

164 FERC ¶ 61,217
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee,
and Richard Glick.

Monongahela Power Company	Docket Nos. EL16-71-002
Potomac Edison Company	ER17-179-001
West Penn Power Company	ER17-179-002
AEP Indiana Michigan Transmission Company, Inc.	ER17-179-003
AEP Kentucky Transmission Company, Inc.	
AEP Ohio Transmission Company, Inc.	
AEP West Virginia Transmission Company, Inc.	
Appalachian Power Company	
Indiana Michigan Power Company	
Kentucky Power Company	
Kingsport Power Company	
Ohio Power Company	
Wheeling Power Company	
Commonwealth Edison Company	
Commonwealth Edison Company of Indiana, Inc.	
Dayton Power and Light Company	
Virginia Electric and Power Company	
Public Service Electric and Gas Company	
PECO Energy Company	
PPL Electric Utilities Corporation	
Baltimore Gas and Electric Company	
Jersey Central Power & Light Company	
Metropolitan Edison Company	
Pennsylvania Electric Company	
Potomac Electric Power Company	
Atlantic City Electric Company	
Delmarva Power & Light Company	
UGI Utilities Inc.	
Allegheny Electric Cooperative, Inc.	
CED Rock Springs, LLC	
Old Dominion Electric Cooperative	
Rockland Electric Company	
Duquesne Light Company	
Neptune Regional Transmission System, LLC	
Trans-Allegheny Interstate Line Company	
Linden VFT, LLC	

American Transmission Systems, Incorporated
City of Cleveland, Department of Public Utilities,
Division of Cleveland Public Power
Duke Energy Ohio, Inc.
Duke Energy Kentucky, Inc.
City of Hamilton, Ohio
Hudson Transmission Partners, LLC
East Kentucky Power Cooperative, Inc.
City of Rochelle
ITC Interconnection LLC
PJM Interconnection, L.L.C.

ORDER ON REHEARING
AND COMPLIANCE

(Issued September 26, 2018)

1. In this order, the Commission denies rehearing of the February 15, 2018 order in Docket Nos. EL16-71-000 and ER17-179-000 (February 15 Order),¹ and accepts, effective September 26, 2018, PJM Interconnection, L.L.C.'s (PJM) and the PJM Transmission Owners' compliance filings in Docket Nos. ER17-179-002 and ER17-179-003.²

I. Background

2. In PJM, there are distinct processes for planning new transmission infrastructure at the regional level—i.e., PJM's Regional Transmission Expansion Planning (RTEP) process for Regional RTEP projects and Subregional RTEP projects³— and at the local level—i.e., individual transmission owners' processes for planning Supplemental Projects. Under PJM's regional transmission planning process, PJM's Office of Interconnection and the Subregional RTEP Committees identify Regional RTEP projects

¹ *Monongahela Power Co.*, 162 FERC ¶ 61,129 (2018) (February 15 Order).

² PJM March 19, 2018 Compliance Filing (Schedule 6 Compliance Filing); PJM Transmission Owners March 19, 2018 Compliance Filing (Attachment M-3 Compliance Filing) (collectively, Compliance Filings).

³ In PJM, Regional RTEP projects are projects that will operate at or above 230 kV, while Subregional RTEP projects are projects that will operate below 230 kV. *Id.*, Definitions Q-R (6.0.0).

and Subregional RTEP projects, respectively, to meet system reliability, operational performance, or economic criteria. In contrast, each PJM Transmission Owner identifies Supplemental Projects to meet needs within their respective zones.⁴

3. In Order No. 890, the Commission required transmission providers to develop a transmission planning policy that satisfied certain transmission planning principles—including, as relevant here, transparency to customers and other stakeholders regarding the basic criteria, assumptions, and data underlying their transmission system plans, and coordination with stakeholders—with the objective of reducing after-the-fact litigation and opportunities for undue discrimination.⁵ The Commission specified that, to comply with Order No. 890, transmission owners in the footprint of a regional transmission organization (RTO) or independent system operator (ISO) must engage in a transmission planning process that complies with the requirements of Order No. 890.⁶

4. In August 2016, the Commission issued an order establishing an inquiry in Docket No. EL16-71-000 under section 206 of the Federal Power Act (FPA)⁷ into the justness and reasonableness of the Supplemental Projects planning procedures contained in the PJM Operating Agreement and the PJM Open Access Transmission Tariff (OATT).⁸ Specifically, the Commission cited concerns raised at a November 2015 technical conference and in post-technical conference comments that the PJM Transmission Owners were depriving stakeholders of a meaningful opportunity to participate in the Supplemental Projects planning process by, among other things, identifying and developing these transmission projects before discussing the need for those projects in the stakeholder process.⁹ The Commission directed the PJM Transmission Owners to either propose revisions to the PJM Operating Agreement, their portions of the PJM OATT, or

⁴ See PJM, Intra-PJM Tariffs, Operating Agreement, Definitions S-T (11.0.0).

⁵ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at PP 425, 454, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 440.

⁷ 16 U.S.C. § 824e (2012).

⁸ *Monongahela Power Co.*, 156 FERC ¶ 61,134 (2016) (Show Cause Order).

⁹ See February 15 Order, 162 FERC ¶ 61,129 at PP 10-11 (citing Show Cause Order, 156 FERC ¶ 61,134 at PP 13-14).

their individual Open Access Transmission Tariffs to comply with Order No. 890, or to show cause why they should not be required to do so.¹⁰

5. On October 25, 2016, the PJM Transmission Owners filed a response asserting that the PJM Operating Agreement already complied with Order No. 890 and thus no revisions were needed to comply with the Show Cause Order.¹¹ That same day, however, PJM and the PJM Transmission Owners submitted an FPA section 205¹² filing “[i]n conjunction with” the Show Cause Response to include a new Attachment M-3 to the PJM OATT and proposed revisions to Schedule 6 of the PJM Operating Agreement.¹³ PJM and the PJM Transmission Owners asserted that, while the Show Cause Response demonstrated that the PJM Operating Agreement and OATT were consistent with Order No. 890, the proposed revisions in the Attachment M-3 Filing were intended to provide additional detail and transparency to the process for planning Supplemental Projects.¹⁴

6. Several parties, including Old Dominion Electric Cooperative (Old Dominion) and American Municipal Power, Inc. (American Municipal Power), filed responses to the Show Cause Order arguing that the transmission planning process for Supplemental Projects violated Order No. 890 and proposed revisions to the PJM Operating Agreement.¹⁵ Old Dominion and American Municipal Power also protested the Attachment M-3 Filing, arguing that the revisions proposed therein were a step in the right direction, but insufficient to ensure compliance with Order No. 890. Moreover, Old Dominion and American Municipal Power stated that, in any event, PJM and the PJM Transmission Owners should have filed the proposed revisions to Attachment M-3 in the

¹⁰ Show Cause Order, 156 FERC ¶ 61,134 at P 15.

¹¹ PJM Transmission Owners, Response to Show Cause Order, Docket No. EL16-71-000 (filed Oct. 25, 2016) (Show Cause Response).

¹² 16 U.S.C. § 824d.

¹³ PJM and PJM Transmission Owners, Proposed Tariff Revisions in Response to Order to Show Cause, Docket No. ER17-179-000, at 1 (filed Oct. 25, 2016) (Attachment M-3 Filing).

¹⁴ *Id.* at 2.

¹⁵ *See* American Municipal Power, Initial Comments, Docket No. EL16-71-000, at 4-17 (filed Oct. 25, 2016) (American Municipal Power Show Cause Comments); Old Dominion, Response to Order to Show Cause, Docket No. EL16-71-000, at 6-13 (filed Oct. 25, 2016) (Old Dominion Show Cause Comments).

