Order No. 1000 compliance filings, PJM therefore is employing its new proposal window process “to the extent feasible and practical,”6 but its pre-Order No. 1000 tariff continues to control.7

PSEG has claimed that there is no process to follow if the Order No. 1000 process does not apply.8 This hyperbole is directly contradicted by Commission precedent. PJM’s pre-Order No. 1000 process, which includes consideration of third-party proposals, is a transparent public process that the Commission explicitly approved as compliant with Order No. 890.9 For the Commission to find that “no process” exists would require the Commission to renounce its own Order No. 890 compliance orders.

(Cont’d...)

process complies with the Commission’s directive in the First Compliance Order.”), order on reh’g & compliance, 150 FERC ¶ 61,038 (2015).

6 July 22 Filing at 3.

7 As discussed below, PJM decided to use the Order No. 1000 process to the extent feasible for sound reasons. For one, almost all of the Artificial Island solutions could trigger complex state siting processes. For this reason, and because PJM knew there would be significant interest from developers, PJM thought it best to seek competitive proposals before making its decision, even though not required to do so. In addition, the Order No. 1000 solicitation processes are untested around the nation. Therefore, PJM thought a “trial run” of these processes was appropriate.

8 Answer to Motion to Dismiss of Public Service Electric and Gas Company, Docket No. EL15-40-000, at 3 (Feb. 18, 2015).

Long before Order No. 1000, the Commission determined that PJM’s planning process should consider non-incumbent third party proposals. In *Primary Power*, the Commission confirmed that, when third-party proposals are considered, the pre-Order No. 1000 tariff requires PJM to “designate projects under the relevant tariff provisions in a not unduly discriminatory manner, whether sponsored by transmission owners or others.”\(^\text{10}\) That standard is what PJM is applying. While using its proposal window process “to the extent feasible and practicable,” PJM is evaluating the various proposed projects in a nondiscriminatory manner, in accordance with its pre-existing tariff, as the Commission has directed.

PSEG makes no claim other than PJM failed to follow a yet to be effective tariff. On this basis alone, the Commission should deny the Complaint.

Nonetheless, even if PJM’s Order No. 1000 tariff provisions were deemed to apply to the Artificial Island solicitation, PSEG has not shown that PJM has acted inconsistently with its Order No. 1000 process and, similarly, has provided no basis for the drastic and self-serving remedy it seeks. As demonstrated here, PJM is proceeding properly with the process set forth in those provisions. PSEG complains that PJM failed to follow its Order No. 1000 process because it unilaterally “modified” the Artificial Island proposals rather than just evaluating and comparing them. That is neither an

accurate depiction nor a reasonable standard for the Commission to apply under the relevant tariff provisions.

In fact, application of PSEG’s rationale would lead to absurd results which would defeat the Commission’s very purpose in directing competitive solicitation processes to determine “the more efficient or cost-effective” solution to an identified transmission need. PSEG’s position is that Section 1.5.8(g) of the tariff prevents PJM from making any modification whatsoever to project proposals because it states that, if PJM “determines that none of the proposed Long-lead Projects received during the Long-lead Project proposal window would be the more efficient or cost-effective solution to resolve a posted violation, or system condition,” PJM “may re-evaluate and re-post on the PJM website the unresolved violations.”11 As PSEG is well aware and states repeatedly, Section 1.58(g) also goes on to say that, if there is insufficient time to repost and rebid, then PJM must determine an appropriate project and give the project to an incumbent transmission owner.

If PSEG’s interpretation of the tariff were accepted, anytime that PJM cannot conclude that a picture perfect project has been proposed that is the “more efficient or cost-effective” solution, PJM must repost the violation and accept rebids or, if there is no time to repost and rebid, give a PJM-specified project to an incumbent. If this interpretation were accepted, PJM would be engaged in interminable, never-ending solicitations until the perfect project was proposed, with the inevitable result that PJM would have to default to assigning many projects to incumbents due to lack of time for reposting. Such a result runs entirely counter to Order No. 1000.

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11 Operating Agreement, Schedule 6 § 1.5.8(g).
A far more reasonable interpretation of the tariff (consistent with both Order No. 1000’s intent and purpose to ensure a more dynamic and holistic planning process) is that, in evaluating potential solutions, PJM must evaluate all of the various submitted proposals to determine the "more efficient or cost-effective solution”\textsuperscript{12} to address the system need. PJM’s Order No. 890-approved process always has been one which combines various proposed ideas in a manner that ensures at the end of the process a designation which can meet the test of being “more efficient or cost-effective” and just and reasonable. If refinements are necessary to any given proposal, in combination with other proposals, PJM should be permitted to address them without having to repost the violation and start the process over again (or simply assign a project to an incumbent due to the passage of time).\textsuperscript{13} The tariff was not designed to preclude PJM’s continued ability to review and refine combinations of proposals through a transparent process including stakeholders.

Furthermore, the tariff expressly provides in Section 1.5.8(e) that in evaluating whether project proposals meet the criteria as the more efficient or cost-effective solutions, PJM shall evaluate the proposed projects “individually or in combination with other” proposals. Therefore, contrary to PSEG’s Complaint, it is permissible for PJM to consider elements of one proposal (e.g., an SVC or the addition of optical ground wire, as were proposed by bidders) “in combination” with other separately submitted transmission

\textsuperscript{12} Operating Agreement, Schedule 6 § 1.5.8(e).

\textsuperscript{13} By contrast, PSEG would turn this from a sponsorship and review process, as designed, into a strict bidding process of the type that would govern homogenous products such as the purchase of paper clips. The Commission adopted the competitive solicitation provisions of Order No. 1000 to enhance, not trump, the deliberative planning processes that it approved in Order No. 890.
line proposals to determine the more efficient or cost-effective solution to the Artificial Island needs. That is not “appropriating key elements of one sponsor’s proposal and giving it to another sponsor,” as PSEG contends. It is simply “combining” proposals. In the case of the optical ground wire, for example, PSEG, which proposed the optical ground wire, would still build that element of the selected project, regardless of other selected proposals, if that solution were chosen.

As discussed in more detail below, the alleged “modifications” that PJM staff has made while considering proposals constitute “combinations” of proposals, and changes arising from the combinations, so as to produce a more efficient or cost-effective solution. In a few instances, minor other modifications were made, which simply do not rise to a level of being a fundamental change to the proposal submitted (such as adding spare parts to a proposal). As discussed below, without these combinations and modifications, if PJM accepted PSEG’s interpretation of the tariff, PJM would have been left to accepting a proposal with four times the costs of the combination of proposals that it is now considering.

PSEG’s additional claim that PJM violated its competitive solicitation tariff by allowing a proposer to “modify” its proposal to offer a cost cap also is without merit. In its comments to the Board regarding the PJM staff’s initial recommendation, one of the bidders, Northeast Transmission Development (“Northeast”), pointed out that, in its

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14 PJM must emphasize, however, that no project has been selected yet, and any number of possible outcomes still exist, including outcomes that do not even involve the complained of modifications or combinations. Therefore, it is premature for the Commission to determine whether any particular set of combinations or modifications was acceptable. The process remains in the evaluation stage, after which the PJM Board of Managers (“Board”) will make a final determination.
evaluation, PJM had adjusted its cost estimates for Northeast upward, which Northeast believed to be in error. To remove any uncertainty regarding its ability to meet the costs it proposed, Northeast therefore agreed to cap its costs. This would provide certainty to its proposed costs when evaluated against other proposals. This properly should be viewed, not as a “modification” to its proposal, but rather as a confirmation and clarification by Northeast of the cost component of its proposal, permitted under the tariff. To be sure, PJM could have just revised its estimate of Northeast’s costs to conform to the further information Northeast submitted, without giving rise to any claim that PJM allowed a bidder to “modify” its proposal. Obviously, in this circumstance, it was more beneficial to ratepayers to accept the confirmation and certainty to the cost estimate that Northeast’s proposed cost cap provided.

