

142 FERC ¶ 61,214
 UNITED STATES OF AMERICA
 FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
 Philip D. Moeller, John R. Norris,
 Cheryl A. LaFleur, and Tony Clark.

PJM Interconnection, L.L.C.	Docket Nos. ER13-198-000
Indicated PJM Transmission Owners	ER13-195-000
PJM Interconnection, L.L.C Public Service Electric and Gas Company	ER13-90-000

ORDER ON COMPLIANCE FILINGS

(Issued March 22, 2013)

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1. On October 25, 2012, PJM Interconnection, L.L.C. (PJM) submitted, pursuant to section 206 of the Federal Power Act (FPA),¹ in Docket No. ER13-198-000 (PJM October 25 Filing), revisions to Schedule 6 of its Operating Agreement (OA) (Schedule 6), as well as conforming revisions to its OA and Open Access Transmission Tariff (OATT)² to comply with the local and regional transmission planning requirements of Order No. 1000.³ Prior to this, on October 11, 2012, the PJM Transmission Owners had submitted, pursuant to section 205 of the FPA,⁴ in Docket No. ER13-90-000 (PJM Transmission Owners October 11 Filing), revisions to Schedule 12 of the PJM OATT (Schedule 12) to comply with the cost allocation requirements of Order No. 1000. Also on October 25, 2012, the Indicated PJM Transmission Owners⁵ submitted, in Docket No. ER13-195-000, a filing (Indicated PJM Transmission Owners October 25 Filing) in which they posited that *Mobile-Sierra* protections apply to existing rights of first refusal in PJM's tariffs and agreements (PJM, PJM Transmission Owners, and Indicated PJM

¹ 16 U.S.C. § 824e (2006).

² On October 26, 2012, PJM submitted a supplement to its October 25 Filing to provide an Appendix II that due to technical issues was not included in the October 25 Filing.

³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

⁴ 16 U.S.C. § 824d (2006).

⁵ For the purposes of this proceeding, the Indicated PJM Transmission Owners consist of: Exelon Corporation; Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, and American Transmission Systems, Incorporated (collectively, the FirstEnergy Companies); Pepco Holdings, Inc. on behalf of its affiliates Potomac Electric Power Company, Delmarva Power & Light Company and Atlantic City Electric Company (collectively, PHI Companies); PPL Electric Utilities Corporation; Public Service Electric and Gas Company; UGI Utilities, Inc. – Electric Division; and Virginia Electric and Power Company, doing business as Dominion Virginia Power.

Transmission Owners are collectively referred to as “PJM Parties”).⁶ In this order, we conditionally accept the PJM October 25 Filing, subject to further compliance filings, as discussed below. Additionally, we will address the appropriate effective date for PJM’s Order No. 1000 compliant regional transmission planning process in our order addressing PJM’s subsequent compliance filing. We will conditionally accept the PJM Transmission Owners October 11 Filing, effective February 1, 2013, as requested, subject to further compliance filings, as discussed below.

I. Background

2. In Order No. 1000, the Commission amended the transmission planning and cost allocation requirements of Order No. 890⁷ to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. Order No. 1000’s transmission planning reforms require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its OATT to describe procedures for the consideration of transmission needs driven by public policy requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; (3) remove federal ROFRs from Commission-jurisdictional tariffs and agreements for certain new transmission facilities; and (4) improve coordination between neighboring transmission planning regions for new interregional transmission facilities.

3. Order No. 1000’s cost allocation reforms require that each public utility transmission provider participate in a regional transmission planning process that has: (1) a regional cost allocation method or methods for the cost of new transmission facilities selected in a regional transmission plan for purposes of cost allocation; and (2) an interregional cost allocation method or methods for the cost of new transmission facilities that are located in two neighboring transmission planning regions and are jointly evaluated by the two regions in the interregional transmission coordination procedures required by Order No. 1000. Order No. 1000 also requires that each cost allocation method satisfy six cost allocation principles.

⁶ “PJM Parties” is used as a heading reference throughout this order. However, where applicable, references are made individually to PJM, PJM Transmission Owners, and Indicated PJM Transmission Owners.

⁷ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

4. The Commission acknowledged in Order No. 1000 that each transmission planning region has unique characteristics, and, therefore, Order No. 1000 accords transmission planning regions significant flexibility to tailor regional transmission planning and cost allocation processes to accommodate regional differences.⁸ Order No. 1000 does not prescribe the exact manner in which public utility transmission providers must fulfill the regional transmission planning requirements.⁹ Similarly, because the Commission did not want to prescribe a uniform method of cost allocation for every transmission planning region, Order No. 1000 adopts the use of cost allocation principles.¹⁰ The Commission stated that it was acting to identify a minimum set of requirements that must be met to ensure that all transmission planning processes and cost allocation mechanisms subject to its jurisdiction result in Commission-jurisdictional services being provided at rates, terms, and conditions that are just and reasonable and not unduly discriminatory or preferential, and it acknowledged that public utility transmission providers in some regions may already meet or exceed some requirements of Order No. 1000.¹¹

II. Compliance Filings

5. In its October 25 Filing, PJM submits revisions to Schedule 6, as well as conforming revisions to the definition sections of its OA and its OATT. PJM states that its current transmission planning process already satisfies many of the requirements of Order No. 1000. Additionally, PJM states that it proposes specific reforms, including procedures to provide for consideration of public policy requirements and a competitive solicitation process for new transmission proposals, that are either consistent with Order No. 1000 or, “due to the unique nature of PJM’s operations and markets,” are “superior to” Order No. 1000.¹²

6. PJM Transmission Owners in their October 11 Filing submit revisions to Schedule 12, relating to the allocation of costs of transmission system expansions and enhancements approved by the PJM Board of Managers. PJM Transmission Owners

⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 61.

⁹ *Id.* P 157.

¹⁰ *Id.* P 604.

¹¹ *Id.* P 13.

¹² PJM October 25 Filing, Docket No. ER13-198-000, at 2-3 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 149 and 18 C.F.R. § 35.28(c)(4)(ii) (2012)).

state that their proposed revisions comply with the cost allocation principles of Order No. 1000.¹³ In its October 25 Filing, PJM states that it incorporates the revisions to Schedule 12 of the PJM OATT proposed by PJM Transmission Owners in their October 11 Filing under section 205 of the FPA because it complements the PJM October 25 Filing. Additionally, PJM references the PJM Transmission Owners October 11 Filing as a key component of the PJM October 25 Filing.¹⁴

7. PJM states that its October 25 Filing, together with the PJM Transmission Owners October 11 Filing, satisfies PJM's compliance obligations relative to the regional cost allocation requirements of Order No. 1000. PJM proposes to implement its proposed revisions to Schedule 6 of its OA, as well as its OATT, for the next full 12-month or 24-month planning cycle following a final Commission order approving this compliance filing and any associated subsequent compliance filings. PJM consents to the Commission determining the actual effective date. PJM Transmission Owners propose an effective date of February 1, 2013, for their revisions to Schedule 12 of PJM's OATT.

8. Finally, in the Indicated PJM Transmission Owners October 25 Filing, the Indicated PJM Transmission Owners submit, in compliance with Order No. 1000-A, a request that the Commission find that PJM's right of first refusal for non-economic projects is protected by the *Mobile-Sierra* doctrine,¹⁵ determine that the "public interest" standard of review for setting aside the right of first refusal has not been met, and reject the right of first refusal removal provisions proposed in the PJM October 25 Filing as moot.¹⁶ Indicated PJM Transmission Owners state that although PJM is responsible for its Order No. 1000 compliance filings, the Indicated PJM Transmission Owners made a separate filing because it is their rights of first refusal that are at issue.¹⁷ Indicated PJM Transmission Owners state that the PJM October 25 Filing, together with the Indicated

¹³ PJM Transmission Owners October 11 Filing, Docket No. ER13-90-000, at 3, 14-18.

¹⁴ PJM October 25 Filing, Docket No. ER13-198-000, at 4.

¹⁵ The *Mobile-Sierra* doctrine originated in the Supreme Court's decisions in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) (*Mobile*), and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Sierra*).

¹⁶ Indicated PJM Transmission Owners October 25 Filing, Docket No. ER13-195-000, at 1, 18.

¹⁷ *Id.* at 2 n.4.

PJM Transmission Owners October 25 Filing, constitute companion pieces to the requirements of Order No. 1000-A.¹⁸

III. Notice of Filing and Responsive Pleadings

A. PJM October 25 Filing (Docket No. ER13-198-000)

9. Notice of the PJM October 25 Filing was published in the *Federal Register*, 77 Fed. Reg. 66,829 (2012), with interventions and protests due on or before December 10, 2012. Notices of intervention and timely-filed motions to intervene were filed by the entities noted in the Appendix A to this order. Motions to intervene out-of-time were submitted on December 12, 2012, by New Jersey Board; on December 14, 2012, by National Rural Electric Coops; and on February 5, 2013, by PHI Companies. Protests and comments were filed in the PJM October 25 Filing by the entities noted in Appendix B to this order and are addressed below. Comments were submitted out of time on December 11, 2012, by PJM IMM; and on December 12, 2012, by New Jersey Board.

10. Answers were filed in the PJM October 25 Filing by the entities noted in Appendix C to this order and are addressed below.

B. Indicated PJM Transmission Owners October 25 Filing (Docket No. ER13-195-000)

11. Notice of the Indicated PJM Transmission Owners October 25 Filing was published in the *Federal Register*, 77 Fed. Reg. 66,829 (2012), with interventions and protests due on or before December 10, 2012. Notices of intervention and timely motions to intervene were filed by the entities noted in the Appendix A to this order. Motions to intervene out-of-time were submitted on December 12, 2012, by New Jersey Board; on December 14, 2012, by National Rural Electric Coops; on December 19, 2012, by PJM; and on December 21, 2012, by Indiana Commission. Protests and comments were filed in the Indicated PJM Transmission Owners October 25 Filing by the entities noted in Appendix B to this order and are addressed below. On December 12, 2012, LS Power filed a supplemental protest and New Jersey Board submitted comments out of time. On December 21, 2012, Indiana Commission submitted comments out of time in support of the comments of Illinois Commerce Commission.

¹⁸ *Id.*, Cover Letter (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 389) (“As the Commission explained in Order No. 1000, a public utility transmission provider that considers its contract to be protected by a *Mobile-Sierra* provision may present its arguments as part of its compliance filing.”).

12. Answers were filed in the Indicated PJM Transmission Owners October 25 Filing by the entities noted in Appendix C to this order and are addressed below.

C. PJM Transmission Owners October 11 Filing (Docket No. ER13-90-000)

13. Notice of the PJM Transmission Owners October 11 Filing was published in the *Federal Register*, 77 Fed. Reg. 64,974-75 (2012), with interventions and protests due on or before November 9, 2012.

14. On November 1, 2012, the Commission granted an extension of time for filing comments, protests, and interventions in the above-referenced proceedings until and including December 10, 2012.

15. Notice of extension of time was published in the *Federal Register*, 77 Fed. Reg. 66,829-30 (2012), with interventions and protests due on or before December 10, 2012.

16. Notices of intervention and timely-filed motions to intervene were filed by the entities noted in Appendix A to this order. Motions to intervene out of time were filed on December 11, 2012, by Acciona; on December 12, 2012, by New Jersey Board; and on February 1, 2013, by PHI Companies. Protests and comments were filed in the PJM Transmission Owners October 11 Filing by the entities noted in Appendix B to this order and are addressed below. On December 12, 2012, the New Jersey Board submitted comments out of time.

17. Answers were filed in the PJM Transmission Owners October 11 Filing by the entities noted in Appendix C to this order and are addressed below.

18. On January 31, 2013, the Commission issued an order conditionally accepting the PJM Transmission Owners October 11 Filing, subject to the outcome of this order.¹⁹

IV. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notices of intervention and timely, unopposed motions to

¹⁹ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,074, at P 1 (2013) (“In this order the Commission conditionally accepts and nominally suspends the proposed cost allocation methods for filing, to be effective February 1, 2013, subject to refund and to a future order in PJM’s Order No. 1000 compliance proceeding.”).

intervene serve to make the entities that filed them parties to the proceeding in which they filed them. In addition, given the early stage of these proceedings and the absence of undue prejudice or delay, we grant the unopposed late-filed interventions. In the PJM October 25 Filing (Docket No. ER13-198-000) we grant the unopposed late-filed interventions of New Jersey Board, National Rural Electric Coops, and PHI Companies. In the Indicated PJM Transmission Owners October 25 Filing (Docket No. ER13-195-000) we grant the unopposed late-filed interventions of New Jersey Board, National Rural Electric Coops, PJM, and Indiana Commission. In the PJM Transmission Owners October 11 Filing (Docket No. ER13-90-000) we grant the unopposed late-filed interventions of Acciona, New Jersey Board, and PHI Companies.

20. As noted above, in each proceeding, certain parties filed an answer to a protest or an answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in the proceedings under Docket Nos. ER13-198-000, ER13-195-000, and ER13-90-000,²⁰ because they have provided information that assisted us in our decision-making process in these proceedings.

B. Substantive Matters

21. We find that PJM Parties' compliance filings, with certain modifications, comply with the obligations relating to regional transmission planning and cost allocation requirements imposed by Order No. 1000. Accordingly, we will accept the PJM October 25 Filing to be effective as discussed in the body of this order, subject to further compliance filing(s) as discussed below. We also conditionally accept the PJM Transmission Owners October 11 Filing, effective February 1, 2013, as requested, subject to further compliance filing(s) as discussed below. We will direct PJM Parties to file the compliance filing(s) within 120 days of the date of issuance of this order.

1. Regional Transmission Planning Requirements

22. Order No. 1000 requires each public utility transmission provider to participate in a regional transmission planning process that complies with the identified transmission planning principles of Order No. 890 and that, in consultation with stakeholders, results in the development of a regional transmission plan.²¹ The regional transmission plan will identify transmission facilities that meet the region's reliability, economic, and Public

²⁰ See Appendix C for a list of parties that have filed answers in each of the dockets that are addressed in this order.

²¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 6, 11, 146.

Policy Requirements-related needs more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes.²² A primary objective of the reforms in Order No. 1000 is to ensure that transmission planning processes at the regional level consider and evaluate, on a non-discriminatory basis, possible transmission alternatives and produce a transmission plan that can meet a transmission planning region's transmission needs more efficiently and cost-effectively.²³

a. Transmission Planning Region

23. Order No. 1000 specifies that a transmission planning region is one in which public utility transmission providers, in consultation with stakeholders and affected states, have agreed to participate for purposes of regional transmission planning and development of a single regional transmission plan.²⁴ The scope of a transmission planning region should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions.²⁵ However, an individual public utility transmission provider cannot, by itself, satisfy the regional transmission planning requirements of Order No. 1000.²⁶

24. In addition, Order No. 1000 requires that public utility transmission providers explain in their compliance filings how they will determine which transmission facilities evaluated in their local and regional transmission planning processes will be subject to the requirements of Order No. 1000.²⁷ Order No. 1000's requirements are intended to apply to new transmission facilities, which are those transmission facilities that are subject to evaluation, or reevaluation as the case may be, within a public utility transmission provider's local or regional transmission planning process after the effective date of the public utility transmission provider's compliance filing.²⁸ Each region must

²² *Id.* PP 11, 148.