Show Cause Order proceeding, instead of in a separate FPA section 205 filing, and as revisions to the PJM Operating Agreement, instead of to the OATT.¹⁶

February 15 Order

7. In the February 15 Order, the Commission found that the PJM Operating Agreement and OATT, as applied by the PJM Transmission Owners, did not fully comply with Order No. 890 and were therefore unjust and unreasonable and unduly discriminatory and preferential.¹⁷ In particular, the Commission found that the PJM Transmission Owners' practices in planning Supplemental Projects were inconsistent with Order No. 890's principles of coordination and transparency and in violation of the PJM Operating Agreement.¹⁸ With respect to the Attachment M-3 Filing, the Commission accepted PJM and the PJM Transmission Owners' proposal to move the transmission planning provisions for Supplemental Projects from the PJM Operating Agreement to the OATT in the form of proposed Attachment M-3.¹⁹ However, the Commission found that PJM and the PJM Transmission Owners failed to meet their FPA section 205 burden with respect to the revisions proposed in the Attachment M-3 Filing.²⁰

8. Having found that PJM and the PJM Transmission Owners failed to demonstrate that the proposed revisions were just and reasonable, and having found the existing PJM Operating Agreement and OATT to be unjust and unreasonable, the Commission used its authority under FPA section 206 to set a just and reasonable rate.²¹ The Commission thus accepted, in part, and rejected, in part, the Attachment M-3 Filing, and directed revisions

¹⁶ See American Municipal Power, Protest and Comments, Docket No. ER17-179-000, at 4-11 (filed Nov. 22, 2016) (American Municipal Power Attachment M-3 Protest); Old Dominion, Protest, Docket Nos. ER17-179-000 and EL16-71-000, at 5-11 (filed Nov. 22, 2016) (Old Dominion Attachment M-3 Protest). American Municipal Power also moved to dismiss the Attachment M-3 Filing as an attempt to circumvent the Show Cause Order. American Municipal Power, Motion to Dismiss or Reject Filing and Answer, Docket Nos. ER17-179-000 and EL16-71-000, at 5-8 (filed Nov. 16, 2016) (American Municipal Power Motion to Dismiss).

¹⁷ February 15 Order, 162 FERC ¶ 61,129 at PP 4, 72-91.

¹⁸ See *id.* P 72.

¹⁹ *Id.* P 92.

²⁰ *Id.*

²¹ See *id.* P 71.

to the PJM Operating Agreement and Attachment M-3 to the PJM OATT.²² The Commission found that the additional reforms that Old Dominion and American Municipal Power proposed were not required to achieve compliance with Order No. 890.²³

II. Requests for Rehearing and Commission Determination

A. Rehearing

9. A joint request for rehearing of the February 15 Order was timely filed by American Municipal Power, Old Dominion, Delaware Division of the Public Advocate, PJM Industrial Customer Coalition, Illinois Citizens Utility Board, Office of the People's Counsel for the District of Columbia, and Public Power Association of New Jersey (collectively, the Load Group). The Load Group argues that, even with the proposed modifications to the PJM transmission planning process in Attachment M-3, as accepted in the February 15 Order, and the further revisions to Attachment M-3 and the Operating Agreement that the Commission required in that same order, the PJM Transmission Owners' processes for planning Supplemental Projects still fail to comply with Order No. 890. Generally, the Load Group asserts that the Commission erred by: (1) permitting PJM and the PJM Transmission Owners to circumvent the division of filing rights in PJM, and particularly the supermajority vote of the Members Committee required for changes to the Operating Agreement, by filing the revisions as an attachment to the OATT rather than as part of the Operating Agreement;²⁴ (2) exceeding its authority under FPA sections 205 and 206 by accepting proposed Attachment M-3 subject to condition;²⁵ (3) accepting a proposal that fails to fully integrate the PJM Transmission Owners' Supplemental Projects planning process into the PJM transmission planning process;²⁶ and (4) failing to direct various additional revisions to Attachment M-3 to ensure compliance with Order No. 890, such as requiring the PJM Transmission Owners to respond to stakeholder comments.²⁷

²² *Id.* PP 4, 100-116.

²³ *Id.* P 117.

²⁴ Load Group Rehearing Request at 3, 5, 6-13.

²⁵ *Id.* at 3, 13-16.

²⁶ *Id.* at 2, 5, 16-19.

²⁷ *Id.* at 4-5, 6, 19-36.

10. The Load Group largely repeats arguments that American Municipal Power, Old Dominion, and other protestors made in multiple pleadings in Docket Nos. EL61-71-000 and ER17-179-000, which the Commission fully considered in the February 15 Order. We are not persuaded that the Commission erred in the February 15 Order, which we believe appropriately responds to these concerns. Accordingly, and as discussed further below, we deny rehearing.

1. **Moving the Supplemental Projects Planning Process to OATT Attachment M-3**

11. In the February 15 Order, the Commission found just and reasonable the proposal to move the PJM Transmission Owners' process for planning Supplemental Projects from the Operating Agreement to the OATT, given that the PJM Transmission Owners bear primary responsibility for planning Supplemental Projects.²⁸ The Commission found that allowing the PJM Transmission Owners to change the location of this provision to be consistent with the Commission's directive in Order No. 890 that "individual transmission owners must, to the extent that they perform transmission planning within an RTO or ISO, comply with the Final Rule."²⁹ In reaching this conclusion, the Commission addressed American Municipal Power's and Old Dominion's arguments that the Operating Agreement should govern the Supplemental Projects planning process.³⁰ The Load Group raises these same arguments on rehearing, asserting that the revisions in Attachment M-3 to the OATT should be housed in Schedule 6 of the Operating Agreement with the RTEP protocols and procedures "where they naturally belong," and that the PJM Transmission Owners have circumvented the allocation of filing rights in the PJM governing documents with the express aim of being able to amend the

²⁸ February 15 Order, 162 FERC ¶ 61,129 at PP 96-97.

²⁹ *Id.* P 97 (quoting Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 440).

³⁰ *See* American Municipal Power Motion to Dismiss at 6-8 (arguing that, as all other RTEP provisions are in the Operating Agreement, the PJM Transmission Owners' proposal to move the Supplemental Projects planning provisions to the OATT must be intended to give themselves the exclusive right to modify these provisions in the future); American Municipal Power Attachment M-3 Protest at 4-7 (making the same argument, and further asserting that PJM should be responsible for planning Supplemental Projects); Old Dominion Attachment M-3 Protest at 9-10 (pointing to the significance of transmission planning, the "past history" of some PJM Transmission Owners failing to comply with Order No. 890, and the fact that core provisions of PJM's transmission planning are contained in Schedule 6 as reasons to require the Supplemental Projects planning provisions to be housed in the Operating Agreement).

Supplemental Projects planning procedures without the requisite Members Committee supermajority vote.³¹

12. We continue to find these arguments unavailing. The Load Group asserts that the response in the February 15 Order was incomplete because the Commission “only” found, based on the record in the proceeding, that the PJM Transmission Owners bear primary responsibility for planning Supplemental Projects and noted that any OATT revisions that the PJM Transmission Owners file must be found just and reasonable and not unduly discriminatory or preferential by the Commission before they can take effect.³² But the Load Group makes no argument about how the Commission erred in relying on these factors.

13. In Order No. 890, the Commission held that individual transmission owners’ local planning processes must comply with specified requirements.³³ When transmission owners participate in an RTO, the Commission did not require them to allow the RTO to do all planning for local or Supplemental Projects. Rather, the Commission recognized “RTO planning processes may focus principally on regional problems and solutions, not local planning issues that may be addressed by individual transmission owners.”³⁴ The PJM Transmission Owners therefore may retain primary authority for planning local Supplemental Projects and the record in this proceeding demonstrated that the PJM Transmission Owners, in fact, do the planning for Supplemental Projects, “with PJM playing a relatively minor role in which it reviews the proposed Supplemental Projects only to ensure that they do not have adverse reliability impacts.”³⁵ Accordingly, the Commission found that it is just and reasonable for the Supplemental Projects planning process to be contained in the PJM OATT.³⁶ We therefore disagree with Load Group that further explanation is necessary.³⁷

³¹ Load Group Rehearing Request at 3, 5, 6-13.

³² *Id.* at 7 (citing February 15 Order, 162 FERC ¶ 61,129 at P 97).

³³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 440.

³⁴ *Id.*

³⁵ February 15 Order, 162 FERC ¶ 61,129 at P 97.

³⁶ *Id.*

³⁷ Load Group Rehearing Request at 7 (asserting that the Commission “erred in wholly failing to address the arguments presented in the record”).