Moreover, PSEG hardly can claim it was prejudiced by this action. In fact, the Board allowed all of the other finalists in the solicitation the same, nondiscriminatory opportunity to clarify their costs. Except for one finalist, all other finalists, including PSEG, chose to include some form of a cost cap. Given the basis for Northeast’s action (responding to PJM’s use of a higher estimate) and the lack of prejudice to any other bidder, PJM’s allowing parties the option to clarify their cost proposals was both prudent and in the interests of the customers who ultimately will bear these costs.

As the Commission will discern from this Answer, the Artificial Island solicitation has been a fact intensive process. And it is not yet completed. If the Commission deems that PJM’s Order No. 1000 competitive solicitation applies and does not deny the Complaint outright, the Commission should defer action until after the completion of the Artificial Island solicitation. The Commission plainly would benefit from having all of the solicitation facts and outcomes available before addressing issues
regarding either the process or the selection of particular projects. Moreover, consideration of the facts surrounding PJM’s actions and decisions in the evaluation and selection process would enable the Commission to consider whether to defer to the independent Board’s judgments and determinations regarding the complex engineering facts, precisely why the Commission established RTOs with independent boards.

Further, a deferral would enable the Commission to better evaluate the appropriate remedy, if any, after considering the outcome of the solicitation and whether it produced just and reasonable results. Within a matter of months, PJM expects to complete the solicitation process, which will provide the Commission all of the information it needs to process the Complaint, if it determines that the Order No. 1000 tariff applies. If the Commission does not dismiss the Complaint because of the inapplicability of the Order No. 1000 tariff, it should announce that it is holding this matter in abeyance until the Artificial Island solicitation process is complete.

II. FACTUAL BACKGROUND

A. PJM Order No. 1000 Compliance Filings and Orders

On October 25, 2012, PJM submitted its initial Order No. 1000 compliance filing,\textsuperscript{15} in which it proposed a competitive solicitation process, whereby both incumbent transmission owners and non-incumbent developers could submit proposals for Regional Transmission Expansion Plan (“RTEP”) upgrades that would address reliability, economic, or public policy needs. PJM requested that the tariff revisions implementing this process become effective on a date that coincides with “the first 12-month and 24-

month planning cycle after issuance of a Commission order on [PJM’s] compliance filing.”

PJM further explained:

As the date of the Commission action is unknown, PJM commits herein that depending upon the stage of the planning cycle, PJM will implement whatever provisions proposed herein can be implemented without restarting a planning cycle mid-year so as not to ‘delay current studies being undertaken’ pursuant to PJM’s existing RTEP process or ‘impede progress on implementing existing transmission plans.’ PJM will clarify its exact transition upon receipt and review of the Commission’s final order on this compliance filing. As a result, 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. In the interim, PJM will implement our current RTEP process consistent with our tariffs.

On March 22, 2013, the Commission conditionally accepted PJM’s October 25 Filing, subject to a compliance filing. As part of that subsequent compliance filing, the Commission directed PJM to establish a date certain indicating the start of the next full 12-month and 24-month planning cycle, during which PJM’s proposed revisions would be effective, and to provide “further information regarding PJM’s transition to the revised regional transmission planning process, including an explanation of how PJM will evaluate transmission projects currently under consideration.”

In response to this directive, PJM stated, in its second Order No. 1000 compliance filing, that “the effective date of the Operating Agreement and Tariff revisions filed in the October 25 Filing will be January 1, 2014,” which coincides “with the beginning of the next 12-month and 24-month planning cycle following the issuance of [the March 22

16 October 25 Filing at 81.
17 October 25 Filing at 81-82 (emphasis added) (footnote omitted).
18 First Compliance Order.
19 First Compliance Order at P 34.
Order].”\textsuperscript{20} PJM further explained that because it was requesting a January 1, 2014 effective date, “solutions for reliability violations and economic constraints identified prior to that date will be evaluated \textit{under PJM’s current regional transmission planning process}.”\textsuperscript{21} PJM also reiterated that it was “implementing the new proposal window process” only “\textit{to the extent feasible and practicable} under its current process.”\textsuperscript{22} On May 15, 2014, the Commission affirmed the January 1, 2014 effective date and accepted PJM’s explanation as to how it would transition to its new Order No. 1000 process.\textsuperscript{23}

\textbf{B. The Artificial Island Solicitation}

\textit{1. The operational performance issues giving rise to the Artificial Island solicitation}

Artificial Island operational performance issues were identified by PJM during PJM’s 2012 and 2013 planning cycles. Artificial Island is a nuclear generation and transmission complex located in southern New Jersey consisting of three units with a total generating capacity of 3818 MW. To address performance issues, special operating procedures have been used to maintain stability in the area. However, the operating procedures have become increasingly difficult to implement while respecting other

\textsuperscript{20} July 22 Filing at 3 (alteration in original) (emphasis added) (footnotes omitted) (quoting First Compliance Order at P 32).

\textsuperscript{21} July 22 Filing at 3 (emphasis added).

\textsuperscript{22} July 22 Filing at 3 (emphasis added).

\textsuperscript{23} \textit{PJM Interconnection, L.L.C., 147 FERC ¶ 61,128, at P 22.}
operational limits on the system. Consequently, PJM identified the need for transmission enhancements.\textsuperscript{24}

2. \textit{The Artificial Island solicitation and evaluation}

Although its Order No. 1000 solicitation process was not yet in effect and the pre-existing transmission planning tariff rules continued to apply, PJM determined that the Artificial Island needs offered a good opportunity to try out its proposal window process. PJM expected that it would receive many proposals, whether or not it solicited them. It determined that using the Order No. 1000 proposal window process to the extent feasible would provide a beneficial structure for handling multiple proposals. Consequently, PJM opened an Artificial Island proposal window on April 29, 2013. The proposal window closed on June 28, 2013. During the proposal window, PJM received 26 proposals submitted by seven entities—VEPCo/Dominion Power, Transource/AEP, FirstEnergy, PHI/Exelon, Northeast Development/LS Power, Atlantic Wind, and PSEG. PJM posted these project proposals on its website at the close of the proposal window.\textsuperscript{25}

Consistent with its pre-Order No. 1000 planning process, PJM staff, in consultation with PJM’s Transmission Expansion Advisory Committee (‘‘TEAC’’), reviewed and evaluated the proposals. In consultation with the TEAC, PJM evaluated the project proposals to address reliability, efficiency, and cost concerns. This evaluation included: (i) the inclusion of the construction of an SVC, as proposed by some bidders,

\textsuperscript{24} The enhancements are not needed to address reliability violations, but rather operational performance issues, in order to eliminate cumbersome operating procedures and to provide greater flexibility in maintaining operating limits.

at a substation where it would be built and owned by PSEG, in the evaluation of proposals in order to improve stability performance; (ii) the relocation of the connection point within a substation in two proposals to eliminate a critical fault; (iii) the removal of breaker schemes proposed in some proposals in favor of a ring bus modification proposed by one of the bidders; and (iv) the removal of certain transmission lines from several proposals because, with the construction of an SVC, the additional facilities were not needed to pass applicable reliability criteria testing and therefore their removal would reduce costs and improve constructability.  