²³ *Id.* PP 4, 6.

²⁴ *Id.* P 160.

²⁵ *Id.* (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 527).

²⁶ *Id.*

²⁷ *Id.* PP 65, 162.

²⁸ *Id.*

determine at what point a previously approved project is no longer subject to reevaluation and, as a result, whether it is subject to these requirements.²⁹

25. Order No. 1000-A states that public utility transmission providers in each transmission planning region must have a clear enrollment process that defines how entities, including non-public utility transmission providers, make the choice to become part of the transmission planning region.³⁰ Each public utility transmission provider (or regional transmission planning entity acting for all of the public utility transmission providers in its transmission planning region) must include in its OATT a list of all the public utility and non-public utility transmission providers that have enrolled as transmission providers in its transmission planning region.³¹ A non-public utility transmission provider will not be considered to have made the choice to join a transmission planning region and thus be eligible to be allocated costs under the regional cost allocation method until it has enrolled in the transmission planning region.³²

i. PJM Parties' Filings

26. PJM states that the scope of the PJM transmission planning region includes numerous public utility and non-public utility transmission providers. PJM states that this includes, among others, those entities that have integrated into PJM since 2002: Allegheny, American Electric Power Service Corporation, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., Dayton Power & Light Company, American Transmission Systems, Inc., Duke Energy Ohio, Inc., and Duke Energy Kentucky, Inc. PJM notes that East Kentucky Power Cooperative is currently obtaining the necessary approvals for integration and expects to integrate into PJM by June 1, 2013.

27. PJM proposes to implement its complete set of revisions in the next full 12-month and 24-month planning cycles following a final Commission order approving its compliance filing and any associated subsequent compliance filings. PJM states that it commits to evaluate projects under consideration in the planning cycle in which the Commission's compliance order issues under the new rules to the extent feasible.³³ PJM also states that it will: (1) clarify its exact transition to its Order No. 1000 compliant

²⁹ *Id.*

³⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

³¹ *Id.*

³² *Id.* PP 276-277.

³³ PJM October 25 Filing, Docket No. ER13-198-000, at 82.

process upon receipt and review of the Commission's final order on this compliance filing; (2) vet through the stakeholder process any changes to the PJM manuals necessary to clarify PJM's process to facilitate processing proposals by nonincumbent transmission developers, prior to the effective date of this compliance filing; and (3) work with its states, as requested, to develop public policy projects, either as a Supplemental Project or an individual "one-off" project, for filing with the Commission.³⁴

28. As for the enrollment process, section 11.6 of the OA includes the procedures and requirements to enroll as a full member of PJM.³⁵ Specifically, to become a member of PJM, an entity must satisfy certain requirements, apply in writing, and execute a supplement to the OA in substantially the form prescribed in Schedule 4 of the OA.³⁶ In addition, Attachment A of the Consolidated Transmission Owners Agreement (CTOA) includes a list of transmission owning members of PJM.³⁷

ii. Protests/Comments

29. No protests or comments were filed.

iii. Commission Determination

30. We find that the scope of the transmission planning region, the description of facilities that will be subject to the requirements of Order No. 1000, and the enrollment process specified in PJM's filing comply, in part, with the requirements of Order No. 1000. Therefore, we accept in part, and reject in part, PJM's proposal to comply with these requirements of Order No. 1000, as described more fully below. In Order No. 1000, the Commission stated that every public utility transmission provider has already included itself in a region for purposes of complying with Order No. 890 and that these existing regional processes should guide public utility transmission providers in formulating transmission planning regions to comply with the requirements of Order No. 1000.³⁸ PJM, a Commission-approved regional transmission organization (RTO), has a footprint reflecting a regional scope that complies with Order No. 890.³⁹ We note

³⁴ *Id.* at 81-82.

³⁵ PJM, Intra-PJM Tariffs, OA, § 11.6 (Membership Requirements) (2.0.0).

³⁶ *Id.* § 11.6(a), (c), (e) (2.0.0).

³⁷ PJM, PJM, Rate Schedules, TOA (Rate Schedule 42), Attachment A (5.1.0).

³⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 160.

³⁹ *See PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163 (2008) (accepting the PJM region and PJM's proposed transmission planning process as consistent with Order (continued...))

that there has been no significant decrease or limitation in the scope or configuration of the PJM transmission planning region since the Commission accepted PJM's compliance with respect to Order No. 890. Accordingly, we find that the scope of the PJM region complies with the requirements of Order No. 1000.

31. PJM adequately demonstrates that its proposed Schedule 6, OA, and OATT revisions apply to new transmission facilities within PJM's regional transmission planning process after the effective date of PJM's compliance filing. We note however, that PJM makes conflicting requests regarding the effective date and implementation of its proposed revisions. First, PJM requests an effective date for its proposed revisions that, "coincides with the first 12-month and 24-month planning cycle after issuance of a Commission order in [the PJM October 25 Filing]." ⁴⁰ Second, PJM states that it "will implement its complete set of revisions in the next full 12-month or 24-month planning cycle following a final Commission order approving [the PJM October 25 Filing] and any associated subsequent compliance filings." ⁴¹ Third, PJM requests and consents to the Commission replacing its placeholder effective date submitted in eTariff with the actual effective date determined by the Commission. ⁴²

32. We accept PJM's proposal to make the proposed OATT revisions effective at the start of the next full 12-month and 24-month planning cycles following this order. However, neither Schedule 6 nor the OA or OATT provides a date certain for indicating the start of the next full 12-month and 24-month planning cycle. We note that PJM's Manual 14B appears to indicate that the planning year begins in January of a given year. However, Manual 14B also appears to indicate that the regional transmission planning process (i.e., development of assumptions and building of a basecase model) begins in December prior to a planning year. ⁴³ Therefore, we direct PJM, to submit a compliance filing, as discussed more fully below, establishing an appropriate effective date to coincide with the beginning of a 12-month and 24-month planning cycle, and providing

No. 890) (2008 PJM Order No. 890 Compliance Order), *order on compliance*, 127 FERC ¶ 61,166 (2009) (2009 PJM Order No. 890 Compliance Order), *order on reh'g*, 129 FERC ¶ 61,177 (2009).

⁴⁰ PJM October 25 Filing, Docket No. ER13-198-000, at 81.

⁴¹ *Id.*

⁴² *Id.* at 81 n.227

⁴³ *See* PJM, Manual 14B: PJM Region Transmission Planning Process, Revision: 22, Ex. 1 (24-Month Planning Cycle), at 15 (Oct. 25, 2012), *available at* <http://www.pjm.com/document/manuals.aspx>.

further information regarding PJM's transition to the revised regional transmission planning process. The Commission anticipates that this appropriate effective date will coincide with the beginning of the next 12-month and 24-month planning cycle following the issuance of this order consistent with PJM's proposal, as noted above. PJM may propose a different effective date, but must provide a showing demonstrating why such an effective date is more appropriate. We note that any proposed effective date must coincide with the beginning of a 12-month and 24-month PJM regional transmission planning cycle. Consistent with this determination, we reject PJM's proposal to implement its complete set of revision in the next full 12-month or 24-month planning cycle following a final Commission order approving PJM's October 25 Filing and any associated subsequent compliance filings. We do not believe that it is necessary to delay the effective date of the proposed revisions until every issue in this proceeding has been resolved.

33. PJM's enrollment process comprises specific procedures an entity must complete to become a full transmission-owning member of PJM and to be eligible to be allocated costs under the regional cost allocation methods. Specifically, section 11.6 of the OA includes the procedures and requirements to enroll as a full member of PJM.⁴⁴ We find that these procedures reflect a clear process through which entities, including non-public utility transmission providers, may choose to become part of the transmission planning region. In addition, PJM has included in its CTOA a list of all the public utility and non-public utility transmission providers that have enrolled as transmission owning members of PJM.⁴⁵

34. Accordingly, we direct PJM to submit a compliance filing, within 120 days of the date of this order, that: (1) establishes a date certain indicating the start of the next full 12-month and 24-month planning cycle, during which PJM's proposed revisions will be effective; or (2) provides an alternative proposed effective date to coincide with a full 12-month and 24-month planning cycle, and explains why the alternative proposed effective date is appropriate; and (3) provides 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.

b. Regional Transmission Planning Process General Requirements

35. Order No. 1000 requires that each public utility transmission provider participate in a regional transmission planning process that produces a regional transmission plan

⁴⁴ PJM, Intra-PJM Tariffs, OA, § 11.6 (Membership Requirements) (2.0.0).

⁴⁵ PJM, Rate Schedules, TOA (Rate Schedule 42), Attachment A (5.1.0).

and that complies with certain transmission planning principles of Order No. 890 identified in Order No. 1000.⁴⁶ Through the regional transmission planning process, public utility transmission providers must evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than transmission solutions identified by individual public utility transmission providers in their local transmission planning process.⁴⁷ Public utility transmission providers have the flexibility to develop, in consultation with stakeholders, procedures by which the public utility transmission providers in the region identify and evaluate the set of potential transmission solutions that may meet the region's needs more efficiently or cost-effectively.⁴⁸ The procedures must result in a regional transmission plan that reflects the determination of the set of transmission facilities that more efficiently or cost-effectively meet the region's needs.⁴⁹ The process used to produce the regional transmission plan must satisfy the following Order No. 890 transmission planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; and (7) economic planning.⁵⁰

36. Application of these transmission planning principles will ensure that stakeholders have an opportunity to participate in the regional transmission planning process in a timely and meaningful manner. Stakeholders must have an opportunity to express their needs, have access to information, and an opportunity to provide information, and thus have an opportunity to participate in the identification and evaluation of regional transmission solutions.⁵¹ In addition, when evaluating the merits of alternative transmission solutions, proposed non-transmission alternatives must be considered on a comparable basis.⁵² Public utility transmission providers must identify how they will

⁴⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 146, 151.

⁴⁷ *Id.* P 148.

⁴⁸ *Id.* P 149.

⁴⁹ *Id.* P 147.

⁵⁰ *Id.* P 151. These transmission planning principles are explained more fully in Order No. 890.

⁵¹ *Id.* P 150. As explained in Order No. 1000, the term “stakeholder” means any interested party. *Id.* P 151 n.143.

⁵² *Id.* P 148.

evaluate and select from competing transmission solutions and resources such that all types of resources are considered on a comparable basis.⁵³

i. PJM Parties' Filings

(a) Summary of PJM's Current Regional Transmission Expansion Planning (RTEP) Process

37. The current PJM RTEP process is implemented on an annual cycle (recently expanded to include a 24 month cycle) centered on PJM's planning and market simulation functions. The PJM RTEP process includes opportunities for stakeholders, including members, regulatory bodies, and other interested parties, to participate and provide input in the regional transmission planning process through the PJM Transmission Expansion Advisory Committee (TEAC), the Subregional RTEP Committee, and the PJM Planning Committee (PC) forums. The RTEP process has continually evolved since the Commission accepted PJM's RTEP Protocol in 1997.⁵⁴ PJM's RTEP process culminates in PJM's presentation of the RTEP for approval by the PJM Board of Managers.⁵⁵

(b) PJM Parties' Proposal

38. PJM asserts that the revisions it proposes in its October 25 Filing, considered together with: (1) its Order No. 890 filings which the Commission accepted; and (2) the revisions filed and accepted in Docket No. ER12-1178-000,⁵⁶ satisfy the Commission's objectives in Order No. 1000.

39. PJM notes that the Commission found, during its Order No. 890 compliance proceeding, that PJM complied with Order No. 890's coordination principle by providing for stakeholder input and participation at all stages of the regional planning process

⁵³ *Id.* P 155.

⁵⁴ See *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997).

⁵⁵ See PJM, Manual 14B: PJM Region Transmission Planning Process, Revision: 22, at 7 (Oct. 25, 2012), available at <http://www.pjm.com/document/manuals.aspx>.

⁵⁶ See PJM February 29, 2012 Filing (February 2012 Filing), *accepted in PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,080, at P 15 (2012) (April 30, 2012 Order); see also PJM May 30, 2012 Filing, *accepted in PJM Interconnection, L.L.C.*, 141 FERC ¶ 61,169 (2012) (November 29, 2012 Order).

through the PJM PC and the TEAC.⁵⁷ In addition, PJM states that it proposed and the Commission accepted, in Docket No. ER12-1178-000, a process through which state commissions and stakeholders may provide input on the range of assumptions and public policy initiatives that PJM uses and considers in the regional transmission planning process.⁵⁸ PJM notes that this amendment to its RTEP process memorialized PJM's commitment to meet regularly with state representatives, including but not limited to state commissions, to encourage greater input from the states and to better integrate individual state needs into the regional plans.⁵⁹

40. PJM states that the Commission likewise found that PJM fulfilled the requirements of the Order No. 890 openness principle through its open and transparent planning committees, which are accessible to all interested parties, and through its practice of posting on the PJM website all information reviewed and discussed at the planning committees. PJM adds the Commission found that the provisions regarding the release of confidential information and critical energy infrastructure information (CEII) in the OA satisfy the requirements of Order No. 890.⁶⁰

41. In addition, PJM states that, since its Order No. 890 compliance proceeding, PJM has amended its regional transmission planning process to expand stakeholders' opportunities to provide input. In particular, PJM states, stakeholders can provide input and submit suggestions: (1) prior to the initial meetings for the assumptions to be used in the sensitivity studies, modeling assumption variations and scenario analyses; (2) upon issuance of the range of assumptions to be used in the studies and analyses; (3) on the

⁵⁷ PJM October 25 Filing, Docket No. ER13-198-000, at 18 (referring to 2008 PJM Order No. 890 Compliance Order, 123 FERC ¶ 61,163 at P 22).

⁵⁸ PJM October 25 Filing, Docket No. ER13-198-000, at 19. In particular, PJM notes that it instituted a new committee within the stakeholder process, the Independent State Agencies Committee (ISAC), which is comprised of interested state agencies in the PJM region. PJM states that, according to section 1.5.6(d) of Schedule 6, PJM facilitates periodic meetings with the ISAC to discuss: (1) the assumptions used in performing the evaluation and analysis of potential transmission needs; (2) regulatory initiatives, where appropriate; (3) the impact of regulatory actions and other trends in the industry; and (4) alternative sensitivity studies, modeling assumption variations, and scenario analyses proposed by the ISAC. PJM October 25 Filing, Docket No. ER13-198-000, at 19-20 (referring to PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.6(d) (3.0.0)).