14. The fact that stakeholders have greater control over the planning process for RTEP projects³⁸—because the RTEP protocols are contained in the Operating Agreement, and any revisions must therefore pass a two-thirds majority sector-weighted vote of the Members Committee to be filed under FPA section 205³⁹—does not change this result.⁴⁰ The Load Group’s arguments to the contrary appear to be predicated on the assumption that the Supplemental Projects planning process is simply a component of, and identical to, the RTEP planning process. As indicated in the February 15 Order, we disagree. The PJM Transmission Owners have primary responsibility for planning Supplemental Projects and, therefore, retain the filing rights to make modifications to these provisions.⁴¹ Unlike the RTEP transmission projects, for which the PJM Transmission Owners have ceded planning to PJM as part of establishing an RTO,⁴² the PJM Transmission Owners remain responsible for planning Supplemental Projects, and we find that it is just and reasonable for the PJM Transmission Owners to establish the process for planning these transmission projects and to initiate under section 205 any proposed revisions. Moreover, the PJM Transmission Owners do not have unfettered agency to change the Supplemental Projects planning process at will, as alleged by the rehearing requests; changes to Attachment M-3 take effect only if the Commission finds

³⁸ *Id.* at 11-12.

³⁹ *See* Operating Agreement, section 8.4.

⁴⁰ *See* February 15 Order, 162 FERC ¶ 61,129 at P 97 (finding that it is just and reasonable for the PJM Transmission Owners to have FPA section 205 filings rights over the Supplemental Projects planning provisions).

⁴¹ *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 10-11 (D.C. Cir. 2002) (“Rather this Court, among others, has stressed that the power to initiate rate changes rests with the utility and cannot be appropriated by FERC in the absence of a finding that the existing rate was unlawful.”).

⁴² 18 C.F.R. § 35.34(k)(7) (2018) (“The [RTO] must be responsible for planning, and for directing or arranging, necessary transmission expansions, additions, and upgrades that will enable it to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with the appropriate state authorities.”); *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,163 (1999), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001) (affirming that “the RTO must have ultimate responsibility for both transmission planning and expansion within its region”).

them to be just and reasonable and not unduly discriminatory or preferential under FPA section 205.⁴³

15. Finally, while the PJM Transmission Owners' processes for planning Supplemental Projects must comply with Order No. 890, Order No. 890 does not specify how planning will be conducted when transmission owners have joined together in an RTO. Since PJM does not have primary responsibility for planning for Supplemental Projects, the PJM Transmission Owners can specify where their transmission planning process should be located. Indeed, as the Commission recognized in the February 15 Order, the Show Cause Order expressly contemplated that the PJM Transmission Owners might address the transmission planning process for Supplemental Projects in PJM's OATT.⁴⁴

2. The Commission's Authority Under FPA Sections 205 and 206

16. We also deny the Load Group's contention that the Commission exceeded its authority under FPA sections 205 and 206.⁴⁵ In the February 15 Order, the Commission found that: (1) the existing provisions in PJM's Operating Agreement governing the PJM Transmission Owners' process for planning Supplemental Projects violated Order No. 890's coordination and transparency principles and were therefore unjust and unreasonable and unduly discriminatory and preferential; (2) the PJM Transmission Owners' FPA section 205 proposal in the Attachment M-3 Filing was also unjust and unreasonable, as it primarily carried over the provisions that the Commission found to be unjust and unreasonable in the PJM Operating Agreement; and (3) the revisions to Attachment M-3 and the PJM Operating Agreement directed in the February 15 Order would ensure compliance with the coordination and transparency principles of Order No. 890 and were therefore just and reasonable and not unduly discriminatory or preferential.⁴⁶

⁴³ February 15 Order, 162 FERC ¶ 61,129 at P 97.

⁴⁴ *Id.* P 97 n.207 (citing Show Cause Order, 156 FERC ¶ 61,134 at P 15).

⁴⁵ Load Group Rehearing Request at 3, 13-16.

⁴⁶ February 15 Order, 162 FERC ¶ 61,125 at P 71. As explained in the February 15 Order, the Commission may "transform" a section 205 proceeding into a section 206 proceeding if the Commission concludes both that the filing entity failed to demonstrate that its proposed rate is just and reasonable and that the prior rate is no longer just and reasonable, and establishes a substitute rate that is just and reasonable. *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1579 (D.C. Cir. 1993) (*Western Resources*).

17. These findings follow the framework set out by the court in *Western Resources* and other cases for revising a tariff proposal that the Commission does not find just and reasonable. As the court explained:

Under the [Natural Gas Act], an action may originate as a § 4 proceeding only to be transformed later into a § 5 proceeding. In imposing its own rate under these circumstances, the Commission must make three findings: first, it must conclude under § 4 that the pipeline failed to carry its burden of proof that the proposed rate was just and reasonable; second, it must itself demonstrate that the default position, the prior rate, is no longer just and reasonable; and third, it must establish that its substitute rate is just and reasonable.⁴⁷

The Commission followed all three steps here. The Commission found the proposal by the PJM Transmission Owners unjust and unreasonable as filed.⁴⁸ The Commission found the prior provision regarding planning for Supplemental Projects unjust and unreasonable.⁴⁹ And, the Commission established the just and reasonable substitute rate.⁵⁰

18. The Load Group argues that the Commission lacked authority to direct changes to the proposed Attachment M-3 and instead should have rejected the Attachment M-3 Filing altogether and required modifications to the Operating Agreement.⁵¹ In particular, the Load Group argues that, because technically there *was* no Attachment M-3 prior to

⁴⁷ *Id.* See *Pub. Serv. Comm'n of State of N.Y. v. FERC*, 866 F.2d 487, 491 (D.C. Cir. 1989) (“[W]here a § 4 [parallel to FPA section 205] proceeding is under way, the Commission may discover facts that persuade it that reductions or changes are appropriate that require the exercise of its § 5 [parallel to FPA section 206] powers); *Tenn. Gas Pipeline Co. v. FERC*, 860 F.2d 446, 456 (D.C. Cir. 1988) (“If, in the course of a section 4 proceeding, FERC decides to take action authorized by section 5, the Commission may do so without initiating an independent proceeding. But section 5 authority, regardless of the context in which it is exercised, may be pursued only in accordance with the requirements and constraints imposed by section 5.”).

⁴⁸ February 15 Order, 162 FERC ¶ 61,129 at PP 92, 100-104.

⁴⁹ *Id.* PP 70, 73-91.

⁵⁰ *Id.* PP 105-116.

⁵¹ Load Group Rehearing Request at 14-16.

the PJM Transmission Owners' FPA section 205 filing, there was no preexisting rate to find unjust and unreasonable and the Commission thus lacked the catalyst to "transform" its FPA section 205 assessment of the Attachment M-3 Filing into a section 206 analysis.⁵²

19. Prior to the Attachment M-3 Filing, the process for planning Supplemental Projects was covered by the general transmission planning provisions in Schedule 6 of the Operating Agreement. The Commission instituted a proceeding under section 206 to examine the justness and reasonableness of that process. In conjunction with responding to the section 206 proceeding, the PJM Transmission Owners exercised their section 205 filing rights to propose changes to the planning process for Supplemental projects in a new Attachment M-3. The Commission found the substance of the provisions of proposed Attachment M-3 to be unjust and unreasonable precisely because they "rely largely on the provisions of the PJM Operating Agreement that we find are being implemented in a manner that is unjust and unreasonable."⁵³ The Commission then followed *Western Resources* to revise that proposal by "transforming" the proceeding into a section 206 proceeding. The Commission found that the prior provision regarding Supplemental Projects in the Operating Agreement unjust and unreasonable and determined the just and reasonable substitute rate.

20. The Load Group appears to place form over substance in maintaining that the Commission could not find the prior rate unjust and unreasonable simply because that rate existed in a different provision of the OATT.⁵⁴ We do not read *Western Resources* and the other cases to impose such a requirement when the Commission exercises its

⁵² *Id.* at 14. The Load Group further asserts that *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017) prohibits the Commission from making the modifications directed in the February 15 Order to Attachment M-3 under section 205 of the FPA. *Id.* at 15-16. As noted, however, the Commission did not purport to require changes to Attachment M-3 under section 205 and we disagree with the Load Group's application of *Western Resources*. Accordingly, we reject this argument as well.

