

June 30, 2020

VIA ELECTRONIC MAIL

Ake Almgren, Chairman
Manu Asthana, President & CEO
The PJM Board of Managers
2750 Monroe Blvd.
Audubon, Pennsylvania 19408

Re: End of Life (EOL) Transmission Planning

Dear Dr. Almgren, Mr. Asthana, and the PJM Board of Managers:

The undersigned PJM Members and customer representatives are providing this response to the letter from certain PJM Transmission Owners dated June 26, 2020 requesting that PJM engage in a private meeting with a single PJM sector or subsection of a PJM sector regarding the PJM Board's decision to comply with the duties and obligations in the Operating Agreement by submitting to the Federal Energy Regulatory Commission ("FERC" or "Commission") a Federal Power Act section 205 filing as approved by a supermajority of the PJM Members Committee.

As the Board knows, on June 18, 2020, by a 69% sector-weighted supermajority vote, the Members Committee voted to approve a proposal brought forward by a diverse group of stakeholders to modify the PJM Operating Agreement regarding planning of transmission projects to replace Transmission Facilities under PJM's control that the Transmission Owners determine have reached the end of their operational lives.

PJM Members have authority to change the Operating Agreement. Specifically, the PJM Operating Agreement, Section 8.8, provides that the Members Committee shall have the power to take actions specified in the Operating Agreement, including, in accordance with Section 18.6 of the Operating Agreement, amending any portion of the Operating Agreement. Section 18.6, in turn, provides in part that the Operating Agreement may be amended only upon (i) submission to Board for its review and comments; (ii) *approval of the amendment or new Schedule by the Members Committee, after consideration of the comments of the PJM Board; and, (iii) approval and/or acceptance for filing of the amendment by FERC.*" (emphasis added).

As importantly, FERC has required Regional Transmission Organizations, including PJM, to have minimum characteristics, with the first being independence. Section 35.34(j)(1) of the Commission's regulations requires PJM to have a decision-making process that is independent of control by any market participant or class of market participants. Moreover, Section 7.7 of the Operating Agreement requires the Board to carry out all duties in a manner consistent with the "principle that a Member or group of Members shall not have undue influence over the operation of the PJM Region."

As the Transmission Owners note, one of the duties that PJM must carry out without undue influence is to "[f]ile with FERC on behalf of the Members any amendments to this Agreement or the Schedules hereto, any new Schedules hereto, and make any other regulatory filings on behalf of the Members or the LLC necessary to implement this Agreement." Operating Agreement, Section 10.4(xiii).

The Transmission Owners argue that the requirement to perform the functions and responsibilities transferred to it under the Combined Transmission Owners Agreement (“CTOA”) conflicts with the obligation to file with FERC the proposed amendments to the RTEP in the Operating Agreement, but they are wrong. PJM’s filing of the proposed Operating Agreement changes does not, in and of itself, effectuate the changes. As noted above, changes to the Operating Agreement may only become effective upon FERC approval. The CTOA does not trump any obligations PJM has under its governing documents, to which the Transmission Owners are also signatories.

The sector-weighted, supermajority of votes cast by the Members Committee is a clear indication of PJM Members’ desire. There is nothing in the CTOA that prohibits PJM from making the filing. In fact, courts have found no prohibition against “PJM or its member utilities from amending the Tariff, the Operating Agreement, or PJM’s own planning criteria to address any problem of prodigal spending, to establish appropriate end-of-life planning criteria, or otherwise to limit regional cost sharing—as long as any amendment respects the cost-causation principle.” *Old Dominion Electric Cooperative v. FERC*, 898 F.3d 1254 at 1263, *reh’g denied*, 905 F.3d 671 (D.C. Cir. 2018) (“ODEC v. FERC”).

The PJM Transmission Owners have made their position regarding the CTOA clear, and they are free to argue their position in a protest of the Federal Power Act section 205 filing once it is made. What the PJM Transmission Owners and the PJM Board or a delegate may not do is meet to “discuss the decision to file the stakeholder proposal before PJM makes any such filing.” Such an action is, by definition, an attempt by the PJM Transmission Owners to exert undue influence over the Board’s decision-making. The Transmission Owners’ letter is a blatant attempt to exercise undue influence; the very request and tone is itself a threat to the Board’s independence.

The Board should reject the Transmission Owners’ request to meet in private prior to PJM carrying out its duty to file the proposed Operating Agreement changes approved by the Members Committee. The Board should also confirm in writing that PJM will file the proposed changes within the timeframe announced by Mr. O’Hara, which was within two weeks of the June 18 Members Committee meeting or by July 2, 2020, as July 3rd is a federal holiday and the FERC is closed.

We look forward to your reply.

Respectfully,

Jolene M. Thompson
President/CEO
American Municipal Power, Inc.

Marcus Harris
President/CEO
Old Dominion Electric Cooperative

Sharon K. Segner
Vice President, LS Power

Robert A. Weishaar, Jr.
Susan E. Bruce
Counsel to PJM Industrial Customer Coalition