⁵⁹ PJM October 25 Filing, Docket No. ER13-198-000, at 20.

⁶⁰*Id.* at 21 (referring to 2008 PJM Order No. 890 Compliance Order, 123 FERC ¶ 61,163 at P 28).

study results, including the sensitivity studies, modeling assumption variations and scenario analyses; and (4) on the projects to be included in the RTEP.⁶¹

42. PJM states that, according to Schedule 6, it is required to post communications regarding the study results.⁶² Specifically, section 1.5.4(e) of Schedule 6 requires that PJM post on its website information specific to each Local Plan,⁶³ including all criteria, assumptions, and models used by the PJM Transmission Owners in developing their respective Local Plans.⁶⁴ PJM also indicates that, through its filing in Docket No. ER12-1178-000, it has expanded its information posting requirements to include notices of the commencement of planning studies, as well as the assumptions used in the studies and scenario analyses, and the final RTEP approved by the PJM Board.⁶⁵ PJM adds that its Order No. 1000 proposal incorporates new posting requirements related to the proposal window process,⁶⁶ including the requirement to post those violations, system conditions

⁶¹ *Id.* at 21-22 (citing PJM, Intra-PJM Tariffs, OA, Schedule 6, §§ 1.3(b) (Establishment of Committees) (2.0.0), 1.5.4(c) (Supply of Data) (3.0.0), 1.5.6(b) (Development of the Recommended Regional Transmission Expansion Plan) (3.0.0)).

⁶² *Id.* at 22 (citing PJM, Intra-PJM Tariffs, OA, Schedule 6, §§ 1.5.4(g), 1.5.6(b) (3.0.0)).

⁶³ As defined, a Local Plan refers to the plan as developed by the Transmission Owners. The Local Plan shall include, at a minimum, the Subregional RTEP Projects and Supplemental Projects as identified by the Transmission Owners within their zone. The Local Plan will include those projects that are developed to comply with the Transmission Owner planning criteria. *See* PJM, Intra-PJM Tariffs, OA, Definitions (I-L), § 1.18B (1.0.0).

⁶⁴ PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.4(e) (3.0.0).

⁶⁵ PJM October 25 Filing, Docket No. ER13-198-000, at 22.

⁶⁶ To comply with the requirements regarding nonincumbent transmission developers, PJM proposes a competitive solicitation process through which an entity who has pre-qualified may submit a project proposal and may notify PJM of whether or not it desires to be designated rights to the project if the project is selected for inclusion in the RTEP. *See* PJM October 25 Filing, Docket No. ER13-198-000, at 13. PJM uses the term “proposal windows” to specify the period in PJM’s proposed “transmission project proposal process,” during which stakeholders will have the opportunity to propose transmission projects in response to transmission needs identified by PJM. According to PJM’s October 25 Filing, PJM will review the project proposals and may then select the more efficient or cost-effective transmission solution from among these project

(continued...)

and economic constraints, and “Public Policy Requirements”⁶⁷ that could be addressed by project proposals in the proposal window process or by the states pursuant to the State Agreement Approach,⁶⁸ as well as an explanation as to why other suggested assumptions will not be evaluated. The new posting requirements also include the obligation to post descriptions of the proposed enhancements and expansions.⁶⁹

43. Further, PJM states that, through participation in the TEAC and Subregional RTEP Committees, stakeholders have access to models and data used in the RTEP process, subject to appropriate confidentiality and CEII protections.⁷⁰

44. Regarding the transparency principle required in Order No. 890, PJM states the Commission found PJM’s process to be compliant, as it enabled the regular exchange of information on the basic criteria, assumptions, and data used to develop the RTEP, through the PJM PC, the TEAC, the Subregional RTEP Committees, and other working groups and PJM task forces.⁷¹ In addition, PJM states that, in Docket No. ER12-1178-

proposals. *See infra* Part IV.B.2.a.ii.(a) (describing PJM’s proposed “transmission project proposal process”).

⁶⁷ In Docket No. ER12-1178, PJM, as part of its proposed reforms to its transmission planning process accepted by the Commission, proposed new terms, “Public Policy Requirements” and “Public Policy Objectives,” and corresponding definitions. *See* April 30, 2012 Order, 139 FERC ¶ 61,080 at P 2 n.4. As discussed and explained below in the body of this order, PJM’s proposal in its October 25 Filing maintains these terms and their definitions. *See* PJM October 25 Filing, Docket No. ER13-198-000, at 40 nn.114 & 115.

⁶⁸ As discussed more fully in Part IV.B.1.d.iii, PJM explains that, according to the proposed State Agreement Approach, a state governmental entity (or group of state governmental entities), authorized by the respective state(s), can submit a project that addresses public policy requirements identified by the state(s) for PJM to study, even if the project does not meet the requirements to qualify as a reliability or market efficiency project as set forth in the PJM tariff. If the states, individually or collectively, agree to voluntarily assume responsibility for all costs of the project, the project will be included in the RTEP either as a Supplemental Project or state public policy project. PJM October 25 Filing, Docket No. ER13-198-000, at 47-48.

⁶⁹ *Id.* at 22-23.

⁷⁰ *Id.* at 23.

⁷¹ *Id.* at 24 (referencing 2008 PJM Order No. 890 Compliance Order, 123 FERC ¶ 61,163 at PP 37-42).

000, PJM amended Schedule 6 to provide that it will supply to the TEAC and the Subregional RTEP Committees reasonably required information and data utilized to develop the RTEP, subject to the protection of confidentiality and CEII provisions.⁷² PJM also states that, since its Order No. 890 compliance proceeding, it has continued to improve the planning section of its website, expanding the information available. According to PJM, the range of information available includes details regarding RTEP development; interregional planning; generation interconnections; merchant transmission projects; long-term firm transmission service request customers; generation retirements; auction revenue rights;⁷³ RTEP upgrades and status; planning criteria, including its transmission owners' planning criteria for each Local Plan; and design, engineering, and construction standards. PJM states that, as required by Order No. 1000, its website also provides information specific to RTEP upgrades and status, including information on backbone projects, transmission construction, and cost allocation.⁷⁴

⁷² *Id.* at 27-28 (referring to PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.4(g) (3.0.0)).

⁷³ Auction Revenue Rights (ARR) are entitlements that are allocated annually to Firm Transmission Service Customers that entitle the holder to receive an allocation of the revenues (or charges) from the annual Financial Transmission Right (FTR) auction. FTRs are financial instruments awarded to bidders in FTR Auctions that entitle the holder to a stream of revenues (or charges) based on the hourly Day Ahead congestion price differences across the path. ARRs provide a revenue stream to the firm transmission customer to offset the purchase price of FTRs. Stage 1A ARRs protect native load utilization of the transmission system providing long-term certainty against congestion. ARRs must be simultaneously feasible to ensure that annual FTR auction revenues are sufficient to cover ARR target allocations. Schedule 6 of the Operating Agreement requires PJM to identify transmission system enhancements needed to ensure the system can support the simultaneous feasibility of all stage 1A ARRs for 10 consecutive PJM Planning periods. *See, e.g.*, PJM Staff, Transmission Expansion Advisory Committee (TEAC) Recommendations to the PJM Board, at 1 (Oct. 2012), *available at* <http://www.pjm.com/~media/committees-groups/committees/teac/20121011/20121011-october-2012-pjm-board-approval-white-paper.ashx>.

⁷⁴ PJM October 25 Filing, Docket No. ER13-198-000, at 24-28. In particular, PJM states the information available on an entity's commitment to build a transmission facility includes: (1) the project number of the upgrade as filed with the Commission; (2) the required in-service date; (3) a description of the project; (4) the name of the constructing party; (5) the drivers; (6) the status of the project; (7) the location of the facilities by state(s); and (8) the project's estimated costs.

45. PJM states that the Commission found PJM satisfies the information exchange principle of Order No. 890 by preparing an independent Load Forecast Report, which embodies a reasonable method for providing an annual peak load and an energy forecast report covering a ten-year forecast horizon.⁷⁵ PJM adds that, since Order No. 890, PJM has continued to improve its load forecasting process.⁷⁶ For example, the processes for the development and implementation of the PJM forecasts are maintained on the PJM website, along with relevant data.⁷⁷

46. With regards to the comparability principle of Order No. 890, PJM states the Commission found that PJM satisfied the principle by showing that sponsors of transmission, generation, and demand response resources have opportunities to provide input on the development of assumptions used in the planning process, which includes consideration of alternatives to address the physical, economic, and operational limitations of the transmission system. PJM notes the Commission also found that the OA and PJM manuals clearly described how PJM selects among alternatives, such as transmission, generation, and demand-side resources, on a comparable basis.⁷⁸ PJM states that its regional transmission planning process enables non-transmission alternatives to compete with transmission solutions on a comparable basis through various market structures. PJM asserts that the PJM market design, in particular the PJM capacity market design, plays a role in identifying and choosing non-transmission alternatives where such alternatives more efficiently or cost-effectively ensure the overall reliability of the system. PJM explains that resources that have cleared PJM's capacity market produce firm commitments of new demand response, energy efficiency and generation resources to meet the year forward projected load. PJM states that the availability of these resources on a forward basis is then factored into future RTEP

⁷⁵ PJM October 25 Filing, Docket No. ER13-198-000, at 28 (citing 2008 PJM Order No. 890 Compliance Order, 123 FERC ¶ 61,163 at P 51).

⁷⁶ *Id.* at 29.

⁷⁷ *Id.*

⁷⁸ *Id.* at 29-30 (citing 2009 PJM Order No. 890 Compliance Order, 127 FERC ¶ 61,166 at P 17. However, as part of its compliance filing, PJM proposes to remove section 1.5.6(m), (n), (o), & (p) of Schedule 6, which relate to PJM's procedures for stakeholders and PJM to propose, and for PJM to review and adopt, alternative transmission solutions. We note that the Commission relied on these tariff sections when finding PJM in compliance with the Order No. 890 comparability principle in the 2009 PJM Order No. 890 Compliance Order. *See* 2009 PJM Order No. 890 Compliance Order, 127 FERC ¶ 61,166 at P 17; PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.6(m), (n), (o), & (p) (3.0.0).

planning analyses and can preempt the need for transmission solutions to ensure a reliable system. PJM points out that, even after transmission solutions are identified and approved by the PJM Board, non-transmission solutions can clear through the PJM markets and eliminate the need for such transmission.⁷⁹

47. PJM states it has a formal dispute resolution process in its OA, which parties can utilize to address disputes arising under the PJM tariffs. PJM notes that the Commission previously found that PJM complies with the Order No. 890 dispute resolution principle.⁸⁰ PJM proposes to specify in Schedule 6 that an entity, after being notified that it does not satisfy the pre-qualification requirements that determine whether an entity is eligible to be designated rights to a project that is selected in PJM's regional transmission planning process for the purposes of cost allocation, may request dispute resolution pursuant to PJM's dispute resolution process.⁸¹

48. PJM states that the Commission found that the PJM economic planning process is transparent and provides opportunities for market-based project developers and merchant investments to propose solutions to congestion at any time.⁸² In addition, PJM notes the Commission approved PJM's formula to account for the benefits to customers from reductions in energy and capacity prices resulting from a proposed economic-based project.⁸³ PJM states it proposes additional revisions to Schedule 6 to ensure its economic planning process integrates with all other drivers of transmission needs through the addition of the 24-month planning cycle.⁸⁴

ii. Protests/Comments

49. Public Interest Organizations state that PJM's proposed procedures for evaluating transmission solutions and non-transmission alternatives on a comparable basis satisfy, in

⁷⁹ PJM October 25 Filing, Docket No. ER13-198-000, at 31.

⁸⁰ *Id.* at 33 (citing 2008 PJM Order No. 890 Compliance Order, 123 FERC ¶ 61,163 at P 63).

⁸¹ *Id.* (citing PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(a) (Pre-qualification Requirements) (3.0.0)).

⁸² *Id.* at 33-34 (citing 2008 PJM Order No. 890 Compliance Order, 123 FERC ¶ 61,163 at PP 97-98; *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,051, at PP 26-30 (2008); *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,218, at P 36 (2006)).

⁸³ *Id.* at 34 (citing *PJM*, 123 FERC ¶ 61,051 at PP 26-30).

⁸⁴ PJM October 25 Filing, Docket No. ER13-198-000, at 34.

part, Order No. 1000's comparability requirement by incorporating demand side resources into its assumptions development process.⁸⁵ However, Public Interest Organizations assert that PJM's planning procedures fail, in practice, to ensure comparable treatment and to enable stakeholders to identify systems needs for which non-transmission solutions may be appropriate.⁸⁶ In addition, Public Interest Organizations protest PJM's reliance on its existing markets to provide comparable consideration of non-transmission alternatives in regional transmission planning. Public Interest Organizations conclude that PJM's failure to ensure comparable treatment hinders PJM's ability to select the more efficient or cost-effective solutions. Accordingly, Public Interest Organizations request that the Commission require PJM to collaborate with the ISAC and other stakeholders to develop tariff modifications "demonstrably capable of achieving comparable treatment," such as more specific procedures and metrics on how PJM will evaluate all solutions on a comparable basis and select more efficient or cost-effective solutions.⁸⁷

50. Public Interest Organizations assert that PJM's procedures for stakeholder participation in the regional transmission planning process ensure timely and meaningful participation by all interested parties and allow all interested parties to fully participate in local and regional stakeholder transmission planning groups and meetings. However, Public Interest Organizations assert that PJM could enhance stakeholder participation by providing staff technical assistance or funding for such assistance to qualified public interest organizations, including non-governmental organizations, state consumer advocate offices, and state regulatory entities. Public Interest Organizations argue that without financial and technical assistance, non-industry stakeholders will likely be unable to provide the most valuable level of input.⁸⁸

iii. Answer

51. Responding to Public Interest Organizations' request that the Commission require PJM to work with the ISAC and other stakeholders to establish specific procedures and

⁸⁵ Public Interest Organizations Comments, Docket No. ER13-198-000, at 23-24.

⁸⁶ *Id.* at 25-26. Public Interest Organizations note that, to date, there have been virtually no non-transmission alternatives proposed as solutions through the planning process (i.e., outside of the market context). In addition, they assert that PJM's current procedures may not be adequate to provide stakeholders with information related to the development of non-transmission alternatives in a useful or timely manner.

⁸⁷ *Id.* at 27.