⁵³ February 15 Order, 162 FERC ¶ 61,129 at P 71.

⁵⁴ Indeed, if the Load Group were correct that no prior rate existed, then the Commission's action still fell within its authority. See *Tenn. Gas Pipeline Co. v. FERC*, 860 F.2d 446, 456 (finding that if no existing rate exists, the Commission can still modify a Natural Gas Act section 4 proposal by finding the proposal unjust and unreasonable and satisfying its burden of showing the substitute rate just and unreasonable); *ISO New England, Inc.*, 113 FERC ¶ 61,055, at P 27 (2005) (citing *Tenn. Gas Pipeline Co. v. FERC* and noting, similarly, that the Commission may accept a just and reasonable alternative where the utility fails to meet its burden to justify a new proposed rate).

authority to act under section 206. The Load Group's argument could also be viewed as an alternative version of their contention that the PJM Transmission Owners do not have authority to make unilateral revisions to the planning for Supplemental Projects. We responded to that argument above.⁵⁵ We therefore continue to find that the Commission acted within its authority to direct modifications to the FPA section 205 Attachment M-3 Filing under FPA section 206, consistent with *Western Resources*.

3. Integration of the Supplemental Projects Planning Process into the RTEP Process

21. The Load Group asserts that the Commission's failure to require PJM to fully integrate the PJM Transmission Owners' Supplemental Projects planning process into its regional transmission planning process renders PJM's RTEP process non-compliant with Order No. 890.⁵⁶ In particular, the Load Group requests that the Commission require that: (1) Attachment M-3 be revised to clearly define the term "planning cycle" and align it with the planning cycle used for the RTEP planning;⁵⁷ (2) more information be provided regarding how Supplemental Projects will be modeled in PJM's RTEP baseline process;⁵⁸ and (3) PJM and the PJM Transmission Owners be required to coordinate Supplemental Projects with RTEP projects in the same area.⁵⁹

22. We deny rehearing and decline the Load Group's request that the Commission direct PJM Transmission Owners to make a further compliance filing implementing these proposals. While the Load Group alleges that the Commission departed from precedent by failing to require coordination between the two processes, it cites no precedent suggesting that these requested revisions are required for PJM or the PJM Transmission Owners to comply with Order No. 890.⁶⁰ As we stated above, under Order No. 890, the PJM Transmission Owners are permitted to retain responsibility for planning Supplemental Projects on their own systems. PJM plays only a small role by reviewing the proposed Supplemental Projects to ensure that they do not have adverse reliability impacts. We therefore do not find that the Supplemental Projects planning process

⁵⁵ *See supra* PP 14-15.

⁵⁶ Load Group Rehearing Request at 4, 5, 16-19.

⁵⁷ *Id.* at 17-18.

⁵⁸ *Id.* at 18.

⁵⁹ *Id.*

⁶⁰ *Id.* at 18-19.

provisions adopted by the Commission are required to be more fully integrated with PJM's RTEP process.

23. The Load Group notes that PJM has stated to the Commission that the PJM Transmission Owners' local transmission planning processes must be fully integrated into PJM's overall transmission planning process.⁶¹ The focus of this proceeding, as established in the Show Cause Order, was to determine whether the PJM Transmission Owners' processes for planning Supplemental Projects were providing stakeholders with meaningful opportunity for input and participation in the transmission planning process, consistent with Order No. 890.⁶² Although the revisions proposed in the Attachment M-3 Filing moved the Supplemental Projects planning process from the Operating Agreement to the OATT, the Commission found no indication in the February 15 Order that this change jeopardized or revised the existing coordination between the Supplemental Projects planning process and the RTEP process. As explained in the February 15 Order, PJM reviews the Supplemental Projects and, as long as they do not jeopardize reliability, they are integrated into the Local Plan,⁶³ which is a product of the Subregional RTEP Committees,⁶⁴ and then integrated into PJM's Regional Transmission Expansion Plan.⁶⁵ The Load Group fails to establish that the Supplemental Projects planning process, with the revisions that the Commission directed in the February 15 Order, effects any change in the current process.⁶⁶ We therefore disagree that the Commission's action have

⁶¹ *Id.* at 17 (citing Show Cause Order, 156 FERC ¶ 61,134 at P 8).

⁶² Show Cause Order, 156 FERC ¶ 61,134 at P 1.

⁶³ The Local Plan includes the Supplemental Projects that PJM Transmission Owners identified within their zones and Subregional RTEP projects developed to comply with applicable reliability criteria, including transmission owners' planning criteria or based on market efficiency analysis and in consideration of public policy requirements. PJM, Intra-PJM Tariffs, Operating Agreement, Definitions I-L (10.0.0).

⁶⁴ The Subregional RTEP Committees are selected by PJM's Office of Interconnection and facilitate development and review of the Local Plans. PJM Operating Agreement, Schedule 6, § 1.3(c). They are open to participation by: "(i) all Transmission Customers and applicants for transmission service; (ii) any other entity proposing to provide Transmission Facilities to be integrated into the PJM Region; (iii) all Members; (iv) the electric utility regulatory agencies within the States in the PJM Region, the Independent State Agencies Committee, and the State Consumer Advocates and (v) any other interested entities or persons." *Id.* § 1.3(e).

⁶⁵ *See* February 16 Order, 162 FERC ¶ 61,129 at P 8.

⁶⁶ *See id.* at 16 (citing Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,164).

created “a vacuum, divorced from the broader RTEP planning process as set forth in the Operating Agreement,” as alleged in the rehearing.⁶⁷

24. With respect to the Load Group’s requested clarification regarding the use of the term “planning cycle,” we note that the Load Group also raises this issue in its protest of the Attachment M-3 Compliance Filing.⁶⁸ As the Commission did not direct the PJM Transmission Owners to define this term on compliance, we consider the Load Group’s objections to be outside the scope of the compliance proceeding and properly classified as a request for rehearing.⁶⁹ While we do not believe that further revisions to Attachment M-3 are needed, to the extent necessary, we clarify that the Commission interprets the term “planning cycle,” as used in Attachment M-3, to mean the same planning cycle used in the RTEP process. The term is not otherwise defined in PJM’s OATT and this interpretation comports with the PJM Transmission Owners’ representations that the time periods in the Attachment M-3 Compliance Filing were chosen in consultation with PJM to ensure that the Supplemental Projects planning process can be completed in conjunction with PJM’s overall planning cycle.⁷⁰

4. Request for Additional Revisions to Attachment M-3

25. On rehearing, the Load Group revives American Municipal Power’s request that the Commission require PJM Transmission Owners to respond to stakeholder

⁶⁷ Load Group Rehearing Request at 17.

⁶⁸ Load Group April 9, 2018 Protest at 8 (arguing, as in its rehearing request, that the PJM Transmission Owners have failed to clearly define the term “planning cycle” as it applies to the Supplemental Projects planning cycle, or to specify when this cycle ends).

⁶⁹ Accordingly, we decline to address the PJM Transmission Owners’ response to the Load Group at pages 15-17 of its April 24, 2018 answer as an impermissible answer to a request for rehearing, and likewise reject the Load Group’s further response to the PJM Transmission Owners are pages 4-6 and 9-10 of its May 9, 2018 answer. 18 C.F.R. § 385.713(d)(1) (2018).

⁷⁰ *See* Attachment M-3 Compliance Filing at 4.

comments.⁷¹ The Commission declined to require express responses in the February 15 Order, finding that this additional reform was not required for compliance with Order No. 890.⁷² Nevertheless, the revisions to Attachment M-3 include language specifying that the Transmission Owner “may respond or provide feedback as appropriate” to stakeholder comments.⁷³ The Load Group asserts that an express directive is needed to ensure compliance with Order No. 890’s comparability and coordination principles, and that by using “may” instead of “shall” the Commission failed to ensure that stakeholders will have an opportunity to provide meaningful input.⁷⁴ Absent an express requirement to respond to comments, the Load Group insists, stakeholders will not know whether the PJM Transmission Owners have actually considered their comments, which will discourage stakeholder participation and increase the use of dispute resolution.⁷⁵

26. We do not believe that Order No. 890 dictates the result that the Load Group requests. Order No. 890 requires that stakeholders be afforded the opportunity to provide meaningful input, and that public utility transmission providers “craft a process that allows for a reasonable and meaningful opportunity to meet or otherwise interact meaningfully.”⁷⁶ Its requirements are not so prescriptive as to dictate whether and how the PJM Transmission Owners must respond to that input.⁷⁷ While we encourage the PJM Transmission Owners to be as responsive as possible to stakeholder comments, we also realize that not all comments may require answer and that the PJM Transmission Owners require some flexibility to manage written responses to comments, the timely preparation of materials for the next meeting, and other obligations. We believe that the process required in the February 15 Order strikes the appropriate balance.