After receiving feedback from the TEAC, on June 16, 2014, PJM staff informed stakeholders that it planned to recommend to the Board (i) the approval of PSEG’s “7K” proposal, which (as modified by combining it with the construction of the SVC and the elimination of line segments proposed by PSEG but no longer required as a result) was a new 500 kV transmission line from Hope Creek to Red Lion and a 650MVAR SVC at New Freedom, and (ii) that PSEG be designated the responsibility to construct the Hope Creek to Red Lion 500 kV line (except for certain transmission owner upgrades to the Red Lion substation, which were assigned to PHI, the owner of the substation) and the new SVC at the New Freedom substation. PJM further provided a period for comments to the Board regarding its recommendation.

26 See Complaint, Attachment 7 (TEAC 5/19/14 Presentation) at 41-42.
27 Complaint, Attachment 10 (6/16/14 TEAC Presentation (excerpt)) at 36.
28 Id., Attachment 10 at 32-35.
29 See Complaint, Attachment 7 at 198, Attachment 10 at 4.
Several parties submitted comments to the Board. Among the comments were those of Northeast. Northeast challenged the cost estimate that PJM staff used in evaluating its project (“LS Power Solution”):

It appears that [PJM] Staff’s recommendation was founded upon the conclusion that the [PSEG 7K proposal] and the LS Power Solution are equivalent to each other from a cost standpoint. This conclusion was simply incorrect and inconsistent with the information presented by the independent consultants engaged by Staff. While PSE&G estimated the cost of its project to be $297 million and we estimated the upper end of the LS Power Solution to be $148.6 million, the Staff attributed construction costs in the range of $211 - $257 million for either project.  

In an effort to ensure that PJM used Northeast’s original estimate in the cost comparisons and to eliminate uncertainty on this point, Northeast offered to clarify its costs by including a cost cap:

In order to remove any cost uncertainty from the selection process, and to guarantee that the ratepayers receive the benefit of the real and material cost advantages offered by the LS Power Solution, we will agree to cap the construction cost of the LS Power Solution (overhead or submarine) at $171 million.  

The New Jersey Board of Public Utilities filed comments supporting the LS Solution with the price cap.  

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At its July 22, 2014 meeting, the Board decided to defer action on the various proposals. PJM sent a letter to the TEAC members explaining that Northeast had offered to place a fixed cap on the costs associated with its project and that it would invite the four finalist bidders—PSEG, Transource/AEP, LS Power, and Dominion—to make submissions to further clarify their respective project costs in light of LS Power’s cost cap.33

On August 12, 2014, PJM sent a letter to the finalist bidders inviting them, if they desired, to clarify their proposals to submit final terms of project costs.34 The letter stated that, if the finalists wanted to supplement their proposals in terms of cost, they “must include sufficient detail for PJM to evaluate the details of its cost proposal, including the specific details surrounding any costs cap that a proposer wishes to submit.”35

(continuation)


33 Complaint, Attachment 13 (PJM Letter to TEAC Members (7/23/14)) at 1. The Board also determined it was appropriate to seek additional information regarding the Dominion proposal based on comments it had received from Dominion. Complaint, Attachment 14 (PJM Letter re: Artificial Island Supplemental Proposal Request (8/12/14)) at 1 n.1.

34 Complaint, Attachment 14 at 1-2. PJM identified the following five projects as the finalists: (1) Dominion 1A (TCSC/SVC); (2) Dominion Project 1C (Hope Creek to Red Lion 500 kV line); (3) Transource 2B (Southern Crossing 230 kV – submarine); (4) LS Power 5A (South Southern Crossing 230 kV – submarine); and (5) PSE&G 7K (Hope Creek to Red Lion 500 kV line). See id., Attachment 14 at 1. PJM limited submissions to the four finalist bidders because it had determined that the other proposals could not adequately address the operational performance needs.

35 Complaint, Attachment 14 at 2.
The four finalists submitted their five proposals on September 12, 2014. Northeast, Transource/AEP, and PSEG each offered a cost cap, while Dominion declined to include a cap for either of its two finalist proposals.\textsuperscript{36} To ensure fairness, PJM sought from the Chief Administrative Law Judge the services of an Administrative Law Judge as a non-decisional observer of PJM’s further evaluation of the proposals.\textsuperscript{37} The Chief Judge appointed Judge Steven L. Sterner, who oversaw “fact-finding” sessions regarding each of the four finalists. Judge Sterner obtained the approval of each of the finalists, including PSEG, to participate in this part of the process. During these sessions, PJM discussed with each finalist its submitted proposal. Judge Sterner observed these discussions, and on December 3, 2014, he published his report on the discussions, finding that “[t]he fact gathering process was fair,” “PJM treated each bidder equally,” and “[e]ach bidder was afforded due process.”\textsuperscript{38}

On December 9, 2014, the four finalist bidders made additional presentations to the TEAC regarding their proposals to permit stakeholders to ask any remaining questions of the proposers.\textsuperscript{39}

PJM and its Board are continuing to evaluate the proposals, and no decisions have been made.

\textsuperscript{36} Complaint, Attachment 16 (TEAC 12/9/14 Presentation) at 22.

\textsuperscript{37} See Complaint, Attachment 15 (PJM Letter to FERC re: Artificial Island Solicitation Appointment of Facilitator, Docket No. MD14-1 (8/29/14)).

\textsuperscript{38} See Artificial Island Order 1000 Transmission Solicitation, 149 FERC ¶ 63,017, at Findings (G), (H), (J) (2014) (“Status Report”).

C. The PSEG Complaint

On January 29, 2015, long after the Board requested additional submissions from the bidders, PSEG filed its Complaint claiming that PJM did not follow its competitive solicitation tariff to the letter in conducting the Artificial Island solicitation. PSEG contends that PJM failed to follow its Order No. 1000 competitive solicitation tariff because it (i) unilaterally “modified” the Artificial Island proposals rather than just evaluating and comparing them, and (ii) allowed a proposer to modify its proposal to add a cost cap.40

On February 13, 2015, PJM moved to dismiss the Complaint and to postpone the answer date.41 PJM requested that the Complaint be dismissed with prejudice for failure to state a valid claim on the grounds that the competitive solicitation tariff was not in effect at the time that the Artificial Island solicitation commenced and therefore did not apply to the solicitation. In the alternative, PJM requested that the Complaint be dismissed as premature because PJM is still evaluating the competing project proposals and no selection of any entity to build facilities has yet occurred.42

On March 4, 2015, the Commission denied PJM’s motion to dismiss, without prejudice, concluding that “the Commission will benefit from a full record that addresses the allegations in the Complaint.”43 The Commission required PJM’s answer by

40 See, e.g., Complaint at 2-3.
41 Motion to Dismiss Complaint and Postpone Answer Date of PJM Interconnection, L.L.C., Docket No. EL15-40-000 (Feb. 13, 2015) (“Motion to Dismiss”).
42 Motion to Dismiss at 8-10.
March 11, 2015. The Commission specifically acknowledged that its denial of PJM’s motion was merely procedural, stating that its decision “does not prejudge any future Commission decisions with respect to the matters at issue in this proceeding.”