⁸⁸ *Id.* at 12-13.

metrics to ensure that its transmission planning process treats all options on a comparable basis, PJM reiterates that the “dynamic, holistic nature” of its planning process evidences how its process “considers public policy on a comparable basis.”⁸⁹ PJM adds that “hard and fast ‘metrics,’” as opposed to more flexible sensitivity studies, modeling assumption variations and scenario planning analyses, “would tie PJM’s hands and require PJM to do a body of analysis that may or may not be meaningful to stakeholders.”⁹⁰ PJM surmises that the Public Interest Organizations have not demonstrated that PJM’s proposal fails to comply with Order No. 1000, particularly “[g]iven that Order No. 1000 left it up to the transmission providers and its stakeholders to determine how best to comply.”⁹¹

iv. Commission Determination

52. On review of PJM’s filings in compliance with the transmission planning requirements of Order No. 890, the Commission found that PJM’s regional transmission planning process satisfied each of the transmission planning principles of Order No. 890. The Commission’s focus in the PJM Parties’ Order No. 1000 compliance proceeding is therefore on the incremental changes to the PJM regional transmission planning process developed to comply with the general regional transmission planning requirements of Order No. 1000. We find that the amendments to the regional transmission planning process proposed in the PJM October 25 filing comply, in part, with the requirements of Order No. 1000 and are otherwise just and reasonable and not unduly discriminatory.

53. Regarding the comparability principle, PJM states that the Commission found that PJM’s OATT describes how PJM selects among alternatives on a comparable basis.⁹² Specifically, the Commission found that “PJM’s planning process indicates where and when in the planning process sponsors of transmission, generation, and demand resources have an opportunity to provide their input regarding the development of assumptions used by PJM in its transmission planning activities and the potential solutions, including alternatives, being considered.”⁹³ Thus, the Commission concluded that provisions in

⁸⁹ PJM Answer, Docket No. ER13-198-000, at 11-12. In addition, PJM identifies specific examples of major backbone transmission lines that were removed from the RTEP “due in part to non-transmission alternatives such as new generation and/or increase in demand response or energy efficiency.”

⁹⁰ *Id.* at 13.

⁹¹ *Id.* at 12 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 155).

⁹² PJM October 25 Filing, Docket No. ER13-198-000, at 29-30 (citing 2009 PJM Order No. 890 Compliance Order, 127 FERC ¶ 61,166 at P 17).

⁹³ *Id.*

Schedule 6 “clearly indicated how PJM will select the preferred solution from competing alternatives such that all types of resources (i.e., transmission, generation, and demand resources) are considered on a comparable basis.”⁹⁴ However, despite these prior Commission determinations, PJM proposes, in the PJM October 25 Filing, to remove sections 1.5.6(m), (n), (o), and (p) of Schedule 6⁹⁵ that the Commission relied on to conclude that PJM complied with the comparability principle.⁹⁶ In its October 25 Filing, PJM does not explain how, absent the provisions it proposes to remove in its filing, it still complies with the comparability principle. Accordingly, we direct PJM to file, within 120 days of the issuance of this order, a further compliance filing explaining how it will comply with the comparability principle. To the extent that Public Interest Organizations contend that non-transmission alternatives should be selected in the regional transmission plan for purposes of cost allocation, Order No. 1000 concluded that the issue of cost recovery associated with non-transmission alternatives is beyond the scope of Order No. 1000, which addresses the allocation of the costs of transmission facilities.⁹⁷

54. With respect to the Public Interest Organizations’ request that PJM provide technical assistance or funding to qualified public interest organizations, we note that in Order No. 1000, the Commission affirmed the general approach it took in Order No. 890 regarding the recovery of costs associated with participation in the regional transmission planning process.⁹⁸ In that proceeding, the Commission directed public utility transmission providers to “include relevant cost recovery for state regulators, to the extent requested.”⁹⁹ In Order No. 1000, the Commission declined to expand that directive to include funding for other stakeholder interests.¹⁰⁰ While the Commission did not preclude public utility transmission providers from proposing funding mechanisms for other stakeholders, PJM did not make such a proposal and requiring that it do so would be inconsistent with Order No. 1000.

55. Regarding PJM’s enrollment process, we note that, PJM indicates in its October 25 Filing that “[t]o participate in the PJM regional planning process, an entity

⁹⁴ *Id.*

⁹⁵ PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.6(m), (n), (o), & (p) (3.0.0).

⁹⁶ 2009 PJM Order No. 890 Compliance Order, 127 FERC ¶ 61,166 at P 17.

⁹⁷ Order No. 1000 FERC Stats. & Regs. ¶ 31,323 at PP 779, 147 n.138.

⁹⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 162.

⁹⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 574 n.339, 586.

¹⁰⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 162.

must become a member of PJM.”¹⁰¹ This appears to be a misstatement by PJM. Consistent with the Order No. 890 planning principles, and with section 1.3(a) of Schedule 6,¹⁰² an entity does not have to become a member, or associate member, of PJM in order to participate in the regional transmission planning process.

c. **Requirement to Plan on a Regional Basis to Identify More Efficient or Cost-Effective Transmission Solutions**

56. Through the regional transmission planning process, public utility transmission providers must evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process.¹⁰³ Public utility transmission providers have the flexibility to develop, in consultation with stakeholders, procedures by which the public utility transmission providers in the region identify and evaluate the set of potential solutions that may meet the region’s needs more efficiently or cost-effectively.¹⁰⁴ In addition, whether or not public utility transmission providers within a transmission planning region select a transmission facility in the regional transmission plan for purposes of cost allocation will depend in part on their combined view of whether the transmission facility is a more efficient or cost-effective solution to their needs.¹⁰⁵

57. Public utility transmission providers in each transmission planning region, in consultation with stakeholders, must propose what information and data a merchant transmission developer¹⁰⁶ must provide to the regional transmission planning process to

¹⁰¹ PJM October 25 Filing, Docket No. ER13-198-000, app. I at 2.

¹⁰² Specifically, Schedule 6 provides that “The Planning Committee shall be open to participation by... any other interested entities or persons.”

¹⁰³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 148.

¹⁰⁴ *Id.* P 149.

¹⁰⁵ *Id.* P 331.

¹⁰⁶ Order No. 1000 defines merchant transmission projects as projects “for which the costs of constructing the proposed transmission facilities will be recovered through negotiated rates instead of cost-based rates.” Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 119. The Commission noted in Order No. 1000 that “a merchant transmission developer assumes all financial risk for developing its transmission project and constructing the proposed transmission facilities. . . .” *Id.* P 163.

allow the public utility transmission providers in the transmission planning region to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region.¹⁰⁷

58. Finally, the regional transmission planning process developed by public utility transmission providers, in consultation with stakeholders, must result in a regional transmission plan that reflects the determination of the set of transmission facilities that more efficiently or cost-effectively meet the region's transmission needs.¹⁰⁸ Order No. 1000 does not require that the resulting regional transmission plan be filed with the Commission.

i. PJM Parties' Filings

59. PJM states that its transmission planning process and the associated stakeholder processes look at both regional and subregional transmission needs and solutions through the TEAC and the Subregional RTEP Committees.¹⁰⁹ PJM asserts that, as a result of this process, stakeholders have the opportunity to review the RTEP and the treatment of their particular needs and interests from both a regional and subregional perspective. In addition, PJM states that the evaluation of potential transmission solutions considers meeting both regional and subregional needs in the most efficient manner (e.g., implementation of larger scale regional solutions that resolve a range of issues including subregional transmission needs). PJM adds that locally proposed Supplemental Projects¹¹⁰ are factored into the RTEP process, and if they are found to most efficiently resolve transmission needs, these local projects are included in the regional plan as RTEP projects for the purposes of cost allocation.¹¹¹ PJM proposes revisions throughout its Schedule 6 to make clear that the test for selecting a project for inclusion in the plan for

¹⁰⁷ *Id.* P 164; Order No. 1000-A, 139 FERC ¶ 61,132 at PP 297-298.

¹⁰⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 147.

¹⁰⁹ PJM October 25 Filing, Docket No. ER13-198-000, at 30 & n.86 (citing PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.6(b), (c) (2.0.0)).

¹¹⁰ A "Supplemental Project" is defined as "a Regional RTEP Project(s) or Subregional RTEP Project(s) (i.e., a transmission expansion or enhancement rated below 230 kV), which is not required for compliance with the following PJM criteria: System reliability, operational performance or economic criteria, pursuant to a determination by the Office of the Interconnection." PJM, Intra-PJM Tariffs, OA, Definitions (S-T), § 1.42A.02 (2.0).

¹¹¹ PJM October 25 Filing, Docket No. ER13-198-000, at 30-31.

the purposes of cost allocation, with a few situational exceptions, results in a determination that the project is the most efficient or cost-effective project.¹¹²

60. PJM indicates that, if a project is selected for inclusion in the RTEP for purposes of cost allocation, the project may qualify as either a Subregional RTEP Project or Regional RTEP Project.¹¹³ In addition, PJM's regional transmission planning process includes Supplemental Projects, which are projects that are not identified by PJM as necessary for reliability or economic reasons, but may address local planning criteria or public policy requirements.¹¹⁴ PJM Transmission Owners state that a Supplemental Project may be included in the RTEP for information purposes and its costs are not eligible for cost allocation under Schedule 12. Finally, PJM proposes a new category of projects, state public policy projects.¹¹⁵ As explained more fully below, under the State Agreement Approach, if one or more states identify a transmission enhancement or expansion that PJM has not found to be necessary for economic or reliability reasons, but which the state or states have determined to be necessary to address public policy requirements, then the project may be included in the RTEP as a state public policy project. PJM states that the costs of a state public policy project shall be recovered from the customers in the states proposing the project.¹¹⁶

61. PJM states that merchant transmission customers are required to execute a *pro forma* three-party interconnection service agreement¹¹⁷ or upgrade construction

¹¹² See, e.g., Schedule 6, § 1.5.6 (e) (2.0.0); § 1.5.8(d) (Posting and Review of Projects), (e) (Criteria for Considering Inclusion of a Project in the Recommended Plan), (g), (h), (m)(2) (Immediate-need Reliability Projects) (3.0.0).

¹¹³ A Subregional RTEP Project is defined as “a transmission expansion or enhancement rate below 230 kV which is required for compliance with the following PJM criteria: system reliability, operational performance or economic criteria, pursuant to a determination by the Office of the Interconnection.” PJM, Intra-PJM Tariffs, OA, Definitions (S-T), § 1.42A.01 (2.0).

¹¹⁴ See PJM Transmission Owners October 11 Filing, Docket No. ER13-90-000, at 19.

¹¹⁵ *Id.* at 5; PJM October 25 Filing, Docket No. ER13-198-000, at 37-38.

¹¹⁶ PJM October 25 Filing, Docket No. ER13-198-000, at 38.

¹¹⁷ See PJM, Intra-PJM Tariffs, OATT, Attachment O (Form of Interconnection Service Agreement) (2.0.0).

service agreement¹¹⁸ prior to construction and energization of its project. Once executed, the merchant transmission facilities and requisite network upgrades are included in the PJM baseline planning models. PJM indicates that, with the information provided, it conducts studies to assess the potential reliability and operational impacts of the merchant developer's proposed facilities on both the PJM system, as well as other neighboring systems. PJM states that such study reports are available on the PJM website.¹¹⁹

ii. Protests/ Comments

62. Many commenters generally support the compliance development process that led to the instant compliance proposal. For example, Duquesne Light Company states that diverse stakeholders participated in the development process and were given ample opportunity to provide written and oral input and comments.¹²⁰ Similarly, PSEG Companies state that the stakeholder proceedings leading to the compliance proposal were conducted in an open and transparent manner, allowing substantial opportunity for input into the process.¹²¹

63. Clean Line states that the Commission should direct PJM to modify its proposal to permit participant funded merchant transmission developers to submit their projects and the associated benefits for study in the RTEP. Clean Line argues that allowing a project sponsor to submit a merchant project for study in the current RTEP, rather than waiting several years for an interconnection agreement, would more closely satisfy the Commission's goal for regional plans to "identify transmission facilities that more efficiently or cost-effectively meet the region's reliability, economic and Public Policy Requirements . . . [by] reflect[ing] a fair consideration of transmission facilities proposed by nonincumbents."¹²²

¹¹⁸ See PJM, Intra-PJM Tariffs, OATT, Attachment GG (Form of Upgrade Construction Service Agreement) (2.0.0).

¹¹⁹ *Id.* at 24-25 n.72.

¹²⁰ Duquesne Light Company Comments, Docket No. ER13-198-000, at 2-3.

¹²¹ PSEG Companies Limited Protest and Comments, Docket No. ER13-198-000, at 8.

¹²² Clean Line Protest and Comments, Docket No. ER13-198-000, at 6-7 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 11).

iii. Answer

64. Responding to Clean Line's protest that PJM should include participant-funded merchant projects in the RTEP, PJM asserts that the Commission already determined that interconnection and merchant transmission processes and cost recovery are outside the scope of Order No. 1000.¹²³

iv. Commission Determination

65. We find that the regional transmission planning process specified in PJM's October 25 Filing complies with these requirements of Order No. 1000. The proposed process allows PJM to evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the transmission needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes. Through the RTEP process, PJM looks at both regional and subregional transmission needs and solutions, and evaluates potential solutions to determine those solutions that meet the needs of the region most efficiently. In addition, the regional transmission planning process culminates in the RTEP, a regional transmission plan that reflects PJM's determination of the set of transmission facilities that more efficiently or cost-effectively meet the transmission needs of the PJM Region.

66. We dismiss Clean Line's request that the Commission direct PJM to modify its proposal to permit merchant transmission developers to submit their transmission projects for study in the RTEP. Clean Line correctly notes that Order No. 1000 requires a transmission developer proposing a merchant transmission project to "provide adequate information and data to allow public utility transmission providers in the transmission planning region to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region."¹²⁴ Order No. 1000 further states that the public utility transmission providers in each transmission planning region, in the first instance, should propose what information would be required.¹²⁵ Accordingly, PJM proposes to continue its existing practice of obtaining adequate information and data to assess the potential reliability and operational impacts of a merchant transmission project by requiring the developer of the merchant

¹²³ PJM Answer, Docket No. ER13-198-000, at 40 (referring to Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 760).

¹²⁴ Clean Line Protest, Docket No. ER13-198-000, at 6-7 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 164).

¹²⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 164.

transmission project to execute a merchant transmission interconnection service agreement or upgrade construction service agreement.¹²⁶ We find that this practice complies with the merchant information requirement of Order No. 1000.