⁷¹ Load Group Rehearing Request at 4, 6 24-25. *See* American Municipal Power Show Cause Comments at 12.

⁷² February 15 Order, 162 FERC ¶ 61,129 at P 117.

⁷³ *Id.* at Appendix A.

⁷⁴ Load Group Rehearing Request at 26-27.

⁷⁵ *Id.* at 27-28.

⁷⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 453.

⁷⁷ *See id.* P 452 (the Commission is “more concerned with the substance of coordination than its form,” and explained that a transmission provider could meet the coordination requirement with formal meetings, or even by setting up a permanent planning committee with less formal meetings).

27. Neither do we find that the lack of an express requirement to respond to every written comment will jeopardize comparability. A requirement that the PJM Transmission Owners respond to all comments that they receive through the Supplemental Projects planning process does not ensure that each PJM Transmission Owner will treat similarly situated customers comparably,⁷⁸ as the quality of those responses could vary, and submitting an obligatory response does not guarantee that the comments have been more closely considered. Accordingly, we confirm that, having examined the record and found that the proposed OATT and Operating Agreement revisions, as modified in the February 15 Order, were just and reasonable and not unduly discriminatory and preferential, the Commission did not need to incorporate protestors' additional requests.⁷⁹

28. In the same vein, the Load Group catalogs a list of what it characterizes as "significant remaining deficiencies" in Attachment M-3 related to process and information sharing.⁸⁰ As an initial matter, we note that many of the Load Group's arguments pertain to the timing of the Supplemental Projects planning process.⁸¹ These specifics fall outside the scope of the rehearing proceeding, as the February 15 Order did not establish the number of days for these time frames, instead directing the PJM

⁷⁸ Load Group Rehearing Request at 26.

⁷⁹ *Id.* at 25-27 (arguing that the Commission did not meaningfully respond to its objections). As the Commission explained in the February 15 Order, "[u]nder the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology 'need not be the only reasonable methodology,'" and the Commission need not demonstrate that alternative proposals are unjust and unreasonable or otherwise inferior to the proposal accepted. February 15 Order, 162 FERC ¶ 61,129 at P 117 (quoting *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995)).

⁸⁰ Load Group Rehearing Request at 19-24.

⁸¹ *See id.* at 20 (stating that criteria should be provided at least 20 days prior to the Assumptions Meeting, and the PJM Transmission Owners should take comments for at least 20 days after the Assumptions Meeting); *id.* at 21 (arguing that Subregional RTEP Committee meetings should be at least 30 days after the Assumptions Meeting, criteria should be posted at least twenty days in advance of the Needs Meeting, and stakeholders should be permitted to comment up to 10 days after the Needs Meeting); *id.* at 22 (asserting that the timeline for posting potential solutions is too short); and *id.* at 23 (contending that Solutions Meetings should be at least 90 days after the Needs Meeting, and potential solutions should be posted at least 15 days in advance of the Solutions Meeting).

Transmission Owners to propose these periods on compliance.⁸² The PJM Transmission Owners have done so in the Attachment M-3 Compliance Filing, which we address below.

29. The Load Group's additional arguments constitute requests for additional detail and process in Attachment M-3, including: (1) clarification regarding whether the PJM Transmission Owners will provide their criteria, assumptions, and models at a single Subregional RTEP Committee meeting or stagger the presentations over time;⁸³ (2) more detail regarding the specific information that will be provided to stakeholders at the Assumption Meeting, including the use of Transmission Owner-specific models instead of network models;⁸⁴ (3) two Solutions Meetings, instead of one, or at least additional clarity regarding how alternatives developed by stakeholders should be posted and evaluated during a single Solutions Meeting; and (4) specific requirements for the information the PJM Transmission Owners must provide at the Needs Meeting, such as detailed models, power flow models, and power system analyses.⁸⁵

30. While the Load Group asserts that the Commission "erred in not remedying the significant remaining deficiencies in Attachment M-3,"⁸⁶ the list of purported defects more accurately constitutes a menu of alternative proposals, none of which is necessary to ensure compliance with Order No. 890.⁸⁷ The Supplemental Projects planning process established in Attachment M-3, with the revisions directed in the February 15 Order, provides for separate meetings for stakeholders to review and discuss the assumptions that the PJM Transmission Owners use to plan and identify Supplemental Projects, the

⁸² February 15 Order, 162 FERC ¶ 61,129 at P 113.

⁸³ Load Group Rehearing Request at 20; *id.* at 22 (requesting that the PJM Transmission Owners "share all potential drivers of Supplemental Projects so stakeholders can clearly understand how proposed alternative solutions could account for and resolve developing drivers for a more comprehensive process that does not address needs on a piecemeal basis").

⁸⁴ *Id.* at 21.

⁸⁵ *Id.* at 28-31.

⁸⁶ Load Group Rehearing Request at 19.

⁸⁷ Indeed, the Load Group again alleges that the Commission departed from precedent without reasoned explanation by declining to direct additional procedural and informational requirements, but fails to point to any precedent requiring such measures. *Id.* at 24.

identified criteria and system needs that may drive the need for Supplemental Projects, and potential solutions and alternatives to meeting those needs. The process further prescribes time periods for stakeholders to review materials and provide comments which, as discussed below, we find to be sufficient to comply with Order No. 890. We confirm that this process ensures that the Supplemental Projects planning process in PJM complies with Order No. 890, including by providing sufficient transparency to stakeholders regarding the basic criteria, assumptions, and data that underlie their transmission system plans and ensuring appropriate lines of communication between stakeholders and the PJM Transmission Owners.⁸⁸

31. The Commission met its burden under FPA section 206 finding that the existing rate was unjust and unreasonable and that the replacement established in the February 15 Order was just and reasonable. The PJM Transmission Owners are required only to meet the requirements of Order No. 890, not exceed them. Having found that the proposed Supplemental Projects planning process, with the changes that the Commission required, complied with Order No. 890, the Commission cannot require the PJM Transmission Owners to implement additional revisions above and beyond this just and reasonable replacement.⁸⁹

32. In addition to these alternatives, the Load Group includes two arguments where it does not even reference the February 15 Order. Specifically, the Load Group requests that the obligation-to-build and milestone requirements in the Supplemental Projects planning process be brought in line with the requirements for RTEP projects and that PJM be required to analyze Supplemental Projects for their impact on PJM markets and other concerns that go beyond reliability, very much in the same manner that PJM analyzes baseline RTEP projects.⁹⁰ As a rule, we reject requests for rehearing that raise a

⁸⁸ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 454, 461, 471.

⁸⁹ February 15 Order, 162 FERC ¶ 61,129 at P 117 (explaining that, having found the changes required in the February 15 Order to be just and reasonable, the Commission was not required to show that this approach was the only or most just and reasonable result); see *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695, 703 (D.C. Cir. 2007) (explaining that, in acting under FPA section 206, the Commission is not required to choose the best solution, only a just and reasonable one); *Wisconsin Public Power, Inc. v. FERC*, 493 F.3d 239, 266 (D.C. Cir. 2007); *United Distribution Companies v. FERC*, 88 F.3d 1105, 1169 (D.C. Cir. 1996) (“FERC correctly counters that the fact that AEPCO may have proposed a reasonable alternative to SFV rate design is not compelling. The existence of a second reasonable course of action does not invalidate the agency's determination.”).