III. PJM HAS CONDUCTED AND CONTINUES TO CONDUCT THE ARTIFICIAL ISLAND SOLICITATION IN A PROPER MANNER

The premise of PSEG’s Complaint is that PJM did not follow its Order No. 1000 competitive solicitation process in conducting the Artificial Island solicitation. This claim fails for several reasons. First, the Artificial Island solicitation opened prior to the effective date of the Operating Agreement and Tariff provisions that establish PJM’s new competitive solicitation tariff, and therefore PJM is not bound to the new tariff provisions. Second, PJM has conducted the Artificial Island solicitation consistently with its Commission-approved transition for implementing its Order No. 1000 process. As it promised, PJM is evaluating solutions to a system condition identified prior to January 1, 2014, using “the new proposal window process to the extent feasible and practicable under its current process.” Finally, even if somehow PJM’s not yet effective Order No. 1000 competitive process were deemed to apply to the Artificial Island solicitation, PJM is processing the solicitation consistently with the new competitive solicitation tariff.

A. The Order No. 1000 Solicitation Process Was Not Effective Until January 1, 2014, and Therefore PJM Cannot Be Bound to It in Addressing the Artificial Island Needs

In its initial filing to comply with Order No. 1000, PJM explained that to accommodate the new Order No. 1000 process, it was formalizing two planning cycles, a

44 Id. at P 19.
45 July 22 Filing at 3 (emphasis added); accord October 25 Filing at 81-82.
46 October 25 Filing.
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.” 47 PJM also stated that “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.” 48 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,” 49 but that, in the interim, PJM would implement its “current RTEP process consistent with our tariffs.” 50

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 cycles following the date of the order. 51 It 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.” 52 In response, PJM established an effective date of January 1, 2014, for the revisions implementing PJM’s

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47 October 25 Filing at 81.
48 Id. at 82 (emphasis added).
49 Id.
50 Id.
51 First Compliance Order at P 32.
52 First Compliance Order at P 32; see also id. at P 34.
Order No. 1000 solicitation window process.\textsuperscript{53} It 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{54} Thus, while PJM re-iterated that it would implement the new proposal window process “to the extent feasible and practicable” during the transition to the Order No. 1000 process, it also made clear that the implementation would be “under its current process.”\textsuperscript{55} The Commission accepted PJM’s transition plan as compliant with its directives.\textsuperscript{56}

It is undisputed that PJM opened the Artificial Island solicitation window on April 29, 2013,\textsuperscript{57} eight months prior to the January 1, 2014 effective date of PJM’s Order No. 1000 planning process revisions. The needs giving rise to the Artificial Island solicitation 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.”\textsuperscript{58}

\begin{footnotesize}
\begin{enumerate}
\item July 22 Filing at 3.
\item Id. (emphasis added).
\item Id. (emphasis added); see also October 25 Filing at 81-82.
\item \textit{PJM Interconnection, L.L.C.}, 147 FERC ¶ 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.”).
\item See Complaint at 12.
\item July 22 Filing at 3.
\end{enumerate}
\end{footnotesize}
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 . . .”); 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.”).59

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.”60 Recognizing that “the issuance of this Final Rule is likely to fall in the 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.”61 PJM did just that, stating in its compliance filings that

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59 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).

60 Order No. 1000 at P 65 (emphasis added).

61 Id.
“solutions for reliability violations . . . identified prior to [January 1, 2014] will be evaluated under PJM’s current regional transmission planning process.” 62 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 to bring an organized structure to the process and to “try out” the procedures, 63 it is not bound to every particular of the Order No. 1000 process that did not become effective until January 1, 2014.

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 suggests, constitute a post-January 1, 2014 “reevaluation” under Order No. 1000 that “triggered” PJM’s post-January 1, 2014 “formal tariff process.” 64 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 project designation 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,

62 July 22 Filing at 3 (emphasis added).
63 See supra note 5.
64 Complaint at 28.
economic, or operational performance needs.\textsuperscript{65} There are no RTEP-approved transmission facilities that PJM is “reevaluating” here. The \textit{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. Rather, “solutions for reliability violations . . . identified prior to [January 1, 2014] will be evaluated under PJM’s current regional transmission planning process.”\textsuperscript{66} In short, there cannot be a “re-evaluation” of an approved project, when the initial evaluation is not yet completed.

In Order No. 1000, the Commission recognized that transmission planning is a rolling process and that the changes proposed in 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 the Order No. 1000 tariff and continued after the effective date would be subject to the new rules. In its Commission-approved transition, PJM made clear that, while prospectively it would evaluate violations identified after January 1, 2014, under its competitive solicitation tariff, for violations identified in a

\textsuperscript{65} See, e.g., Operating Agreement, Schedule 6 § 1.5.7(c)(iii) (permitting reevaluation of an existing RTEP reliability-based enhancement or expansion to determine whether, if modified, it would relieve an economic constraint); \textit{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). \textit{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).

\textsuperscript{66} July 22 Filing at 3 (emphasis added).
planning cycle 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. 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. PJM followed both the filed rate and its Order No. 1000 transition 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 denied.

B. PJM Is Conducting the Artificial Island Solicitation Properly Under Its Pre-Existing Planning Process

PJM’s pre-Order No. 1000 process contemplates opportunities for stakeholder participation in the planning process, including opportunities for non-incumbent, third

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67 Indeed, while the evaluation of competing competitive proposals undertaken over many months by PJM has been a “learning process” for all involved, it arguably also exposed certain practical implementation questions that the current Order No. 1000 paradigm offers insufficient direction in resolving. Concluding the Artificial Island solicitation process will offer opportunity for an examination of these sorts of questions by the industry and the Commission.

68 See, e.g., Operating Agreement, Schedule 6 § 1.5.6(a) (“The Regional Transmission Expansion Plan, including the Regional RTEP Projects, the Subregional RTEP Projects and the Supplemental Projects shall be developed through an open and collaborative process with opportunity for meaningful participation through the Transmission Expansion Advisory Committee and the (Cont’d . . .)
parties to propose and construct transmission facilities to be included in the RTEP. Prior to any PJM Order No. 1000 compliance filing, the Commission directed PJM to “allow third parties to construct and own new transmission facilities.” More than a decade ago, the Commission found that “PJM would have to modify Schedule 6 of the [Operating Agreement] to create a planning process that gave full consideration to all market perspectives and identifies expansions that are critically needed to support competition as well as reliability needs and included meaningful opportunities for participation by third parties.” The Commission acknowledged in Primary Power that PJM’s pre-Order No. 1000 transmission planning process includes the ability of PJM to designate third parties as entities to construct a project included in the RTEP.

(continuation)

Subregional RTEP Committee.”; id., Schedule 6 § 1.5.6(e) (“The Transmission Expansion Advisory Committee shall facilitate open meetings and communications as necessary to provide opportunity for the Transmission Expansion Advisory Committee participants to collaborate on the preparation of the recommended enhancement and expansion plan.’).

PJM Interconnection, L.L.C., 96 FERC ¶ 61,061, at 61,235 (2001) (provisionally granting RTO status and requiring PJM to revise Schedule 6 to permit third parties to participate in constructing and owning new transmission facilities identified in RTEP), order on reh’g, 101 FERC ¶ 61,345 (2002).

PJM Interconnection, L.L.C., 101 FERC ¶ 61,345, at P 20 (internal quotation marks omitted).