67. Further, while Order No. 1000 established the information requirement discussed above, the Commission also concluded that, because a merchant transmission developer assumes all financial risks for developing its transmission project and constructing the proposed transmission facilities, a merchant transmission developer is not required to participate in a regional transmission planning process for purposes of identifying the beneficiaries of its transmission project that would otherwise be the basis for securing eligibility to use a regional cost allocation method.¹²⁷ Thus, a transmission developer is not required to submit a merchant transmission project into the regional transmission planning process, and the regional transmission planning process is not required to evaluate a merchant transmission project for potential selection in the regional transmission plan for purposes of cost allocation.¹²⁸ However, nothing prevents a transmission developer from submitting its transmission project into the regional transmission planning process for potential selection in the regional transmission plan for purposes of cost allocation. In that case, the regional transmission planning process would evaluate the proposed transmission project as it would any other proposed project and, if the transmission project is selected in the regional transmission plan for purposes of cost allocation, it would be eligible to use the regional cost allocation method. If the proposed transmission facility is not selected in the regional transmission plan for purposes of cost allocation, then the transmission developer could choose to move forward as a merchant transmission facility.

d. Consideration of Transmission Needs Driven by Public Policy Requirements

68. Order No. 1000 requires public utility transmission providers to amend their OATTs to describe procedures that provide for the consideration of transmission needs driven by Public Policy Requirements in the local and regional transmission planning processes.¹²⁹ The Commission clarified in Order No. 1000-A that Order No. 1000

¹²⁶ See PJM, Intra-PJM Tariffs, OATT, Attachment O (Form of Interconnection Service Agreement) (2.0.0).

¹²⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 163.

¹²⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 165; Order No. 1000-A, 139 FERC ¶ 61,132 at P 297.

¹²⁹ *Id.* P 203.

requires that transmission needs driven by Public Policy Requirements be considered just as transmission needs driven by reliability or economic concerns are also considered.¹³⁰ Public Policy Requirements are requirements established by local, state or federal laws or regulations (i.e., enacted statutes passed by the legislature and signed by the executive and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level).¹³¹ As explained further below, Order No. 1000 specifies that the consideration of transmission needs driven by Public Policy Requirements means: (1) the identification of transmission needs driven by Public Policy Requirements; and (2) the evaluation of potential solutions to meet those identified needs.¹³²

69. To comply with the requirement to identify transmission needs driven by Public Policy Requirements, public utility transmission providers, in consultation with their stakeholders, must establish procedures in their OATTs to identify at the local and regional level those transmission needs driven by Public Policy Requirements for which potential transmission solutions will be evaluated.¹³³ The process for identifying transmission needs driven by Public Policy Requirements must allow stakeholders, including, but not limited to, those responsible for complying with the Public Policy Requirements at issue and the developers of potential transmission facilities that are needed to comply with one or more Public Policy Requirements, an opportunity to provide input and to offer proposals regarding the transmission needs they believe are driven by Public Policy Requirements.¹³⁴ Public utility transmission providers must explain in their compliance filings how the procedures adopted give all stakeholders a meaningful opportunity to submit what the stakeholders believe are transmission needs driven by Public Policy Requirements.¹³⁵

70. In addition, public utility transmission providers, in consultation with stakeholders, must establish a just and reasonable and not unduly discriminatory process

¹³⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at PP 204, 206, 208-211, 317-319.

¹³¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2. Order No. 1000-A clarified that Public Policy Requirements included local laws and regulations passed by a local governmental entity, such as a municipal or county government. Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

¹³² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 205.

¹³³ *Id.* PP 206, 207.

¹³⁴ *Id.* PP 207, 208.

¹³⁵ Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

through which public utility transmission providers will identify, out of this larger set of needs, those needs for which transmission solutions will be evaluated.¹³⁶ Public utility transmission providers must explain in their compliance filings how their open and transparent transmission planning process determines whether to move forward regarding transmission needs driven by Public Policy Requirements.¹³⁷ In addition, each public utility transmission provider must post on its website an explanation of: (1) those transmission needs driven by Public Policy Requirements that have been identified for evaluation for potential solutions in the local and regional transmission planning processes; and (2) how other transmission needs driven by Public Policy Requirements introduced by stakeholders were considered during the identification stage and why they were not selected for further evaluation.¹³⁸

71. To comply with the requirement to evaluate potential solutions to meet the identified transmission needs driven by Public Policy Requirements, public utility transmission providers, in consultation with stakeholders, must also establish procedures in their OATTs to evaluate at the local and regional level potential solutions to identified transmission needs driven by Public Policy Requirements.¹³⁹ These procedures must include the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by Public Policy Requirements.¹⁴⁰ Stakeholders must be provided an opportunity to provide input during the evaluation of potential solutions to identified needs.¹⁴¹ In addition, the Commission and stakeholders must be able to review the record that is created by the process to help ensure that the identification and evaluation decisions are open and fair, and not unduly discriminatory or preferential.¹⁴² The Commission will review the proposed evaluation procedures to ensure they comply

¹³⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209.

¹³⁷ Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

¹³⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

¹³⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

¹⁴⁰ *Id.*; *see also id.* P 211 n.191 (“This requirement is consistent with the existing requirements of Order Nos. 890 and 890-A which permit sponsors of transmission and non-transmission solutions to propose alternatives to identified needs.”).

¹⁴¹ *Id.* P 220.

¹⁴² Order No. 1000-A, 139 FERC ¶ 61,132 at P 321.

with the objective of meeting the identified transmission needs more efficiently or cost-effectively.¹⁴³

72. Public utility transmission providers must amend their OATTs to describe procedures that provide for the consideration of transmission needs driven by Public Policy Requirements in the local and regional transmission planning processes.¹⁴⁴ There are no restrictions on the type or number of Public Policy Requirements to be considered as long as any such requirements arise from local, state, or federal laws or regulations that drive transmission needs and as long as the requirements of the procedures required in Order No. 1000 are met.¹⁴⁵ In addition, Order No. 1000 does not preclude any public utility transmission provider from considering in its transmission planning process transmission needs driven by additional public policy objectives not specifically required by local, state or federal laws or regulations. However, Order No. 1000 creates no obligation for any public utility transmission provider or its transmission planning processes to consider transmission needs driven by a public policy objective that is not specifically required by local, state or federal laws or regulations.¹⁴⁶ In addition, public utility transmission providers are not required to consider Public Policy Requirements themselves as part of the transmission planning process.¹⁴⁷

i. Incorporating Consideration of Transmission Needs Driven by Public Policy Requirements in the Regional Transmission Planning Process

(a) PJM Parties' Filings

73. PJM asserts that its compliance with Order No. 1000's requirement to consider public policy requirements consists of three distinct components: (1) PJM's integrated market design that reflects public policy requirements; (2) PJM's transmission planning procedures through which transmission needs driven by "Public Policy Requirements"¹⁴⁸

¹⁴³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

¹⁴⁴ *Id.* P 203.

¹⁴⁵ *Id.* P 214; Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

¹⁴⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 216.

¹⁴⁷ Order No. 1000-A, 139 FERC ¶ 61,132 at P 204.

¹⁴⁸ As defined, Public Policy Requirements refer to policies pursued by state or federal entities where such policies are reflected in enacted statutes or regulations, including but not limited to, state renewable portfolio standards and requirements under

(continued...)

and “Public Policy Objectives”¹⁴⁹ are identified and evaluated; and (3) PJM’s transmission planning procedures that allow for direct state input into identifying “Public Policy Requirements” and “Public Policy Objectives” through the State Agreement Approach.¹⁵⁰

74. PJM states its existing market design integrates market participant responses to current and future public policy initiatives and is a significant vehicle for achieving public policy.¹⁵¹ PJM states that demand response and energy efficiency resources are recognized in the PJM load forecast, which supports the RTEP. PJM also states these resources are factored in to the RTEP reliability and market efficiency analyses, as well as the basecase planning models for the RTEP, which are used to identify transmission needs driven by public policy requirements. Additionally, PJM explains that its generator interconnection process, which integrates renewable resources into the PJM wholesale markets, contributes to satisfying state renewable portfolio standards. Moreover, PJM states its capacity market and generation retirement procedures manage generation retirement decisions made in response to changing economic conditions and environmental regulations.

75. PJM also states that it has incorporated consideration of Public Policy Requirements and Public Policy Objectives in its transmission planning procedures. PJM states that it submitted revisions to Schedule 6 in its February 2012 Filing in Docket No. ER12-1178-000 that included procedures by which transmission needs driven by public policy requirements will be identified. Specifically, PJM states that it added two new terms to the OA: “Public Policy Requirements” and “Public Policy Objectives”. PJM asserts that, as defined, “Public Policy Requirements” comports with the term as it is used in Order No. 1000. PJM states that the use of the term, “Public Policy Objectives”, is intended to permit a broader use of public policy to allow PJM, in consultation with stakeholders, the flexibility to consider a wider range of Public Policy Objectives beyond

Environmental Protection Agency regulations. *See* PJM, Intra-PJM Tariffs, OA, Definitions (O-P), § 1.38B (4.0.0); *see also* PJM, Intra-PJM Tariffs, OATT, Definitions (O-P-Q), § 1.36A.05 (6.0.0).

¹⁴⁹ As defined, Public Policy Objectives refer to Public Policy Requirements, as well as public policy initiatives of state or federal entities that have not been codified into law or regulation but which nonetheless may have important impacts on long term planning considerations. *See* PJM, Intra-PJM Tariffs, OA at 1.38A; *see also* PJM, Intra-PJM Tariffs, OATT, Definitions (O-P-Q) (6.0.0) at 1.36A.04.

¹⁵⁰ PJM October 25 Filing, Docket No. ER13-198-000, at 36.

¹⁵¹ *Id.* at 37-38.

enacted statutes and regulations. PJM states that its February 2012 Filing implemented changes to its planning process that enable PJM to: (1) expand its analyses beyond the tests currently used as part of its reliability and market efficiency analyses and consider public policy; (2) provide more transparency; and (3) clarify the opportunities for stakeholder participation throughout its transmission planning process.¹⁵²

76. PJM explains that the tariff revisions it proposed in the February 2012 Filing included procedures by which transmission needs driven by public policy requirements will be identified. PJM states that it has expanded its current transmission planning process to allow PJM and stakeholders to consider all direct submissions of proposed public policies and initiatives at the assumptions stage of the RTEP process. PJM indicates that states and other stakeholders may provide input and review these submissions through the ISAC and TEAC committees, respectively.¹⁵³ The submissions from the ISAC and the TEAC form a basis for PJM to consider when developing future scenarios and ultimately can be factored into the selection of the optimal reliability and market efficiency transmission projects.¹⁵⁴ PJM also expanded the transmission planning process to include consideration of “Public Policy Requirements” and “Public Policy Objectives” in its sensitivity studies, modeling assumption variations, and scenario planning analyses.

77. PJM points out that stakeholders have an opportunity prior to, and at, the initial assumptions meeting at the beginning of a transmission planning cycle to provide input and suggestions regarding what assumptions and “Public Policy Objectives” should be considered in PJM’s transmission planning analysis. PJM also states that the TEAC provides stakeholders with an “open forum” to discuss the impact of public policy, such as regulatory actions, projected changes in load growth, additions and retirements, and

¹⁵² *Id.* at 39. The Commission conditionally accepted PJM’s proposed revisions, subject to further compliance, in PJM’s April 30, 2012 Order and November 29, 2012 Order. *See supra* note 53. A request for rehearing of the November 29, 2012 Order is currently pending before the Commission.

¹⁵³ PJM October 25 Filing, Docket No. ER13-198-000, at 37-40. PJM reports it collaborated with the state commissions operating in its footprint through the Organization of PJM States to form the ISAC. The ISAC provides a forum for state agencies to participate in all aspects of the review and development of the RTEP. PJM notes that the ISAC allows state agencies to submit input into the assumptions used to evaluate and analyze potential transmission needs, including Public Policy Requirements. PJM reports ISAC has already offered several scenarios that PJM is studying, including “at risk” generation, off-shore wind, and renewable portfolio standards scenarios.

¹⁵⁴ *Id.* at 37.

the TEAC also allows participants to offer any alternative sensitivity studies, modeling assumption variations and scenario analyses for consideration in the transmission planning process.¹⁵⁵

78. PJM explains that it will evaluate public policy requirements through its sensitivity studies, modeling assumption variations, and scenario planning analyses and it will consider the results as alternative transmission solutions that may accelerate, decelerate, or modify a potential reliability, market efficiency or operational performance expansion or enhancement.¹⁵⁶

79. PJM also proposes revisions to provide that the identification of transmission needs driven by public policy requirements occurs before PJM posts on its website the reliability violations, system conditions and economic constraints, and public policy requirements that could be addressed by potential transmission projects. The RTEP process also identifies existing and projected limitations on the transmission system after the consideration of non-transmission solutions.¹⁵⁷

(b) Comments/Protests

80. Several commenters support PJM's proposal to incorporate public policy requirements into its regional transmission planning process, and assert that PJM's proposal complies with Order No. 1000. For instance, Duquesne Light Company supports PJM's definitions of Public Policy Requirements and Public Policy Objectives and PJM's proposal regarding consideration of transmission needs driven by public policy requirements.¹⁵⁸ Similarly, Exelon notes that PJM's proposal calls for consideration of public policy requirements at several stages in the planning process.¹⁵⁹

81. Organization of PJM States and Illinois Commerce Commission also assert that PJM's proposal complies with Order No. 1000, and, in particular, support the role of the ISAC in PJM's proposed process. Organization of PJM States asserts that PJM, through the ISAC, provides an open and transparent forum for the identification and evaluation of public policies potentially affecting transmission needs, and explains that the ISAC

¹⁵⁵ PJM, Intra-PJM Tariffs, OA, Schedule 6 § 1.5.8(b) (3.0.0).

¹⁵⁶ PJM October 25 Filing, Docket No. ER13-198-000, at 43.

¹⁵⁷ PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(b) (Posting of Transmission System Needs) (3.0.0).

¹⁵⁸ Duquesne Light Company Comments, Docket No. ER13-198-000, at 3.

¹⁵⁹ Exelon Comments, Docket No. ER13-198-000, at 5.

allows for participation by state regulatory bodies, official state governmental agencies with statutory authority for energy planning and related environmental issues, and consumer advocates.¹⁶⁰ Illinois Commerce Commission asserts that the ISAC forms an important conduit of information to PJM about state public requirements and goals which can in turn inform PJM's transmission planning processes while also informing the policy makers of aspects of PJM's transmission planning process. Illinois Commerce Commission states that in turn, PJM's planning process will assist policy makers and advisors in devising policies that take into account the nature of PJM's transmission system.¹⁶¹ North Carolina Agencies, however, assert that it is highly unlikely that PJM's proposed additional processes for identifying and planning for public policies will result in the identification of transmission needed to serve North Carolina that somehow eluded North Carolina's robust integrated resource planning process.¹⁶²

82. Delaware PSC argues that the states also should be involved in the selection of projects that address public policy requirements but are not selected under the State Agreement Approach. Delaware PSC expresses concern that projects with secondary benefits addressing public policy requirements could be included in the RTEP for purposes of cost allocation but not be "specifically tied to the [State Agreement Approach.]"¹⁶³ Thus, Delaware PSC requests that PJM submit tariff revisions clarifying that: (1) states will have the opportunity to approve all projects addressing state public policy requirements submitted during the proposal windows;¹⁶⁴ and (2) PJM shall consider only those state public policy requirements approved by a state pursuant to the State Agreement Approach when determining whether a project is a more efficient of cost-effective solution to be included in the RTEP.¹⁶⁵

¹⁶⁰ Organization of PJM States Comments, Docket No. ER13-198-000, at 5.