⁹⁰ Load Group Rehearing Request at 33-36.

novel issue, unless we find that the issue could not have been previously presented, e.g., claims based on information that only recently became available or concerns prompted by a change in material circumstances.⁹¹ Were we to consider these arguments, we nevertheless would deny them. As we explain above, the Commission has found that the proposal, as modified by the Commission, is just and reasonable, and need not consider whether the Load Group's alternative proposals would be *more* just and reasonable.⁹²

33. Finally, the Load Group does not explain its contention that “even with a nondisclosure agreement, the PJM [Transmission Owners] have the option to withhold their agreement to disclose information necessary for stakeholders to replicate their planning studies.”⁹³ In Appendix B to the February 15 Order, the Commission directed PJM to revise section 1.5.4 of Schedule 6 to the Operating Agreement, which addresses the supply of data in the RTEP process, to clarify that the criteria, assumptions, and models used by the PJM Transmission Owners for the development of Supplemental Projects are included in the requirement covering the provision of information by the PJM Transmission Owners to the Office of the Interconnection, and by the Office of the Interconnection through the PJM website.⁹⁴ These references do not change the scope of information that may be obtained under the preexisting provisions, and the Load Group has not established why a separate standard should apply.

⁹¹ Rule 713(c)(3) of the Commission's Rules of Practice and Procedure states that any request for rehearing must “[s]et forth the matters relied upon by the party requesting rehearing, if rehearing is sought based on matters not available for consideration by the Commission at the time of the final decision or final order.” 18 C.F.R. § 385.713(c)(3). *See, e.g., Algonquin Gas Transmission, LLC*, 154 FERC ¶61,048, at P 250 (2016) (novel issues raised on rehearing are rejected “because our regulations preclude other parties from responding to a request for rehearing and such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision”) (internal quotations omitted).

⁹² *See supra* note 89.

⁹³ Load Group Rehearing Request at 32.

⁹⁴ *See* February 15 Order, 162 FERC ¶ 61,129 at Appendix B, sections 1.5.4(a) and (e).

B. Compliance

1. Procedural Matters

34. On March 19, 2018, PJM, on behalf of the PJM Transmission Owners, submitted the Attachment M-3 Compliance Filing in Docket No. ER17-179-002, and submitted the Schedule 6 Compliance Filing in Docket No. ER17-179-003.

35. Notice of the Compliance Filings was published in the *Federal Register*, 83 Fed. Reg. 12,946 (2018), with interventions and protests due on or before April 9, 2018. On April 9, 2018, the Load Group and Old Dominion, separately, filed protests of the Compliance Filings. On April 24, 2018, PJM and the PJM Transmission Owners each filed motions for leave to answer and answers to the protests. The Load Group submitted a response to those answers on May 9, 2018, and the PJM Transmission Owners filed a further answer to that response on May 24, 2018.

36. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers filed by the Load Group, Old Dominion, the PJM Transmission Owners, and PJM because they have provided information that assisted us in our decision-making process.⁹⁵

2. Substantive Matters

37. The Commission provided a narrow set of directives in the February 15 Order. We find that PJM and the PJM Transmission Owners have complied with these directives. As explained above, we find that Attachment M-3 and the PJM Operating Agreement, with the proposed revisions, are adequate to ensure compliance with Order No. 890. The Load Group's requests for various additional provisions go beyond what the Commission required in, and constitute requests for rehearing of, the February 15 Order. We therefore find these requests to be outside the scope of the compliance proceeding and, were we to consider them as requests for rehearing, would deny them.

⁹⁵ The PJM Transmission Owners' May 24, 2018 response does not address specific issues in the Load Group's May 8, 2018 answer, but generally contends that the Load Group reiterates issues already raised in protests and on rehearing and decided in the February 15 Order. Accordingly, we do not summarize this answer in the discussion below.

a. Attachment M-3 Compliance Filing

38. In the February 15 Order, the Commission directed the PJM Transmission Owners to revise Attachment M-3 to provide for separate stakeholder meetings to discuss (1) the models, criteria, and assumptions used to plan Supplemental Projects (Assumptions Meeting); (2) the needs underlying a Supplemental Project (Needs Meeting); and (3) the proposed solutions to meet those needs (Solutions Meeting).⁹⁶ The Commission further directed the PJM Transmission Owners to propose on compliance the minimum number of days between each of these meetings, before each meeting by which information to be discussed at the meeting must be posted, and after each meeting for stakeholders to submit written comments.⁹⁷ The Commission also required the PJM Transmission Owners to clarify that limitations in the “Modifications” provision of Attachment M-3 only apply to FPA section 205 filings and were not intended to foreclose modifications by the Commission pursuant to FPA section 206.⁹⁸ The Commission included these revisions to Attachment M-3 as Appendix A to the February 15 Order.

39. The PJM Transmission Owners state that they incorporated the revisions to Attachment M-3 from Appendix A of the February 15 Order, and filled in the timing requirements that the Commission left blank.⁹⁹ Specifically, the PJM Transmission Owners propose to require: (1) posting of criteria, assumptions, and models at least 20 calendar days prior to the Assumptions Meeting; (2) submission of comments within 10 calendar days after the Assumptions Meeting, Needs Meeting, and Solutions Meeting; (3) posting of criteria violations and drivers at least 10 days in advance of the Needs Meeting; (4) posting of potential solutions and alternatives identified by the PJM Transmission Owners or stakeholders at least 10 days in advance of the Solutions Meeting; and (5) submission of comments at least 10 days before the Local Plan is integrated into the RTEP for PJM Transmission Owner review and consideration.¹⁰⁰ In addition, the PJM Transmission Owners propose that each of the three meetings will be held at least 25 calendar days apart.¹⁰¹ The PJM Transmission Owners state that they

⁹⁶ February 15 Order, 162 FERC ¶ 61,129 at PP 106-107.

⁹⁷ *Id.* PP 109-113.

⁹⁸ *Id.* P 115.

⁹⁹ Attachment M-3 Compliance Filing at 3-4.

¹⁰⁰ *Id.* at 7.

¹⁰¹ *Id.*

consulted with PJM to ensure that these proposed time periods would comport with PJM's overall planning cycle, and incorporated input from stakeholder comments.¹⁰²

40. Given the relocation of the Supplemental Projects planning process from the Operating Agreement to Attachment M-3 of the PJM OATT, the Commission directed the PJM Transmission Owners to revise Attachment M-3 to specify whether the dispute resolution procedures in Schedule 5 of the Operating Agreement would continue to apply, or to propose a different set of dispute resolution procedures meeting the requirements of Order No. 890.¹⁰³ In the Attachment M-3 Compliance Filing, the PJM Transmission Owners propose to add language confirming that the dispute resolution procedures in Schedule 5 of the Operating Agreement will continue to govern disputes arising under Attachment M-3.¹⁰⁴

41. We accept the Attachment M-3 Compliance Filing. The PJM Transmission Owners have incorporated the changes set forth in Appendix A to the February 15 Order, and we find that PJM and the PJM Transmission Owners have complied with the Commission's directives, and affirm, as discussed above, that these changes comply with Order No. 890. We also accept as just and reasonable the time periods that the PJM Transmission Owners propose and their proposal to use the dispute resolution procedures in Schedule 5 of the Operating Agreement, and deny the Load Group's and Old Dominion's protests with respect to other issues, as discussed further below.

i. Timing

(a) Protest

42. Old Dominion contends that the PJM Transmission Owners have not complied with Order No. 890's coordination and transparency principles with respect to the time between the Assumptions and Needs Meetings, as well as between the Needs and Solutions Meetings, the deadline for posting criteria and drivers in advance of the Needs Meeting, and the deadline for posting potential solutions and alternatives in advance of

¹⁰² *Id.* at 4-7. The PJM Transmission Owners state that they extended the deadline for submitting information prior to the Assumptions Meeting from 10 days to 20 days in response to stakeholder requests for longer minimum time periods, and based on their assessment that this period could be extended without delaying the subsequent steps in the process. *Id.* at 6 n.20.

¹⁰³ February 15 Order, 162 FERC ¶ 61,129 at P 114.