Primary Power at 62 (“We find that the PJM Tariff permits, but does not require, PJM to designate Primary Power, an entity other than an incumbent transmission owner, as the entity to build Grid Plus if this project is included in the RTEP as a baseline reliability project or economic project. PJM must designate projects under the relevant tariff provisions in a not unduly discriminatory manner, whether sponsored by transmission owners or others.”); see also Primary Power Rehearing at P 35 (“The Commission affirms the April 13 Order finding that the PJM OATT and Operating Agreement do not prohibit PJM from designating an entity other than an incumbent transmission owner to build and own an economic enhancement if the developer’s proposal is approved in the RTEP.”).
Given the flexibility built into PJM’s pre-Order No. 1000 planning process to consider and designate proposed projects from stakeholders, PJM was able to try out its Order No. 1000 competitive solicitation process to the extent feasible and practicable under its pre-Order No. 1000 planning process to address the Artificial Island needs. But because the Artificial Island solicitation is part of PJM’s transition to its competitive solicitation process, it is still being conducted under its pre-Order No. 1000 tariff and the standards embodied therein. Under that tariff, as the Commission stated in Primary Power, PJM must “designate projects under the relevant tariff provisions in a not unduly discriminatory manner, whether sponsored by transmission owners or others.” PJM acted properly when it used the competitive solicitation process to obtain proposals, and then non-discriminatorily considered those proposals it received, developing solutions based on the input it received, a process that it has used as part of its Order No. 890-approved regional planning process. This was particularly appropriate to address the highly complex Artificial Island needs.

PJM has been fair and transparent in conducting the Artificial Island solicitation. As evidenced by the extensive slide presentations to the TEAC attached to the Complaint, PJM provided: (i) timelines for the solicitation, (ii) the objectives of its evaluation, (iii) a description of its approach to evaluating the proposals, (iv) the primary and secondary considerations in the evaluation and the modifications it believed necessary to each proposal to improve performance or reduce cost and improve constructability, (v) the

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72 Primary Power at P 62.
results of its evaluation as it applied to each proposal, and (vi) evaluation updates.\(^{73}\) PJM staff also provided the TEAC with a detailed explanation of its initially planned recommendation of the PSEG 7K proposal for inclusion in the RTEP and provided opportunity for comments to the Board regarding the recommendation.\(^{74}\)

Once the Board received comments, including Northeast’s explanation regarding the cost estimate in its proposal and its commitment to cap its costs, PJM allowed all of the finalists to make further submissions and in particular address their cost commitments. This ensured nondiscriminatory consideration of the proposals. PJM also sought out on its own initiative an administrative law judge to observe and report on PJM’s evaluation process relating to the proposals.\(^{75}\) All of these actions were designed to ensure the fairness and transparency of the Artificial Island solicitation and the nondiscriminatory consideration of proposals.

None of the allegations of the Complaint demonstrates a failure of PJM to seek to “designate projects under the relevant tariff provisions in a not unduly discriminatory manner.”\(^{76}\) When PJM determined that it would be more cost effective to consider proposals in conjunction with the construction of an SVC at an existing substation, it considered all of the projects in that light. Each proposal was evaluated with the SVC, and where proposed facility elements were no longer needed when combined with the

\(^{73}\) See, e.g., Complaint, Attachment 7, Attachment 8 (TEAC 12/11/13 Presentation (excerpt)), Attachment 10.

\(^{74}\) See Complaint, Attachment 10.

\(^{75}\) The judge found that “[t]he fact gathering process was fair.” Status Report at Findings (G).

\(^{76}\) Primary Power at P 62.
SVC, they were eliminated non-discriminatorily from each of the proposals. Where one bidder clarified the costs in its bid and offered to cap its costs, PJM non-discriminatorily provided opportunity for all of the finalist projects to similarly address their costs.

Notably, the Complaint makes no claim that the process PJM is following would transgress the pre-existing transmission planning tariff provisions.

C. Even if PJM’s Order No. 1000 Competitive Solicitation Tariff Were Deemed to Apply to the Artificial Island Solicitation, PJM Is Proceeding Consistently with That Tariff

While the Commission need not address the Order No. 1000 competitive solicitation tariff with regard to the Artificial Island solicitation, even if it determines that PJM was bound to that yet-to-be-effective tariff, PJM has complied with it. PSEG’s claims to the contrary present an unreasonable and irrationally restrictive reading of the tariff.

PSEG asserts that PJM violated its Order No. 1000 process in two “fundamental” ways: (i) by “unilaterally modif[y]ing each proposal, rather than, as required, evaluating them and selecting the best proposal or, if none qualified as such, reposting the solicitation;” and (ii) by allowing Northeast “to modify its proposal more than one year after the proposal window closed and after PJM staff had recommended another proposal.” 77 Both of these assertions lack merit.

1. PJM did not impermissibly modify the Artificial Island project proposals

Section 1.5.8(d) of Schedule 6 of the Operating Agreement states that PJM “shall review all proposals submitted during a proposal window and determine and present to

77 Complaint at 20.
the [TEAC] the proposals that merit further consideration for inclusion in the recommended plan.”78 Consistent with this section, PJM evaluated the project proposals received in the Artificial Island proposal window and ultimately presented five proposals to the TEAC for consideration.

PSEG alleges, however, that PJM exceeded its authority under this section because it conducted more than just a review, and instead “unilaterally modified all proposals” by adding SVCs and changing the configuration of some projects by deleting line segments or changing connection points, which the tariff does not authorize it to do.79 PSEG also seems to suggest that, under the competitive solicitation tariff, if no project proposal is perfect, PJM’s only recourse is to repost the violations and open a new proposal window, or if time does not allow, to craft a solution and designate the incumbent to construct, rather than working with project proposals that present adequate solutions.80

PSEG’s interpretation is an unreasonably restrictive reading of the competitive solicitation tariff provisions and flies in the face of prudent transmission planning. The Order No. 1000 competitive solicitation process was designed to enhance, not supplant, the public review and development of transmission solutions that has existed under Order No. 890. By contrast, PSEG would straitjacket planners into considering only the precise projects submitted, without any variation whatsoever. Such an outcome would not serve consumers and would represent a step backwards from the kind of holistic, independent

78 Operating Agreement, Schedule 6 § 1.5.8(d); see also Complaint at 21.
79 Complaint at 21.
80 Complaint at 21 (citing Operating Agreement, Schedule 6 § 1.5.8(g)).
RTO consideration of alternatives that the Commission has sought from the planning process dating back to Order No. 2000 and through to Order No. 890 and Order No. 1000.

At issue is the reasonable interpretation of Section 1.5.8(g) of the competitive solicitation tariff, which provides that if PJM “determines that none of the proposed Long-lead Projects received during the Long-lead Project proposal window would be the more efficient or cost-effective solution to resolve a posted violation, or system condition,” PJM “may re-evaluate and re-post on the PJM website the unresolved violations, or system conditions pursuant to Section 1.5.8(b), provided such re-evaluation and re-posting would not affect” PJM’s ability “to timely address the identified reliability need.”

PSEG’s interpretation of this provision would mean that, in PJM’s evaluation of proposed projects, any change whatsoever by PJM to a project is absolutely prohibited. If PJM cannot conclude that a precise project as proposed is the more efficient or cost-effective solution, it must repost the violation (or give the project to an incumbent if there is no time to repost). Because transmission planning is as much an art as a science, if this interpretation were accepted, PJM would never use any judgment in addressing proposals and instead would be engaged in interminable, never-ending solicitations until someone proposed a picture perfect project that without any modification would meet the specified system needs. The practical consequence, as incumbent PSEG no doubt realizes, is that PJM very often would be left with no choice but to assign its own crafted project to an incumbent because of a lack of time to continually repost and rebid. That is completely inconsistent with the goals of Order No. 1000.
A far more reasonable interpretation of the tariff is that, in evaluating potential projects, PJM must determine whether the fundamental elements of a proposed project provide, as directed by the tariff, a “more efficient or cost-effective solution” to the system need. The tariff should not be interpreted so restrictively as to prevent even a single modification to a proposal to address reliability, efficiency, and cost issues. If modifications are required, that do not change the fundamental nature of the proposed project, PJM should be permitted to address them without having to repost the violation and start the process over again (or assign a project to an incumbent).