¹⁶¹ Illinois Commerce Commission Comments, Docket No. ER13-198-000, at 5-6. Illinois Commerce Commission, however, cautions that the Commission should not construe participation in any of the transmission processes as prejudgment of the public need for a project to be built and should not preempt the states' authority to address siting and certification matters within their respective states.

¹⁶² North Carolina Agencies Comments, Docket No. ER13-198-000, at 2.

¹⁶³ Delaware PSC Comments Docket Nos. ER13-198-000 and ER13-90-000, at 8.

¹⁶⁴ *See infra* Part IV.B.2.a.ii(a) (describing PJM's proposed "transmission project proposal process").

¹⁶⁵ Delaware PSC Comments Docket Nos. ER13-198-000 and ER13-90-000 at 8-9.

83. Others argue that PJM's proposal does not comply with Order No. 1000. AWEA contends that Order No. 1000 requires public utility transmission providers to consider public policy requirements on a comparable basis to economic and reliability requirements at every step of the planning process, from the identification of transmission needs to the selection of transmission solutions. AWEA protests PJM's "secondary treatment" of public policy requirements in determining whether a proposed solution is more efficient or cost-effective.¹⁶⁶ AWEA requests that the Commission direct PJM to adopt transparent planning procedures that will allow public policy requirements to be considered on an equal footing with reliability needs and economic benefits in selecting projects for inclusion in the regional plan for purposes of cost allocation.¹⁶⁷ AWEA seeks clarification of the states' role in providing input into the public policies considered at the assumptions stage and in identifying transmission needs driven by public policy requirements.

84. Public Interest Organizations protest that PJM's proposal does not establish adequate procedures by which PJM will select transmission needs driven by public policy requirements for further evaluation.¹⁶⁸ Public Interest Organizations assert that Order No. 1000 requires PJM to specify the process it will use to identify those transmission needs driven by public policy requirements for which potential solutions will be evaluated.¹⁶⁹

85. Protestors also argue that it is unclear how the identification of public policy requirements will result in the evaluation and selection of transmission projects that advance public policy requirements. AWEA contends that PJM leaves public policy requirements out of key provisions of Schedule 6 and fails to explain important steps in the consideration and selection processes.¹⁷⁰ AWEA asserts that PJM must clarify or refine how a transmission line advancing state or federal public policy objectives will be

¹⁶⁶ AWEA Protest, Docket No. ER13-198-000, at 9-10 (referring to Schedule 6, § 1.5.8(d), which provides that PJM will consider "secondary benefits, such as addressing . . . federal Public Policy Requirements or state Public Policy Requirements identified by the state in the PJM Region" in determining whether a project is the more efficient or cost-effective solution).

¹⁶⁷ *Id.* at 2.

¹⁶⁸ Public Interest Organizations Comments, Docket No. ER13-198-000, at 17-23.

¹⁶⁹ *Id.* at 14 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209).

¹⁷⁰ AWEA Protest, Docket No. ER13-198-000, at 6-7 (referencing PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5).

considered, categorized and included in the RTEP for purposes of cost allocation.¹⁷¹ Specifically, AWEA asserts that PJM should clarify how its use of sensitivity studies, modeling assumption variations and scenario analyses “will actually result in projects that advance public policy requirements being included in the RTEP.”¹⁷² If the RTEP modeling assumptions and selection criteria allow PJM to select a transmission line that advances state and federal public policy objectives, then AWEA states that it does not protest that projects eligible to be selected in the regional plan for purposes of cost allocation are those that advance economic or reliability objectives.¹⁷³

86. Protestors also argue that PJM cannot rely on Supplemental Projects and the state public policy projects to satisfy Order No. 1000. AWEA argues that the PJM RTEP process, rather than the State Agreement Approach, must be the vehicle to ensure that regional transmission facilities are planned to meet public policy requirements. It also notes that state public policy projects are not eligible for regional cost allocation through the RTEP.¹⁷⁴ Clean Line objects to PJM’s proposal because it would limit consideration of projects designed to address public policy requirements for inclusion in the regional plan for purposes of cost allocation to those projects that qualify as Supplemental Projects or state public policy projects. Clean Line asserts that this limit on projects addressing public policy requirements does not meet Order No. 1000’s requirement that PJM “ensure fair consideration of transmission needs driven by public policy requirements as well as by reliability needs and economic considerations.”¹⁷⁵

87. Similarly, Atlantic Grid argues that PJM’s proposed tariff changes do not expressly obligate, or even allow, PJM to include projects studied to meet transmission

¹⁷¹ *Id.* at 8-9, 15-16.

¹⁷² *Id.* at 15 (referring to the tariff revisions PJM proposed in Docket No. ER12-1178-001).

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 11-14. AWEA states that, while it does not object to the availability of the State Agreement Approach for the development of projects that advance state public policy requirements, or the existing Supplemental Project and interconnection-related network upgrade project categories, none of these three project paths should be viewed as satisfying the requirements of Order No. 1000. AWEA asserts that the RTEP process, and not any of these three other paths, must be the means by which transmission to address public policy requirements is planned and cost allocated. *See also id.* at 10-11.

¹⁷⁵ Clean Line Protest, Docket No. ER13-198-000, at 6 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 224).

needs driven by public policy requirements in the RTEP unless those projects are participant funded. Instead, Atlantic Grid states, the proposal obligates PJM to identify in its plan only those transmission enhancements and expansions proposed by a state under section 1.5.9 of Schedule 6.¹⁷⁶

88. Atlantic Grid also asserts that PJM's market efficiency analysis disadvantages public policy projects, unless PJM revisits the assumptions underlying the test. For example, Atlantic Grid asserts that PJM includes customer facilities in its model only if they are supported by executed interconnection agreements.¹⁷⁷ According to Atlantic Grid, this "stacks the deck" against certain new transmission lines designed to integrate renewable energy projects, because they cannot demonstrate market efficiency benefits without signed interconnection agreements.¹⁷⁸ Atlantic Grid urges that PJM should instead assume, for modeling purposes, that generation will access the proposed transmission project. Accordingly, Atlantic Grid asks the Commission to direct PJM to modify the modeling assumptions for its market efficiency analysis and the resulting cost allocation method.

89. Several commenters protest that, without a multi-driver approach,¹⁷⁹ PJM's transmission planning process does not fairly consider all project benefits, including

¹⁷⁶ Atlantic Grid Limited Protest, Docket Nos. ER13-198-000 and ER13-90-000, at 12.

¹⁷⁷ We note that Atlantic Grid points to proposed section 1.5.7(i) of Schedule 6, which states "[t]he assumptions used in the market efficiency analysis . . . shall include, but not be limited to . . . [a]ddition of Customer Facilities pursuant to an executed Interconnection Service Agreement or executed Interim Interconnection Service Agreement for which an Interconnection Service Agreement is expected to be executed." PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.7(i) (3.0.0).

¹⁷⁸ Atlantic Grid Limited Protest, Docket Nos. ER13-198-000 and ER13-90-000, at 26.

¹⁷⁹ This term is not defined in any of the proceedings at issue in this order. Several parties dispute the definition of the concept of a "multi-driver approach" as well as various possible mechanics of such an approach. However, parties acknowledge that they have discussed, and continue to discuss, the concept of a "multi-driver approach" in the PJM stakeholder process. PJM's proposal in its October 25 Filing does not include a "multi-driver approach." PJM states that that this is an ongoing reform and that, "[i]nclusion of a multi-driver approach in the RTEP process may allow PJM greater flexibility in developing more efficient and cost-effective projects that could include a combination of public policy components and reliability and/or economic components with a cost allocation method that would identify how PJM would allocate costs to the
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those benefits attributable to public policy. AEP protests that PJM's planning process does not give "credit" for solution proposals that more efficiently and cost-effectively address multiple benefits, because the planning process forces PJM to look for solutions that solve each driver individually. AEP asserts that, consequently, projects that provide greater multi-driver benefits may be rejected in favor of a project that has a greater impact on only a single driver, usually reliability.¹⁸⁰ AEP suggests that, as part of a multi-driver approach, PJM should build upon the planning procedures currently in place for economic and reliability projects, considering changes in generation resources and load driven by public policies together with reliability and economic needs. AEP adds that PJM should consider changes driven by state renewable portfolio standards, new federal or state environmental regulations or new demand side management programs.¹⁸¹

90. Atlantic Grid asserts that a multi-driver approach is needed so that PJM may consider all identifiable benefits of a proposed transmission facility, such as operational performance benefits that could "enhance system reliability even when not alleviating a violation-based reliability criterion."¹⁸²

91. Similarly, AWEA argues that projects addressing public policy will only be included in the RTEP if the project is determined to be necessary for economic or reliability purposes, regardless of public policy benefits.¹⁸³ AWEA urges the Commission to direct PJM to make a compliance filing within six months to implement a multi-driver approach to transmission planning and cost allocation.¹⁸⁴ In the interim, AWEA states, the Commission should not accept the PJM Transmission Owners'

beneficiary of each component." *See* PJM October 25 Filing, Docket No. ER13-198-000, at 80-81.

¹⁸⁰ AEP Comments, Docket No. ER13-198-000, at 12-13. AEP acknowledges that in some cases where competing proposals with similar cost estimates were very close in solving reliability problems, PJM has taken additional factors into account to decide the most optimal project to select.

¹⁸¹ AEP Comments, Docket No. ER13-198-000, at 11.

¹⁸² Atlantic Grid Limited Protest, Docket Nos. ER13-198-000 and ER13-90-000, at 23-24.

¹⁸³ AWEA Protest, Docket No. ER13-90-000, at 9 n.14 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 224).

¹⁸⁴ *Id.* at 16-17.

proposed cost allocation methods, because they fail to define a regional cost allocation method for projects with substantial public policy benefits.¹⁸⁵

92. Delaware PSC asserts that, without a multi-driver approach, PJM's proposal does not demonstrate how the costs of projects addressing reliability or market efficiency drivers, with additional secondary benefits, such as public policy, are allocated commensurate with benefits.¹⁸⁶ Delaware PSC thus asserts that the Commission should not accept PJM's proposal unless, and until, a multi-driver approach is finalized.¹⁸⁷

93. AWEA asserts that, by implementing selection criteria and a cost allocation method for projects with multiple classes of benefits, including public policy benefits, PJM could more fairly ensure that projects advancing public policy requirements will be selected in RTEP for purposes of cost allocation. AWEA notes that PJM could address this concern by assuring that the transmission planning process gives full credit to public policy benefits through a multi-driver process or by accounting for public policy benefits through the regional reliability and economic cost allocation methods.

94. Atlantic Grid argues that Order No. 1000 requires that the transmission planning process must account for benefits that accrue when a single line serves several functions.¹⁸⁸ Atlantic Grid asserts that PJM's proposal fails to assess reliability and market efficiency benefits from lines proposed to meet public policy goals and neglects to consider any benefits of public policy projects beyond those assumed by the states through the State Agreement Approach.¹⁸⁹ Atlantic Grid asserts that Order No. 1000

¹⁸⁵ *Id.* at 14.

¹⁸⁶ Delaware PSC Comments, Docket Nos. ER13-198-000 and ER13-90-000, at 3-5.

¹⁸⁷ *Id.* at 14-15. The Delaware PSC notes its concern that, if the Commission accepts PJM's compliance proposal without a multi-driver approach, such acceptance could reduce stakeholders' incentive to finalize a multi-driver approach. *Id.* at 5.

¹⁸⁸ Atlantic Grid Limited Protest, Docket Nos. ER13-198-000 and ER13-90-000, at 17 n.58 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 690).

¹⁸⁹ Atlantic Grid Limited Protest, Docket Nos. ER13-198-000 and ER13-90-000, at 18 n.59 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 559). Atlantic Grid also notes that, even if the PJM Transmission Owners have authority to make cost allocation proposals, the CTOA still requires PJM to make section 206 filings, such as its October 25 Filing; thus, Atlantic Grid argues that PJM's failure to present the multi-driver approach as part of its compliance plan is not excused by the PJM Transmission Owners October 11 Filing on cost allocation). *Id.* at 18 n.60.

imposes an affirmative obligation on PJM to include public policy projects in its transmission plans and provide for regional cost allocation.¹⁹⁰

95. Still other commenters assert that PJM's proposal complies with Order No. 1000 even without a multi-driver approach. The New Jersey Board asserts that a multi-driver process is not needed to comply with Order No. 1000 and believes that such a process may only "serve to obscure the clearly defined planning process upon which this filing builds."¹⁹¹ Similarly, while Duquesne Light Company supports the development of a multi-driver planning process as part of the ongoing PJM stakeholder process, it believes that the PJM and PJM Transmission Owners' compliance proposal fully complies with the requirements of Order No. 1000 without the multi-driver process.¹⁹² Likewise, the Illinois Commerce Commission states that the Commission should accept PJM's commitment to develop a multi-driver process through future stakeholder processes.¹⁹³

(c) **Answers**

96. PJM responds by reiterating that it incorporates public policy into its transmission planning process both directly, through its integrated market design, and also through its use of scenario analysis.¹⁹⁴ Through its integrated market design, PJM explains, it "draws its assumptions for determining needs for reliability and market efficiency projects from market responses to all conditions, including public policy initiatives."¹⁹⁵ PJM states that the planning process provides information to the market about transmission solutions, and non-transmission alternatives, that made be required for reliability, market efficiency, or state and federal public policy requirements. PJM adds that all resources, including renewable resources, demand response, and energy efficiency, can compete against traditional generation resources through the capacity and energy markets. PJM states that it factors the availability of these resources into future RTEP analyses and asserts that, "[b]ecause such commitments are procured and

¹⁹⁰ *Id.* at 18.

¹⁹¹ New Jersey Board Comments, Docket No. ER13-198-000, at 8.

¹⁹² Duquesne Light Company Comments, Docket No. ER13-198-000, at 7-8.

¹⁹³ Illinois Commerce Commission Comments, Docket No. ER13-198-000, at 6.

¹⁹⁴ PJM Answer, Docket No. ER13-198-000, at 8, 10. As further discussed below, PJM states that, though the scenario analysis, it looks specifically at various potential market responses to public policy.