¹⁰⁴ Attachment M-3 Compliance Filing at 8.

the Solutions Meeting.¹⁰⁵ Old Dominion asserts that stakeholders need additional time after the Assumptions Meeting to prepare for the Needs Meeting, which involves reviewing the models, criteria, and assumptions and attempting, as best they can, to replicate the PJM Transmission Owners' analysis. Old Dominion contends that additional time is particularly necessary because some stakeholders may participate in several PJM Transmission Owners' potentially concurrent Supplemental Projects planning processes, and the models, criteria, and assumptions that each transmission owner uses will likely vary.¹⁰⁶ Similarly, Old Dominion asserts that stakeholders require additional time between the Needs and Solutions Meetings to consider the needs that each PJM Transmission Owner has identified and to develop potential solutions of their own.¹⁰⁷ Old Dominion thus asks the Commission to extend the period between these meetings from 25 days to 30 days.¹⁰⁸

43. Old Dominion further requests that the Commission require the PJM Transmission Owners to post identified criteria violations and drivers at least 20 days prior to the Needs Meeting, arguing that the proposed 10-day period is insufficient for stakeholders to meaningfully consider the violations and drivers. Old Dominion maintains that extending this period by 10 days is reasonable and will not extend the overall timeline.¹⁰⁹ For the posting of potential solutions and alternatives prior to Solutions Meeting, Old Dominion asks that the 10-day prior deadline be extended to 15 days to allow stakeholders adequate time to develop their own alternatives and review alternatives proposed by other stakeholders.¹¹⁰

44. The PJM Transmission Owners assert, in their answer, that the minimum time periods proposed in the Attachment M-3 Compliance Filing are both reasonable and "carefully balanced to give stakeholders early and adequate opportunities for input into each stage of the process of planning Supplemental Projects, to give the PJM Transmission Owners adequate time to consider stakeholder comments, and to give PJM enough time to review the Local Plans that result before integrating them into the

¹⁰⁵ Old Dominion April 9, 2018 Protest at 5-6.

¹⁰⁶ *Id.* at 6.

¹⁰⁷ *Id.* at 7-8.

¹⁰⁸ *See id.* at 8.

¹⁰⁹ *Id.* at 7, 8.

¹¹⁰ *Id.* at 8, 9.

RTEP.”¹¹¹ The PJM Transmission Owners emphasize that the time periods were developed in consultation with PJM, and contends that the minimum 25-day interval between meetings is necessary to ensure the flexibility to hold monthly meetings, scheduling around “the numerous other stakeholder and committee meetings on PJM’s calendar.”¹¹² PJM also supports the time periods proposed in the Attachment M-3 Compliance Filing as necessary to align the Supplemental Projects planning process with PJM’s RTEP process for baseline projects.¹¹³ In particular, PJM objects to Old Dominion’s request to extend the 25-day period between meetings to 30 days, explaining that the 25-day period was chosen to align with the Transmission Expansion Advisory Committees which, at least once a year, are held only 28 days apart, and to account for the need to adjust meeting dates for holidays.¹¹⁴

45. The PJM Transmission Owners also disagree with Old Dominion’s request for earlier posting of criteria and solutions in advance of the Needs and Solutions Meetings.¹¹⁵ The PJM Transmission Owners claim that Old Dominion’s request would leave little or no time to consider stakeholder comments from the prior meeting before posting materials for the next meeting. For example, implementing Old Dominion’s request to post criteria 20 days prior to the Needs Meeting, the PJM Transmission Owners argue, would require them to post the material the same day that comments from the Assumptions Meeting are due under Old Dominion’s preferred 30-day meeting interval, and *before* their receipt using the proposed 25-day meeting interval.¹¹⁶

¹¹¹ PJM Transmission Owners April 24, 2018 Answer at 9-10. The PJM Transmission Owners note that PJM does not plan or approve Supplemental Projects, and thus requires time to review the Supplemental Projects that the PJM Transmission Owners plan prior to integrating the Local Plans into the RTEP submitted to its Board of Managers. *Id.* at 6-7.

¹¹² *Id.* at 7-9.

¹¹³ PJM April 24, 2018 Compliance Filing at 5-6.

¹¹⁴ *Id.* at 5-6. The PJM Transmission Owners also reference this point in their answer. PJM Transmission Owners April 24, 2018 Answer at 8.

¹¹⁵ *Id.* at 9-10.

¹¹⁶ *Id.* at 9.

(b) Commission Determination

46. We find that the PJM Transmission Owners have justified their proposed time periods. In particular, we find that the time periods proposed in the Attachment M-3 Compliance Filing reflect input from PJM as well as stakeholders, and appropriately balance the need for stakeholders to have time to review materials and provide comments, for the PJM Transmission Owners to prepare materials and review comments, and for PJM to coordinate the results of the Supplemental Projects planning process with its RTEP planning activities. We find the proposed time periods appropriately calibrated, given the PJM Transmission Owners' stated objective of aligning the Supplemental Projects planning process with PJM's RTEP process.¹¹⁷ Having found this proposal just and reasonable, we are not persuaded that Old Dominion's proposal is necessary for compliance with Order No. 890.

ii. Dispute Resolution

(a) Protest

47. The Load Group agrees that it is appropriate to apply the dispute resolution procedures in Schedule 5 to disputes regarding the transmission planning process, but requests clarification that the same dispute resolution procedures apply to a PJM Transmission Owner's decision to integrate one or more Supplemental Projects into the Local Plan.¹¹⁸ The Load Group maintains that the PJM Transmission Owners have taken the position that the determination to move forward with a Supplemental Project is within the applicable PJM Transmission Owner's purview and not subject to dispute resolution.¹¹⁹ It further states that it is unclear whether Schedule 5 of the Operating Agreement applies to such disputes.¹²⁰ Absent the requested clarification, the Load Group asserts, only disputes about whether PJM and the PJM Transmission Owners complied with the Supplemental Projects planning process will be subject to dispute resolution, and not substantive disputes about the Supplemental Projects themselves.¹²¹

¹¹⁷ Attachment M-3 Compliance Filing at 4.

¹¹⁸ Load Group April 9, 2018 Protest at 9-10.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 10.

¹²¹ *Id.*

48. The PJM Transmission Owners dismiss this request as unnecessary, unsupported, and an attempt to elevate stakeholders to co-equal participants in the Supplemental Projects planning process, contrary to Order No. 890.¹²² The Load Group counters that, absent clarification that the Schedule 5 process applies to both substantive and procedural disputes, the dispute resolution process will fall short of Order No. 890's requirement that reliance on an existing dispute resolution process "specifically address how its procedures will be used to address planning disputes."¹²³

(b) Commission Determination

49. We accept the PJM Transmission Owners' proposal to apply the Schedule 5 dispute resolution procedures to the Supplemental Projects planning process. In the February 15 Order, the Commission explained that, because Schedule 5 of the Operating Agreement applies to disputes arising under the Operating Agreement, the Consolidated Transmission Owners Agreement, and the Reliability Assurance Agreement, moving the transmission planning process for Supplemental Projects to Attachment M-3 of the PJM OATT means that Schedule 5 no longer applied to disputes associated with this process by its terms.¹²⁴ The Commission thus required the PJM Transmission Owners to specify whether they intended to use the dispute resolution procedures in Schedule 5 or a different set of procedures, and they have done so.

50. We agree with the Load Group that substantive disputes that may arise during or result from the Supplemental Projects planning process are also subject to dispute resolution procedures in Schedule 5, and such disputes are not limited to whether PJM and the PJM Transmission Owners complied with the Supplemental Projects planning process itself.¹²⁵ However, the requested clarification of the Load Group is not necessary to achieve this result. The language added in the Attachment M-3 Compliance Filing specifies that disputes arising under Attachment M-3 will be resolved in accordance with the dispute resolution procedures in Schedule 5 of the Operating Agreement, which normally would not apply to an OATT Attachment. Substantive disputes regarding the

¹²² PJM Transmission Owners April 24, 2018 Answer at 17-18.

¹²³ Load Group May 9, 2018 Answer to Answers at 10-11 (quoting Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 501).

¹²⁴ February 15 Order, 162 FERC ¶ 61,129 at P 114.

¹²⁵ As the Commission noted in the February 15 Order, Order No. 890 requires transmission providers to develop a process for managing both substantive and procedural disputes arising from the transmission planning process. *See id.* P 114 n.223 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 501).