For example, consider a proposal submitted to meet a posted reliability violation that consists of three line segments. During the evaluation of proposals, PJM determines only two of the segments are actually needed to more efficiently or cost-effectively solve the reliability violation. It would make no sense for PJM to determine that the proposed project does not present a “more efficient or cost-effective” solution—because in fact it does. The need for a “modification”—removing one line segment—would not change the project so fundamentally as to transform it into a new project or into one that does not meet the criteria as a more efficient or cost-effective solution, requiring PJM to repost and rebid (or assign the project to an incumbent). Nor should PJM nonsensically be required to accept the project as is with all three line segments (for example, where it is the lowest cost bid). That would mean the sponsor would have to present to state siting authorities an overbuilt project, and the Commission would have to accept the costs of the overbuilt project in PJM’s transmission rates. Obviously, the right answer is to consider the proposal without the unnecessary line segment.

By the same token, if it is reasonable for PJM to modify a proposal that presents a more efficient or cost-effective solution by removing a transmission element to reduce
construction costs (and thus avoid over-building), it should be equally reasonable for PJM to add an element to a proposal to more effectively or efficiently meet a system condition. To illustrate, in the above example, if PJM determined that the above three-line proposal was insufficient to protect reliability, but the addition of another one-mile line segment would cure the problem, PJM should be able to select that project as the more efficient or cost-effective solution, but direct the construction of four instead of three line segments. Again, this modest modification does not change the fundamental nature of the proposed project and should not trigger reposting and submission of new proposals (or assignment of the project to an incumbent).

In addition, the tariff expressly permits PJM to accept a combination of different proposals. Section 1.5.8(e) of Schedule 6 of the Operating Agreement provides that in evaluating whether proposed projects meet the criteria as the more efficient or cost-effective solutions, PJM shall evaluate the projects “individually or in combination with other” projects. Thus, if one bidder proposes transmission elements, which in combination with another proposal can be reduced in size by combining the proposals, then PJM is permitted to accept elements of each proposal “in combination” to produce the more efficient or cost-effective solution.\footnote{See 
\textit{PJM Interconnection, L.L.C.}, 150 FERC ¶ 61,117, at P 49 (2015) (“[I]f the more efficient or cost-effective solution would be to combine two separately proposed projects, those projects could be combined; and if discrete elements of the combined project could be designated to the respective proposers, PJM intends to do so.” (quoting Joint Response to Deficiency Notice and Amendment to Filings of PJM Interconnection, L.L.C., Docket Nos. ER14-2864-000, et al., at 3-4 (Dec. 23, 2014))).}

In the Artificial Island proposals under consideration, PJM staff determined that an SVC proposed by some bidders added to an existing transmission owner’s (PSEG)
substation, in combination with the transmission line proposals of each of the finalist bidders, would produce a sound solution. Considering each of the proposals in combination with the construction of the SVC resulted in each of the proposals being a more viable solution to the operating performance needs. This is precisely the type of “combination” and modification that transmission planners in their engineering judgment should be able to make in the evaluation process to ensure reliable and more efficient or cost-effective solutions.

PJM did not “add” an SVC to each proposal, as PSEG contends. Rather, it combined a bidder-proposed SVC, but placing it in an existing PSEG substation, with other proposals. PJM staff determined that PSEG should construct the SVC, because PJM proposes, for operational performance reasons, to place it in an existing substation; therefore, it is classified as a “Transmission Owner Upgrade” that under the tariff is always assigned for construction and ownership to the incumbent transmission owner.

Without the construction of an SVC, the only proposed solutions that PJM could have selected would have cost in excess of $1 billion. In contrast, with the construction of an SVC, and combined with other line proposals, PJM could reduce the costs of the Artificial Island solution by approximately 75%. It would obviously be an unreasonable reading of the tariff, if this were precluded. If PJM selected a project costing four times more than what it could have been had PJM made cost-effective and efficient

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82 *See Complaint at 21.*

83 “Transmission Owner Upgrade” is defined as “an upgrade to a Transmission Owner’s own transmission facilities, which is an improvement to, addition to, or replacement of a part of, an existing facility and is not an entirely new transmission facility.” Operating Agreement § 1.46 (Definitions S-T).

84 *See Operating Agreement § 1.46 (Definitions S-T); id., Schedule 6 § 1.5.8(l).*
modifications and combinations, PJM would fail in its basic function as the transmission planner and simply could not provide the required testimony to state siting and other regulatory authorities that the over-priced selected project was “necessary.” Nor could the Commission ever justify placing costs that are four times what they need to be in transmission rates.

Indeed, PSEG’s initial proposal contained substantial and costly facilities that PJM staff deems unnecessary to the solution once an SVC or an optical ground wire is combined with PSEG’s proposal. In evaluating the proposals, PJM removed some 75% of the project costs that PSEG initially proposed, by combining and modifying its proposal. PSEG raised no concerns about those modifications when PJM staff recommended its PJM-modified proposal over others. Only when the Board decided to defer consideration of the PJM Staff’s recommendations did PSEG decide that its selection was at risk and the process was flawed.

Aside from considering the proposals in combination with the construction of an SVC, and removing resulting unnecessary line segments from proposals as a result, PJM only made minor other modifications to proposals. It minimally relocated line connection points, changed breaker configurations by using the best proposed breaker configuration in combination with all of the other proposals, re-sized a proposed SVC, considered minor re-routings, and added spare parts to a proposal. These adjustments are the type of modifications transmission planners should be able to make to ensure the efficiency and reliability of a project so that it can be considered a more efficient or cost-effective solution under the tariff. Indeed, some of these modifications are the type of changes that in the ordinary planning process would be made after the selection of a project and while it was in the detailed design phase. If PJM added spare parts to a
proposal after it was selected and during the design phase, or re-routed a line because of engineering concerns during the design phase, would PJM have to repost and rebid the project because it “modified” the proposal? Obviously not. Nor should such “modifications” be prohibited while considering the project to select.

What is more, the tariff was designed to prohibit bidders from redesigning their projects through new submissions to avoid gaming and a never-ending re-submittal process. But the tariff should not be read unreasonably to prohibit PJM from combining and refining proposals to produce a “more efficient or cost-effective” solution. PJM did not design a solution out of whole cloth. It properly and consistently with the tariff combined elements of submitted proposals and made necessary modifications (elimination of unnecessary elements) resulting from the combinations.

The flexibility to make such changes to proposals is essential to efficient and effective transmission planning. Without it, the planning process could go on forever, without resolution, if every posted need had to be addressed by a perfectly proposed project. It would lead to endless re-postings, and no doubt result in assignment of numerous projects to incumbents for lack of time to complete a proposal window process. Such a result could chill participation by nonincumbent developers—a result that is contrary to the principles of Order No. 1000. Alternatively, PJM would end up “signaling” what is needed through the evaluation process and transparent discussions with the TEAC, repost, and ultimately receive the identical “perfect” proposal from all

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85 Operating Agreement, Schedule 6 § 1.5.8(c)(14) (“In response to the Office of the Interconnection’s request for additional reports or information, the proposing entity . . . may not submit a new project proposal or modifications to a proposed project once the proposal window is closed.”).

86 See, e.g., Order No. 1000 at P 47.
the bidders, contrary to the sponsorship model that PJM adopted in order to receive a variety of proposals from bidders.