¹⁹⁵ *Id.* at 8.

committed on a forward basis, they can (and do) work to obviate the need for transmission solutions during the RTEP study stage.”¹⁹⁶

97. Through the use of scenario analysis, PJM indicates, it looks at how the market responds or changes direction in response to public policy assumptions. PJM asserts that it can use the different scenarios to decide the most efficient or cost-effective transmission solutions. PJM contends that its proposal exemplifies the regional flexibility that the Commission provided for in Order No. 1000 and that many of the protests seek to go beyond Order No. 1000’s directives.¹⁹⁷

98. In response to AEP’s concerns that PJM must take additional steps to ensure that transmission needs driven by public policy requirements are meaningfully and timely considered, PJM asserts that, without more detail, it is unclear what additional steps AEP believes are needed for Order No. 1000 compliance. PJM points out that, in its February 2012 Filing in Docket No. ER12-1178-000, PJM revised its transmission planning process to provide stakeholders: (1) greater opportunities to provide input at earlier stages in the transmission planning process; and (2) greater access to information. PJM states that the stakeholders’ expanded access to information through additional posting requirements will help stakeholders understand the benefits they will receive from facilities included in the RTEP.¹⁹⁸

99. PJM asserts that AWEA’s protest that PJM leaves public policy requirements out of key provisions of Schedule 6 is factually incorrect. PJM states that consideration of Public Policy Objectives begins at the early stages of the RTEP process, noting that section 1.5.1 of Schedule 6 provides that “[t]he Office of the Interconnection may initiate the enhancement and expansion study process to address or consider, where appropriate, requirements or needs arising from sensitivity studies, modeling assumption variations, scenario analyses and Public Policy Objectives.”¹⁹⁹ By including Public Policy Objectives in the list of requirements or needs that may lead to an enhancement or expansion study, PJM asserts that its compliance proposal goes beyond Order No. 1000’s directives to incorporate public policy initiatives that are under consideration but are not yet enacted into law. In addition, PJM points out that, contrary to AWEA’s assertion, section 1.5.3 of Schedule 6, which governs the scope of PJM’s planning studies, provides

¹⁹⁶ *Id.* at 9.

¹⁹⁷ *Id.* at 10.

¹⁹⁸ *Id.* at 18.

¹⁹⁹ *Id.* at 19 (quoting PJM, Intra-PJM Tariffs, OA, Schedule 6, §1.5.1 (Commencement of the Process) (3.0.0)).

that enhancements and expansion studies include “[i]dentification, evaluation and analysis of potential transmission expansions and enhancements for the purposes of supporting . . . Public Policy Requirements in the PJM Region.”²⁰⁰

100. In response to AWEA’s request that PJM clarify the role of the states in the consideration of transmission needs driven by public policy requirements, PJM explains that all stakeholders, not just states, have the opportunity to provide input on public policy objectives for consideration at the assumptions stage of the transmission planning process. PJM further explains that “state approval is not needed in order for stakeholders to provide input into public policy requirements in the first instance in the RTEP process.”²⁰¹ In addition, PJM states that, during the proposal window process, PJM expects to “work with the states, and to vet such discussions with the TEAC, to help identify and evaluate potential solutions for transmission needs driven by public policy requirements.”²⁰² PJM adds that “[i]f public policy needs have been identified at the opening of a proposal window, PJM will post such public policy requirements along with potential reliability violations and market efficiency constraints.”²⁰³

101. In response to AEP’s protest that PJM’s tariff provisions governing its scenario planning analyses do not provide “sufficient detail as to precisely how the scenario analyses will drive the inclusion of proposed projects in the RTEP,” PJM explains that such detail will be resolved with stakeholders in the context of the stakeholder process. PJM points to the Commission’s finding that the tariff provisions “strike an appropriate balance between the need for PJM to maintain some flexibility given the scenario-based nature of the analysis. . . and the need for sufficient detail in the tariff to allow stakeholders to participate in the planning process.”²⁰⁴ PJM argues that its proposal provides the transparency needed to ensure that any entity has the information needed to challenge a PJM decision and asserts that AEP has not demonstrated that PJM must return to bright-line criteria to comply with Order No. 1000.²⁰⁵

²⁰⁰ *Id.* at 19-20 (quoting PJM, Intra-PJM Tariffs, OA, Schedule 6, §1.5.3(d) (Scope of Studies) (3.0.0)).

²⁰¹ *Id.* at 21.

²⁰² *Id.* at 21-22.

²⁰³ *Id.* at 22.

²⁰⁴ *Id.* at 14-15 (quoting November 29, 2012 Order, 141 FERC ¶ 61,169 at P 21).

²⁰⁵ *Id.* at 15.

102. Responding to concerns with the proposal to consider public policy and other “secondary benefits” when evaluating project proposals, PJM asserts that it must have flexibility to look at secondary considerations that “may not be quantifiable in dollars or megawatts” when evaluating projects that equally address reliability concerns. PJM adds that its transparent and open planning process, which invites robust stakeholder participation, ensures that secondary benefits are appropriately considered in the selection process. PJM asserts that the Commission has already recognized that this process provides the appropriate balance to identify needs and evaluation solutions.²⁰⁶

103. Regarding protests that PJM does not provide a clear path for public policy-driven projects, PJM responds that Order No. 1000 does not require public utility transmission providers to create a separate category of public policy projects or to build solely for public policy.²⁰⁷ However, PJM notes that its proposal includes a direct path for PJM, working with its states, to construct new public policy projects (i.e., the State Agreement Approach).

104. PJM asserts that Atlantic Grid’s protest that PJM should revisit the assumptions underlying its market efficiency analysis is beyond the scope of compliance with Order No. 1000. PJM argues that Atlantic Grid’s protest is an effort to reopen the issue of revisions to the generator interconnection process and cost recovery, which the Commission determined were outside the scope of Order No. 1000.²⁰⁸

105. Regarding a multi-driver approach to transmission planning, PJM asserts that Order No. 1000 does not require a multi-driver approach to transmission planning and therefore, the Commission should not require PJM to submit such an approach for compliance. However, PJM affirms its commitment to continue to address, with stakeholders and states, the “myriad of issues associated with the weighting of multiple drivers.”²⁰⁹

106. In its response, Atlantic Grid states that the PJM October 25 and the PJM Transmission Owners October 11 Filings are materially deficient without the multi-driver approach that is being discussed by PJM with its stakeholders. Atlantic Grid contends the multi-driver approach being developed in the PJM stakeholder process will determine if duplicate costs can be avoided by taking into account the projects developed through

²⁰⁶ *Id.* at 16-17.

²⁰⁷ *Id.* at 22-23, 25.

²⁰⁸ *Id.* at 39 (referencing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 760).

²⁰⁹ *Id.* at 42.

the State Agreement Approach. Atlantic Grid states that public policy-related transmission costs will be recovered through the State Agreement Approach.²¹⁰ Atlantic Grid asserts the multi-driver approach would allocate a proportionate share of the costs to the beneficiaries. Atlantic Grid contends reliability and/or market efficiency costs would be borne by the same parties that would bear them if there were no public policy projects, and any non-reliability or non-market efficiency related costs would be borne solely by state sponsors under the State Agreement Approach.²¹¹

107. Atlantic Grid asserts that the PJM Transmission Owners have no objection to the multi-driver approach, and the PJM Transmission Owners are agreeable to an appropriate cost allocation filing to implement a multi-driver approach. Atlantic Grid states the Commission should order PJM to file the multi-driver approach with an Order No. 1000 compliant cost allocation proposal.²¹²

108. PJM Transmission Owners submitted answers to various protests and comments to its October 11 filing. PJM Transmission Owners state there is no basis for taking issue with the proposed Schedule 12 amendments because they do not provide separate cost allocation methods for categories of projects for which the PJM planning process makes no provision, which include “so-called multi-driver or multi-benefit projects or projects that are proposed to advance public policy requirements that are not the product of the State Agreement Approach and are not otherwise necessary for reliability, operational performance, or economic efficiency.”²¹³ PJM Transmission Owners state that if and when such project becomes part of the RTEP, the PJM Transmission Owners will exercise their authority and responsibility to propose any necessary revisions to the cost allocation method.²¹⁴

(d) Commission Determination

109. We find that the PJM Parties’ Filings partially comply with the provisions of Order No. 1000 addressing transmission needs driven by public policy requirements. Order No. 1000 allows public utility transmission providers flexibility in developing

²¹⁰ Atlantic Grid Limited Answer, Docket Nos. ER13-198-000 and ER13-90-000, at 1-2.

²¹¹ *Id.* at 5.

²¹² *Id.* at 19-20.

²¹³ PJM Transmission Owners December 26 Filing, Docket No. ER13-90-000, at 6.

²¹⁴ *Id.* at 6.

proposals to consider transmission needs driven by public policy requirements.²¹⁵ Our focus here is on PJM's proposal to rely on its existing tariff provisions providing for consideration of transmission needs driven by public policy requirements by incorporating public policy requirements into its needs analysis. As for PJM's proposed State Agreement Approach, we agree with PJM that it is supplemental to PJM's proposal to consider transmission needs driven by public policy requirements, and not needed for compliance with Order No. 1000, as discussed further below.

110. PJM considers "Public Policy Requirements" and "Public Policy Objectives," as defined in PJM's OA and OATT, at the assumptions stage of the RTEP process and, through scenario analyses, identifies those transmission system enhancements and expansions that are needed based on maintaining the reliability of the system in an economic and efficient manner.²¹⁶ PJM's process includes procedures through which PJM will identify, with an opportunity for stakeholders to provide input, "Public Policy Requirements" and "Public Policy Objectives." As PJM explains, TEAC participants may provide advice and recommendations about sensitivity studies, modeling assumption variations, scenario analyses, and "Public Policy Objectives" for PJM to consider in its transmission system studies and analyses.²¹⁷ Additionally, PJM is required to consult

²¹⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 220 ("Some public utility transmission providers might comply with [Order No. 1000] by implementing procedures to consider transmission needs driven by Public Policy Requirements separately from transmission addressing reliability needs or economic considerations. Other public utility transmission providers might comply with [Order No. 1000] by identifying and evaluating all transmission needs, whether driven by Public Policy Requirements, compliance with reliability criteria, or economic considerations.").

²¹⁶ PJM Answer, Docket No. ER13-198-000, at 10. PJM's proposed Schedule 6 revisions make clear that that PJM's determination as to which transmission projects will be selected in the regional transmission plan for the purposes of cost allocation will be based on the determination of the "more efficient or cost-effective" transmission solution. *See, e.g.*, PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(e) (Criteria for Considering Inclusion of a Project in the Recommended Plan) (3.0.0) ("In determining whether a Short-term Project or Long-lead Project proposed pursuant to section 1.5.8(c), individually or in combination with other Short-term Projects or Long-lead Projects, is the more efficient or cost-effective solution and therefore should be included in the recommended plan...").

²¹⁷ PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.3 (2.0.0). The TEAC is open to participation by all transmission customers, any other entity proposing to provide transmission facilities in the PJM Region, all Members, the electric utility regulatory agencies within the states in the PJM Region, the ISAC, the state consumer advocates, (continued...)

with the TEAC and the Subregional RTEP Committees “as appropriate, to prepare the study’s scope, assumptions and procedures.”²¹⁸ In particular, “[TEAC] participants shall notify the Office of the Interconnection in writing of any additional transmission considerations they would like to have included in the Office of the Interconnection’s analyses.”²¹⁹

111. By incorporating public policy requirements and initiatives at the assumptions stage of the RTEP process and as part of its enhancement and expansion studies, PJM considers how public policy requirements and initiatives contribute to transmission system needs. PJM, along with the TEAC, ISAC, and Subregional RTEP Committees, facilitates assumptions meetings, during which PJM develops the assumptions it will use to evaluate and analyze potential enhancements and expansions to the transmission system.²²⁰ Through PJM’s sensitivity studies and scenario analyses, the assumptions that

and any other interested entities or persons.

²¹⁸ *Id.* § 1.5.2 (3.0.0).

²¹⁹ *Id.* § 1.5.1(b) (3.0.0).

²²⁰ As part of PJM’s enhancement and expansion studies, PJM “shall employ sensitivity studies, modeling assumption variations, and scenario analyses, and shall also consider Public Policy Objectives.” PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.3(d) (Scope of Studies) (3.0.0)). These “[s]ensitivity studies, modeling assumption variations, and scenario analyses shall take account of potential changes in expected future system conditions, including, but not limited to, load levels, transfer levels, fuel costs, the level and type of generation, generation patterns (including, but not limited to, the effects of assumptions regarding generation that is at risk for retirement and new generation to satisfy Public Policy Objectives), demand response, and uncertainties arising from estimated times to construct transmission upgrades.” *Id.* § 1.5.3(d) (Scope of Studies) (3.0.0)).

PJM and its stakeholders develop yield specific transmission system needs.²²¹ From this set of transmission system needs, which reflects PJM’s consideration of public policy requirements and initiatives, PJM evaluates potential solutions and selects “the optimal reliability and market efficiency projects” for an identified transmission need.²²²

112. With the revisions required below, we find that PJM’s proposal satisfies the requirements of Order No. 1000 with respect to consideration of transmission needs driven by public policy requirements in the regional transmission planning process, because PJM’s proposal obligates it to affirmatively “consider, in the transmission planning process, the effect that public policy requirements may have on local and regional transmission needs.”²²³ PJM’s regional transmission planning process provides that PJM shall both identify and evaluate potential enhancements and expansions for the purpose of supporting public policy requirements. In Order No. 1000, we noted the benefits to flexible planning criteria for identifying transmission needs driven by public policy requirements, such as facilitating an inclusive long-term transmission planning process.²²⁴ Accordingly, with the revisions required below, we view PJM’s regional transmission planning process as “consistent with or superior to”²²⁵ Order No. 1000’s requirements regarding consideration of transmission needs driven by public policy requirements.

113. With respect to PJM’s proposed definition of “Public Policy Requirements,” we find that the proposed definition partially complies with the provisions of Order No. 1000. In Order No. 1000, the Commission defined “Public Policy Requirements” as state or federal laws or regulations, specifically, “enacted statutes (i.e., passed by the legislature and signed by the executive) and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level,” as well as “duly enacted laws or regulations passed by a local governmental entity, such as a municipal or county

²²¹ PJM’s tariff provides that enhancement and expansion studies shall include, among other things, “[i]dentification, evaluation and analysis of potential enhancements and expansions for the purpose[] of supporting . . . Public Policy Requirements in the PJM Region.” PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.3(d) (Scope of Studies) (3.0.0)).

²²² PJM October 25 Filing at 37, 39-42.

²²³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 204, 222.

²²⁴ *Id.* P 223.

²²⁵ *Id.* P 149; 18 C.F.R. § 35.28(c)(4)(ii) (2012).

government.”²²⁶ As proposed by PJM, however, the definition of “Public Policy Requirements” does not include duly enacted laws or regulations passed by a local governmental entity, such as a municipal or county government.²²⁷ Accordingly, we direct PJM to file a compliance filing revising its OA and OATT to include a definition of “Public Policy Requirements” that is consistent with the definition adopted in Order No. 1000, as further discussed below.