Supplemental Projects also will be subject to Schedule 5 dispute resolution procedures, pursuant to the Operating Agreement. Accordingly, we are not directing further changes.

iii. Other Issues

51. The Load Group raises several issues that we find to be outside the scope of the compliance proceeding, including as discussed above, a request for clarification regarding the planning cycle for Supplemental Projects.¹²⁶ In addition, we find the Load Group's reiteration of arguments that the Supplemental Projects planning process should be included in PJM's Operating Agreement to be an untimely request for rehearing, as the February 15 Order expressly accepted this aspect of the proposal.¹²⁷

52. We also consider to be outside the scope of this proceeding the Load Group's requests that the Supplemental Projects planning process should not be considered final until the conclusion of any applicable dispute resolution, and that the PJM Transmission Owners should not be allowed to introduce Supplemental Projects after 30 days prior to any formal RTEP windows opening.¹²⁸

53. Finally, we note that the Load Group also presents data in its May 9, 2018 response regarding the volume of Supplemental Projects presented at Transmission Expansion Advisory Committee and Subregional RTEP meetings in 2017 and 2018, and the stage of development of these projects at the time they were presented.¹²⁹ The issue of transmission projects being presented to stakeholders at advanced stages of development without the opportunity for meaningful input has been documented in this proceeding and the Commission considered it in reaching its determination that the PJM Transmission Owners were not implementing the Supplemental Projects planning process in compliance with Order No. 890's transparency and coordination principles.¹³⁰ The

¹²⁶ See *supra* P 24.

¹²⁷ Load Group April 9, 2018 Protest at 3-5. Accordingly, we also reject the PJM Transmission Owners' response on this point, and the Load Group's further response, as an impermissible answer to a rehearing request. PJM Transmission Owners April 24, 2018 Answer at 11-14; Load Group May 9, 2018 Answer to Answers at 11-13.

¹²⁸ Load Group April 9, 2018 Protest at 9. We likewise reject the PJM Transmission Owners' response on these points. PJM Transmission Owner April 24, 2018 Answer at 16.

¹²⁹ Load Group May 9, 2018 Answer to Answers at 7-9.

¹³⁰ See February 15 Order, 162 FERC ¶ 61,129 at PP 84-85, 87.

changes that the Commission directed to address this issue are currently before us on compliance and have not yet been implemented; additional evidence regarding this issue is unnecessary.

b. Schedule 6 Compliance Filing

54. In light of the modifications required for Attachment M-3, the Commission also directed PJM in the February 15 Order “to make clarifying edits to [Schedule 6 of] the PJM Operating Agreement to remove redundant or inconsistent revisions.”¹³¹ In addition to including references to the development of Supplemental Projects, the Commission required PJM to revise sections 1.3 and 1.5.6 to specify that the Subregional RTEP Committees will be responsible for development and review of the Local Plan, scheduling and facilitating the meetings required in Attachment M-3, and reviewing the criteria, models, and assumptions used to identify the need for Supplemental Projects.¹³² These revisions to the Operating Agreement were appended to the February 15 Order as Appendix B.

55. In the Schedule 6 Compliance Filing, PJM states that it has revised Schedule 6 of the Operating Agreement to implement the revisions in Appendix B of the February 15 Order, and has proposed revisions to a few additional cross-references in Schedule 6 to reflect the renumbering from these revisions.¹³³

i. Protests

56. The Load Group protests PJM’s inclusion in proposed section 1.3(d) of the Operating Agreement a clause stating that the Subregional RTEP Committees will provide stakeholders with sufficient opportunity to review and comment on any Supplemental Projects included in the Local Plan “in accordance with the Additional Procedures for Planning of Supplemental Projects set forth in Attachment M-3 of the PJM [OATT].”¹³⁴ The Load Group notes that this language, which was originally proposed in the Attachment M-3 Filing, was not included in the changes that the

¹³¹ *Id.* P 105.

¹³² *Id.* P 116.

¹³³ Schedule 6 Compliance Filing at 2-4. PJM notes that the language cited in Appendix B for sections 1.5.4(a) and 1.5.4(e) does not reflect the currently accepted Scheduled 6 language, and states that it has therefore slightly modified the revisions set forth in Appendix B to reflect the current language. *See id.* at 3 nn.6, 7.

¹³⁴ Load Group April 9, 2018 Protest at 5-7.

Commission directed in Appendix B to the February 15 Order, and asks that it be struck.¹³⁵ According to the Load Group, “[w]hile the offending language may appear to be merely a reference to Attachment M-3, it purports to incorporate into the Operating Agreement additional procedures for planning of Supplemental Projects that are included in Attachment M-3 of the [OATT],” and would thus give the PJM Transmission Owners “carte blanche” to modify the Operating Agreement absent the requisite supermajority vote by the Members Committee.¹³⁶

57. The Load Group argues that the language in section 1.3(d) of Schedule 6 should be struck because it has not gone into effect by operation of law, and was, in fact, expressly rejected in the February 15 Order, when the Commission found that the proposed Operating Agreement revisions were not just and reasonable absent the changes in Appendix B.¹³⁷ PJM argues just the opposite: that language should be kept because the Commission did not find that particular clause to be unjust and unreasonable and the language is consistent with the Commission’s determination that the PJM Transmission Owners are responsible for the Supplemental Projects planning process.¹³⁸ In preparing the Schedule 6 Compliance Filing, PJM asserts that it assumed “that the Commission had inadvertently neglected to include the cross-referenced language from Schedule 6, section 1.3(d) in Appendix B to the February 15 Order,” and thus treated the language as accepted.¹³⁹ PJM argues that this language should be included in the Operating Agreement to confirm that, even though Supplemental Projects are reviewed at Subregional RTEP Committee meetings, the process for reviewing Supplemental Projects is contained in OATT Attachment M-3.¹⁴⁰

58. The PJM Transmission Owners support PJM’s position that the language should be kept as was in the initial proposal, because the Commission did not expressly reject it and it is consistent with the Commission’s recognition that the Supplemental Projects planning process was appropriately placed in Attachment M-3.¹⁴¹ They also point out

¹³⁵ *Id.* at 5. The clause is not marked as a change from the Commission-approved Operating Agreement language in the Schedule 6 Compliance Filing.

¹³⁶ *Id.* at 7.

¹³⁷ *Id.* at 5-6.

¹³⁸ PJM April 24, 2018 Answer at 4.

¹³⁹ *Id.* at 5.

¹⁴⁰ *Id.*

¹⁴¹ PJM Transmission Owners April 24, 2018 Answer at 14.

that the language is consistent with the cross-reference to Attachment M-3 that the Commission directed PJM to add to Schedule 6 as section 1.5.6(c).¹⁴² The PJM Transmission Owners posit that the Commission “inadvertently omitted” this change from Appendix B, but reason that the Commission’s oversight “has no bearing on the reasonableness of PJM’s compliance filing, which was proper in every respect.”¹⁴³

ii. Commission Determination

59. We accept the Schedule 6 Compliance Filing, which we find complies with the February 15 Order. We will not require deletion of the disputed reference to Attachment M-3 in section 1.3(d) of Schedule 6. The additional language merely clarifies that stakeholders will be permitted to review and comment on Supplemental Projects in the Local Plan consistent with the procedures set forth in Attachment M-3, which we find to be appropriate. We agree that, while not included in Appendix B, this language is consistent with the Commission’s determination in the February 15 Order that it is just and reasonable to move the provisions governing the Supplement Projects planning process from the Operating Agreement to Attachment M-3 of the OATT.¹⁴⁴ The Load Group’s objection to this language echoes its rehearing argument that the Supplemental Projects planning process must be modified only through the Operating Agreement,¹⁴⁵ which we reject above. Finally, as this language was originally proposed in the Attachment M-3 Filing, all parties had notice and the opportunity to comment.

¹⁴² *Id.* (citing February 15 Order, 162 FERC ¶ 61,129 at Appendix B).

¹⁴³ *Id.* at 14-15.

¹⁴⁴ February 15 Order, 162 FERC ¶ 61,129 at P 97.

¹⁴⁵ *See* Load Group April 9, 2018 Protest at 7.

The Commission orders:

(A) The request for rehearing is hereby denied, as discussed in the body of this order.

(B) The compliance filings are hereby accepted, as discussed in the body of this order.

By the Commission. Chairman McIntyre is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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