PSEG alleges that PJM may be contemplating further “unilateral modifications” to proposals by “considering taking two important features from PSE&G’s 7K proposal—optical ground wire installation and optimization of generator step up (“GSU”) tap adjustments—and adding those features to the remaining proposals to make them more attractive.”\(^{87}\) That is not “adding” these facilities to other proposals, as PSEG contends. It is “combining” proposals. Like the SVC, PSEG will be the only party that could be designated to construct the optical ground wire facilities, as they would be additions to existing facilities and would be classified as a “Transmission Owner Upgrade” that must be designated to the incumbent transmission owner.\(^{88}\)

If PSEG is correct that PJM is unable to combine elements of proposals, as it is considering here with the SVC and the optical ground wire, then any time an efficient and reliable transmission element critical to a solution is proposed by and can only be built by an incumbent transmission owner, every aspect of the solution would have to be assigned to the incumbent. Undoubtedly, the Commission did not intend this exclusionary result that would leave non-incumbent developers on the sidelines.

If the Commission determines that PJM’s Order No. 1000 process applies to the Artificial Island solicitation, it should affirm under PJM’s competitive solicitation tariff: (i) PJM may combine elements of proposed projects in determining the more efficient or cost-effective overall solution to address posted system needs; (ii) PJM has the flexibility

\(^{87}\) Complaint at 20.

\(^{88}\) See Operating Agreement § 1.46 (Definitions S-T); id., Schedule 6 § 1.5.8(l).
to make adjustments to a proposed project that do not change the fundamental nature of
the project in order to best address system needs, costs, and reliability; and (iii) PJM’s
selection of a modified or combined project for inclusion in the RTEP is consistent with
the competitive solicitation tariff. 89

2. *Northeast did not impermissibly modify its proposal by adding a cost cap*

PSEG also alleges that PJM violated its competitive solicitation tariff by allowing
Northeast to modify its proposal by adding a cost cap. 90 Specifically, PSEG asserts that
Northeast’s “addition of a cost cap to its Southern Crossing 230 kV proposal—which LS
Power made more than one year after the window closed—was a clear modification to LS
Power’s proposal.” 91 PJM disagrees.

As Northeast explained in its response in support of PJM’s motion to dismiss, 92
“Northeast Transmission proposals had cost estimates ranging from $116 million to $148
million depending on whether the overhead or submarine option was selected.” 93
However, in its evaluation, PJM had adjusted the costs of Northeast’s proposals upwards
to reflect what it believed would be the likely actual costs. Northeast accurately states:

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89 If the Commission acts on the Complaint prior to the completion of the
solicitation, it should not opine on specific project designs related to the Artificial
Island solicitation. There has been no selection of a project yet. Whether PJM
could or could not consider some of the combinations and modifications may be
moot once PJM selects a final project.

90 Complaint at 23-24.

91 Complaint at 24.


93 Northeast Transmission Response at 9-10.
PJM Staff asserted that the costs of the LS Power proposal and the Staff recommended proposal were equivalent, notwithstanding the difference in cost estimates in the respective original proposals of almost $150 million. PJM estimated the cost of either project as $211 million to $257 million. To arrive at the equivalent costs, PJM Staff raised the cost estimate for the Northeast Transmission proposal by nearly $100 million and lowered the cost estimate for the Staff preferred, PSE&G assigned, solution more than $85 million below the project proposer’s cost estimate.\footnote{Northeast Transmission Response at 10 (footnote omitted).}

As part of its evaluation of proposed projects, PJM necessarily must evaluate the cost estimates provided by the project sponsors. Otherwise, proposers could submit any costs, be selected, and then simply get paid for the cost increases they experience. Absent a commitment to cap costs, nothing would preclude PJM ratepayers from paying the cost overruns. Therefore, PJM staff attempts to place bid costs under a common framework.

In this case, Northeast disagreed with the cost estimate that PJM used to evaluate its project. Since Northeast questioned the PJM cost estimate and offered to cap its costs, the Board reasonably concluded that, for purposes of evaluating competing proposals, it should accept Northeast’s clarification of its cost estimate, backed by a commitment not to exceed those costs. Northeast’s cost cap should not constitute an improper modification to the proposal, but rather should be considered what it really is—a confirmation of the cost element of the proposal.\footnote{See Northeast Transmission Response at 12-13.} After all, based on Northeast’s representations, PJM could have just lowered its cost estimate for the Northeast project without a cost cap. Then there plainly would be no “modification” of the proposal. But
since Northeast offered the cost cap, it only made sense for PJM to accept the protection that it would bring PJM ratepayers.

Nonetheless, recognizing the situation in which accepting the cost cap might place other proposals, the Board determined to let any other finalists also further address their cost proposals, including adding cost caps. PJM therefore mitigated any conceivable harm that might have been caused by the Board accepting Northeast’s cost cap. In fact, all but one finalist (including PSEG) included some form of cost cap in their supplemental submissions. There simply is no harm or unfairness resulting from Northeast’s comments to the Board that removed uncertainty with regard to the cost component of its proposal by agreeing to a cost cap.

IV. THE COMMISSION SHOULD NOT ADOPT PSEG’S DRACONIAN REMEDY

The Commission has substantial discretion in crafting remedies for tariff violations, if it finds them. As the courts and the Commission have consistently found, the Commission’s discretion and authority are “at its zenith” when it is fashioning remedies.96 While PJM believes no remedy is appropriate here because it acted in a

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96 See Consol. Edison Co. of N.Y. v. FERC, 510 F.3d 333, 339 (D.C. Cir. 2007) (stating agency discretion is often at its zenith in deciding remedies, and noting that the remedial discretion applies even in the face of statutory or tariff violations); Towns of Concord v. FERC, 955 F.2d 67, 73-76 (D.C. Cir. 1992) (describing FERC’s discretion not to order refunds even when there has been a violation of the filed rate doctrine, and noting that the FPA “quite clearly confers” FERC with remedial discretion to decide whether refunds are warranted); Midwest Indep. Transmission Sys. Operator, Inc., 117 FERC ¶ 61,113, at PP 92-93 (2006) (granting rehearing of prior determination that refunds are not required, stating “[t]he Commission enjoys broad remedial discretion, ‘even in the face of an undoubted statutory violation’”), order on reh’g, 118 FERC ¶ 61,212, at PP 87, 95 (2007) (denying rehearing of prior finding and stating that when “faced with a public utility’s violation of its own tariff, the Commission must examine the factual situation, balance the equities, and craft an appropriate remedy”).
manner consistent with both its pre-existing tariff and its Order No. 1000 tariff, if the Commission determines otherwise, it need not adopt PSEG’s proposed remedy and has broad discretion to fashion an appropriate remedy.

PSEG would have the Commission throw out two years of PJM work and restart the entire solicitation process with a new posting and new bids, but the Commission is not required to up-end the process in this manner. On numerous occasions when addressing alleged RTO non-compliance with its tariff, the Commission has exercised its discretion not to upset processes that have already occurred. Rather, the Commission has directed future changes to RTO processes and instructed RTOs how to proceed in subsequent cases.97

Here, if the Commission determines that PJM acted in a flawed manner, the Commission should instruct PJM how to proceed in future cases or, if appropriate, require amendments to the tariff to clarify PJM’s role in the solicitation process. It should not cast aside the solicitation process that will be complete in a matter of months. Particularly if the Commission determines that the proposal that PJM selects produces

97 See, e.g., Midwest Indep. Transmission Sys. Operator, Inc., 117 FERC ¶ 61,113, at PP 45, 92-95 (determining that MISO had violated its tariff, but granted rehearing of the refund requirement, stating that requiring refunds would introduce uncertainty to the market and harm market participants that acted in reliance on MISO’s interpretation of its tariff; the Commission noted that it approved a prospective modification to the MISO tariff.); Midwest Indep. Transmission Sys. Operator, Inc., 118 FERC ¶ 61,212, at P 95 (“[F]aced with a public utility’s violation of its own tariff, the Commission must examine the factual situation, balance the equities, and craft an appropriate remedy.”); N.Y. Indep. Sys. Operator, 110 FERC ¶ 61,244, at PP 63-64 (2005) (finding that the New York ISO had violated its tariff in not separately pricing spinning reserves and non-spinning reserves, but declining, based on a balancing of the equities, to order refunds for the violation period; the Commission in another order allowed prospective changes to the pricing methodology).
just and reasonable results in this case, it should not direct PJM to start over. The Commission’s exercising its discretion in this case is particularly appropriate given that this is PJM’s first use of a solicitation window.

V. IF THE COMMISSION DOES NOT DENY THE COMPLAINT, IT SHOULD DEFER ACTION UNTIL AFTER PJM COMPLETES THE ARTIFICIAL ISLAND SOLICITATION

In the event that the Commission does not deny the Complaint on the basis that PJM’s competitive solicitation tariff does not apply to the Artificial Island solicitation, it should defer action on the Complaint until after the completion of the Artificial Island solicitation. The Commission routinely declines to take action while a relevant process is still on-going.98 A deferral is appropriate here because the Commission would clearly benefit from having all of the solicitation facts and outcomes available before addressing issues regarding either the solicitation process or the selection of particular projects to meet the Artificial Island needs.

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98 See Wis. Pub. Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc., 114 FERC ¶ 61,277, at P 25 (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), order on clarification, 115 FERC ¶ 61,185 (2006); see also 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 known); N. Ind. Pub. Serv. Co. v. Midcontinent Indep. Sys. Operator, Inc., 145 FERC ¶ 61,256, at P 22 (2013) (holding complaint in abeyance because it raised issues still under consideration in other proceedings); 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).
Moreover, a deferral would enable the Commission better to determine if it should defer to the financially disinterested, complex engineering judgments and determinations that the Board has made in selecting a proposal or combination of proposals. The Board established RTOs with independent boards precisely to make these difficult judgments.\textsuperscript{99} If the Commission did not defer to RTO determinations in these planning decisions, then every planning decision would be brought to the Commission for review. In the case of projects needed for reliability, that would dictate that incumbents build virtually all projects because there would be no time to address the complex engineering decisions that an RTO makes without a lengthy evidentiary hearing. The selected bidder would not be able to proceed with the cloud of litigation. Because the RTO would not be able to wait for the hearing process to conclude to address a reliability need, it would have to default at that point to assigning an incumbent to commence construction.

\textsuperscript{99} See Regional Transmission Organizations, Order No. 2000, 1996-2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,089, at 31,163 (1999) (“We reaffirm the NOPR proposal that the RTO must have ultimate responsibility for both transmission planning and expansion within its region that will enable it to provide efficient, reliable and non-discriminatory service and coordinate such efforts with the appropriate state authorities.”), order on reh’g, Order No. 2000-A, 1996-2000 FERC Stats. & Regs., Regs. Preambles les s les 6-2000 petitions for review dismissed sub nom. Pub. Util. Dist. No. 1 v. FERC, 272 F.3d 607 (D.C. Cir. 2001); see also PJM Interconnection, L.L.C., 147 FERC ncection, L.L.C.001);ub nom.s. & Regs., Regs. Preambles sal that the RTO must have ultimate responsibility for both transmission planning and expansion within its region that will enable it to provide efficient, reliable and ria, while not giving PJM unwarranted discretion.”); \textit{id. }at P P FERC ncection, L.L.C.001);ub nom.s. & Regs., Regs. Preambles sal that the RTO must have ultimate responsibility for both transmission planning and expansion within its region that will enable an alternative transmission project. We find that PJM has an appropriate amount of discretion . . . in light of its proposal to expand stakeholder involvement for any modifications to the Regional Plan.”).
Deferral also would better place the Commission to address an appropriate remedy, if that becomes necessary. Having the final selection beforehand will enable the Commission better to exercise its discretion in determining whether and what remedy may be necessary, because it will be able to evaluate whether the selected proposal or proposals produce a just and reasonable result.

Therefore, if the Commission does not deny the Complaint outright, it should announce that it will hold the Complaint in abeyance and take no further action until PJM has concluded the Artificial Island solicitation. PJM is near completion of the process. While it cannot make promises in such a complex area where ongoing engineering evaluations and outside consultant advice are still pending, PJM expects that it will complete the process sometime this spring. PJM commits to supplement this answer as the process develops.

VI. ADMISSIONS/DENIALS REQUIRED BY SECTION 385.213(c)

Rule 213(c) 100 requires a respondent, to the extent practicable, to admit or deny the factual allegations of a complaint.

PJM admits the facts described in Section I (The Parties) of the Background section of the Complaint.

PJM admits the facts described in Section IV.A. (Operational Issues at Artificial Island) of the Background section of the Complaint.

PJM admits the allegation in Section IV.B. (The Artificial Island Proposal Window) of the Background section to the Complaint that it opened the proposal window for the Artificial Island solicitation in April 2013.

100 18 C.F.R. § 385.213(c).
PJM admits the allegation in Section IV.B. (The Artificial Island Proposal Window) of the Background section to the Complaint that it initially received 26 proposals from 7 entities.

PJM admits the allegation in Section IV.C. (PJM’s Initial Evaluation of Artificial Island Proposals) of the Background section to the Complaint that PJM posted on its website all of the proposals and it reviewed the proposals with and consulted with the TEAC.

PJM avers in response to the allegations in Section IV.E. (Evaluation of the Supplemental Proposals and Further Modifications) of the Background section to the Complaint that four finalists clarified their proposals on September 12, 2014, and that all finalists, except Dominion, proposed some form of cost cap. PJM admits that it proceeded to conduct further evaluation. PJM admits that on December 9, 2014, the four finalist bidders made additional presentations at a TEAC meeting and parties commented. PJM avers that its evaluation is that installation of an optical ground wire, as proposed by PSEG, could eliminate the need for an SVC.

Aside from the foregoing, the facts stated in the Complaint are entirely based on documents that Complainant attached to the Complaint, consisting of Attachments 1 through 19. Those documents speak for themselves. PJM admits the authenticity of the documents, but denies the characterizations of the Complaint regarding them and denies the conclusions that the Complainant draws from them.

The Complaint further factually recites various statements PJM made in filings to the Commission regarding the Order No. 1000 process. The filings also speak for themselves. PJM admits the authenticity of the filings and the statements made therein,
but denies the characterizations of the Complaint regarding them and denies the conclusions that the Complainant draws from them.

The Complaint also recites various statements in Commission orders. The orders speak for themselves. PJM denies the characterizations of the Complaint regarding Commission orders and the conclusions that the Complainant draws from them.

The remainder of the Complaint consists of legal argument and conclusions that PJM is not required to admit or deny.

To the extent not specifically admitted, PJM denies the allegations of the Complaint.

VII. CONCLUSION

For the foregoing reasons, the Commission should deny PSEG’s Complaint, or, in the alternative, hold the Complaint in abeyance and defer action on the Complaint until after PJM completes the Artificial Island solicitation.

Respectfully submitted,

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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 11th day of March, 2015.

/s/ Carrie L. Bumgarner
Carrie L. Bumgarner