114. We find that PJM’s proposal to consider “Public Policy Objectives”²²⁸ in addition to “Public Policy Requirements,” although not required by Order No. 1000, is “consistent with or superior to” Order No. 1000 because Order No. 1000 “does not preclude any public utility transmission provider from considering in its transmission planning process transmission needs driven by additional public policy objectives not specifically required by state or federal laws or regulations.”²²⁹

115. However, we find that PJM’s proposal does not adequately address Order No. 1000’s requirement to describe a just and reasonable and not unduly discriminatory process through which PJM will identify those particular transmission needs driven by public policy requirements for which transmission solutions will be evaluated. While PJM states that it will consider identified public policy requirements at the assumptions stage of the RTEP process and in preparing the scope, assumptions, and procedures of its transmission enhancement and expansion studies, it is unclear whether PJM will thus incorporate into these transmission enhancement and expansion studies all public policy requirements identified by stakeholders, or whether PJM will, out of this larger set of public policy requirements, select a subset of public policy requirements to incorporate. If PJM will select a subset of the public policy requirements identified by stakeholders to incorporate in its transmission enhancement and expansion studies, PJM does not explain how its OATT provides for a just and reasonable and not unduly discriminatory process for doing so. Because the incorporation of an identified Public Policy Requirement into

²²⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2; Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

²²⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2; Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

²²⁸ PJM defines “Public Policy Objectives” as “Public Policy Requirements, as well as public policy initiatives of state or federal entities that have not been codified into law or regulation but which nonetheless may have important impacts on long term planning considerations.” PJM, Intra-PJM Tariffs, OA, Definitions (O-P), § 1.38A (4.0.0); *see also* PJM, Intra-PJM Tariffs, OATT, Definitions (O-P-Q), § 1.36A.04 (6.0.0).

²²⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 216 & n.193.

PJM's studies determines whether resulting transmission needs will be identified and evaluated for transmission solutions, we conclude that PJM must describe in its tariff the process by which such decisions will be made in order to comply with Order No. 1000. Therefore, we direct PJM to provide, in a subsequent compliance filing discussed more fully below, additional tariff revisions that describe a just and reasonable and not unduly discriminatory process through which PJM will determine which public policy requirements identified by stakeholders at the assumptions stage of the RTEP process will be incorporated into its transmission enhancement and expansion studies, and thus which public policy requirements may result in transmission needs for which transmission solutions will be evaluated.

116. Similarly, we find that PJM's proposal partially complies with the requirement to post on its website an explanation of: (1) those transmission needs driven by public policy requirements that have been identified for evaluation for potential transmission solutions in the regional transmission planning processes; and (2) why other suggested transmission needs driven by public policy requirements will not be evaluated.²³⁰ As explained above, PJM has proposed to allow stakeholders to propose public policy requirements that may drive transmission needs, and PJM will consider identified public policy requirements in preparing a study's scope, assumptions, and procedures. PJM's also proposes to "post an explanation regarding why transmission needs associated with federal or state public policy requirements were identified but were not selected for further evaluation."²³¹ However, it is unclear what information this explanation will provide because it appears the posting will be made "[u]pon identification of existing and projected limitations" on the transmission system, and PJM states in its filing that it is not separately identifying transmission needs driven by public policy requirements.²³² Because PJM thus integrates consideration of transmission needs driven by public policy requirements at the assumptions stage of the regional transmission planning process, PJM must post an explanation of why some public policy requirements proposed to be incorporated as assumptions and/or scenarios are adopted and others are not adopted. Accordingly, we direct PJM to revise its OATT in a further compliance filing, so that PJM will post on its website an explanation of those public policy requirements that PJM adopted at the assumptions stage of its regional transmission planning process and an explanation of why other public policy requirements introduced by stakeholders were not adopted; and, clarifying when in the RTEP process PJM will make such posting(s).

²³⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

²³¹ PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(b) (3.0.0).

²³² *Id.* § 1.5.8(b) (3.0.0).

117. Finally, Order No. 1000 requires that PJM, in consultation with stakeholders, establish procedures in its OATT to evaluate at the regional level potential transmission solutions to identified transmission needs driven by public policy requirements. These procedures must address the evaluation of transmission facilities stakeholders propose to satisfy an identified transmission need driven by public policy requirements²³³ and provide stakeholders an opportunity to provide input during the evaluation of potential transmission solutions to identified transmission needs.²³⁴ We find that PJM complies with this obligation because PJM has a Commission-approved process for evaluating potential transmission solutions, including those proposed by stakeholders, to the transmission needs driven by public policy requirements that result when it performs its studies.²³⁵

118. Accordingly, we direct the PJM to file, within 120 days of the date of issuance of this order, a further compliance filing with revisions to its OATT that: (1) include a definition of “Public Policy Requirements” that is consistent with the definition adopted in Order No. 1000; (2) describe a just and reasonable and not unduly discriminatory process through which PJM will determine which public policy requirements identified by stakeholders will be incorporated into its transmission enhancement and expansion studies, and thus which public policy requirements may result in transmission needs for which transmission solutions will be evaluated; (3) provide that PJM will post on its website an explanation of those public policy requirements that PJM adopted at the assumptions stage of its regional transmission planning process and an explanation of why other public policy requirements introduced by stakeholders were not adopted; and (4) clarify when in the RTEP process PJM will post this explanation.

119. We disagree with protestors that argue that PJM must implement a multi-driver approach for compliance with Order No. 1000. Order No. 1000 does not require PJM to implement a distinct planning process or cost allocation method specifically for public policy transmission projects. PJM has integrated consideration of transmission needs driven by public policy requirements into its transmission planning process by incorporating those needs into the sensitivity studies, modeling assumption variations and scenario planning analyses on which PJM relies to identify the need for reliability and economic transmission projects. As discussed above, by considering public policy requirements in developing the transmission enhancement and expansion studies, including in future scenarios, PJM factors transmission needs driven by public policy requirements into the selection of the optimal reliability and market efficiency

²³³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211.

²³⁴ *Id.* P 220.

²³⁵ PJM, Intra-PJM Tariffs, OA, Schedule 6, §§ 1.5.6(e), 1.5.8(c) (3.0.0).

transmission projects. However, we note that PJM commits to continue to develop a multi-driver approach with its stakeholders,²³⁶ and thus we encourage PJM and its stakeholders to explore future enhancements to improve the regional transmission planning process.

120. We do not require PJM to propose further tariff revisions to modify the modeling assumptions for its market efficiency analysis, as requested by Atlantic Grid. PJM's regional transmission planning process, including the market efficiency analysis, allows PJM the flexibility to assume shifts in generation as a result of state or federal public policy requirements. Section 1.5.3 of Schedule 6 provides that PJM's "[s]ensitivity studies, modeling assumption variations, and scenario analyses shall take account of potential changes in expected future system conditions, including, but not limited to, . . . the level and type of generation [and] generation patterns (including, but not limited to, the effects of assumptions regarding generation that is at risk for retirement and *new generation to satisfy Public Policy Objectives*)."²³⁷ In addition, section 1.5.7(i) of Schedule 6 states that "[t]he assumptions used in the market efficiency analysis . . . shall include, *but not be limited to* . . . [a]ddition of Customer Facilities pursuant to an executed Interconnection Service Agreement or executed Interim Interconnection Service Agreement for which an Interconnection Service Agreement is expected to be executed."²³⁸ We also note that PJM's regional transmission planning process enables stakeholders to provide advice and recommendations about the sensitivity studies, modeling assumption variations, scenario analyses, and "Public Policy Objectives" that PJM considers in its transmission system studies and analyses, as previously discussed.²³⁹ Therefore, we find that PJM's regional transmission planning process, including the market efficiency analysis, allows stakeholders adequate opportunity to provide input on PJM's sensitivity studies, modeling assumption variations, and scenario analyses, which could include expected future generation to satisfy public policy requirements.

²³⁶ PJM October 25 Filing, Docket No. ER13-198-000, at 80.

²³⁷ PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.3(d) (Scope of Studies) (3.0.0) (emphasis added)).

²³⁸ *Id.* § 1.5.7(i) (3.0.0) (emphasis added).

²³⁹ *Id.* § 1.3 (2.0.0). The TEAC is open to participation by all transmission customers, any other entity proposing to provide transmission facilities in the PJM Region, all Members, the electric utility regulatory agencies within the states in the PJM Region, the ISAC, the state consumer advocates, and any other interested entities or persons.

ii. **Incorporating Consideration of Transmission Needs Driven by Public Policy Requirements in the Local Transmission Planning Process**

(a) **PJM Parties' Filings**

121. PJM states that the Subregional RTEP Committees provide a forum “for surfacing and considering local [transmission] planning issues.”²⁴⁰ PJM explains that a locally proposed Supplemental Project, if found to “most efficiently resolve transmission needs,” is included in the regional plan for purposes of cost allocation.²⁴¹

(b) **Comments/Protests**

122. No protests or comments were filed.

(c) **Commission Determination**

123. In the local transmission planning process of PJM’s transmission-owning members, we find that PJM’s proposal may not comply with the requirements of Order No. 1000 addressing transmission needs driven by public policy requirements. Order No. 1000 requires all public utility transmission providers to amend their OATTs to describe procedures that provide for the consideration of transmission needs driven by public policy requirements in the local transmission planning process.²⁴² As PJM explains, through the Subregional RTEP Committee and the TEAC, PJM evaluates each transmission owner’s Local Plan to determine if proposed local reinforcements are needed to optimally meet the local transmission owner planning criteria and to determine whether these reinforcements may be selected in the RTEP for purposes of cost allocation as more efficient or cost-effective transmission solutions. However, PJM does not address in its compliance filing how the transmission-owning members of PJM have incorporated the requirements of Order No. 1000 addressing transmission needs driven by public policy requirements in their local transmission planning processes.

²⁴⁰ PJM October 25 Filing, Docket No. ER13-198-000, at 22.

²⁴¹ *Id.* at 31. PJM explains that, as part of its Order No. 890 compliance filing, PJM added the defined term “Supplemental Project” to its tariff to allow PJM to evaluate local transmission owner planning standards and criteria to determine if local reinforcements are needed to optimally meet the local transmission planning criteria and to determine whether reinforcements may be categorized as PJM RTEP baseline projects or Supplemental Projects. *Id.* at 46 & n.129.

²⁴² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 203.

Accordingly, we direct PJM to file, within 120 days of the date of issuance of this order, a further compliance filing explaining how the local transmission planning process complies with the requirements of Order No. 1000 addressing transmission needs driven by public policy requirements.

iii. State Agreement Approach

(a) PJM Parties' Filings

124. PJM also includes a proposed State Agreement Approach, which PJM states is an additional option to further meet potential states' public policy needs and is not directly tied to meeting Order No. 1000's requirements regarding the "consideration" of transmission needs driven by public policy requirements.²⁴³ PJM does not seek a specific Order No. 1000 review of this aspect of its October 25 Filing, and includes the State Agreement Approach as a mechanism by which states that desire to advance a transmission project addressing public policy requirements can have the transmission project included in the RTEP.²⁴⁴ Transmission projects proposed through the State Agreement Approach will be included in the RTEP either as a Supplemental Project or a state public policy transmission project if the state(s) agrees to voluntarily assume responsibility for the allocation of all costs of the transmission project.²⁴⁵

(b) Comments/Protests

125. Several commenters support PJM's proposed State Agreement Approach. Organization of PJM States contends that the approach ensures transmission costs will correspond closely with state-identified public policy benefits and eliminates concerns over free-ridership and cross-state cost shifting.²⁴⁶ Organization of PJM States also asserts that the State Agreement Approach promotes cost-effective transmission planning.²⁴⁷ PSEG Companies assert that the proposed State Agreement Approach is a reasonable and workable model for satisfying Order No. 1000's requirements with

²⁴³ PJM October 25 Filing, Docket No. ER13-198-000, at 37.

²⁴⁴ *Id.* at 47-48.

²⁴⁵ PJM, Intra-PJM Tariffs, OA, Schedule 6, §§ 1.5.9 (State Agreement Approach) (3.0.0), 1.6 (Approval of the Final Regional Transmission Expansion Plan) (2.0.0); PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(xii) (Public Policy Projects) (5.0.0).

²⁴⁶ Organization of PJM States Comments, Docket No. ER13-198-000, at 5-6.

²⁴⁷ *Id.* at 6-7.

respect to public policy.²⁴⁸ PUC of Ohio points out the significant efforts the members of Organization of PJM States have made to reach a consensus on planning for transmission needs driven by public policy requirements and the associated cost allocation.²⁴⁹

126. Commenters also support the State Agreement Approach because it relies on states rather than PJM to make decisions regarding transmission needs driven by public policy requirements. Organization of PJM States asserts that the State Agreement Approach appropriately provides that only authorized policymakers make the policy decisions and pronouncements required to “convert ‘public policies’ into ‘transmission needs.’”²⁵⁰ New Jersey Board asserts that the State Agreement Approach allows states to develop transmission to serve their policy goals.²⁵¹ Similarly, PSEG Companies assert that the proposal appropriately designates states, through their authorized agents, as the entities “driving the determination” of what projects will satisfy transmission needs driven by state public policy requirements.²⁵²

127. Organization of PJM States and PSEG Companies assert that the State Agreement Approach is consistent with Order No. 1000 because the Commission acknowledged the role of state regulators “in aligning transmission planning related to public policy and

²⁴⁸ PSEG Companies Limited Protest and Comments, Docket No. ER13-198-000, at 8.

²⁴⁹ PUC of Ohio Comments, Docket No. ER13-198-000, at 7.

²⁵⁰ Organization of PJM States Comments, Docket No. ER13-198-000, at 6-7. In particular, Organization of PJM States asserts that the State Agreement Approach is consistent with the Commission’s guidance that in identifying transmission needs driven by Public Policy Requirements, public utility transmission providers could “rely on committees of state regulators or, with appropriate approval from Congress, compacts between interested states.” *Id.* (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209 & n.189). The Organization of PJM States further asserts that “the ‘need’ for transmission projects is a determination that, with limited exceptions, is ultimately defined under state siting laws and the implementation of such state laws by state bodies.” *Id.* at 8.

²⁵¹ New Jersey Board Comments, Docket No. ER13-198-000, at 8.

²⁵² PSEG Companies Limited Protest and Comments, Docket No. ER13-198-000, at 8. PSEG Companies additionally state that the State Agreement Approach provides a “built-in solution” to the allocation of costs related to transmission projects serving the public policies of states in a multi-state RTO. *Id.* at 9.

associated cost allocation.”²⁵³ Organization of PJM States further notes that Order No. 1000 does not require PJM to select in its regional transmission plan public policy projects in a way that downplays the policy driver for such projects and effectively forces some states to fund other states’ public policies.²⁵⁴

128. Additionally, Illinois Commerce Commission contends that the State Agreement Approach will ensure that costs are not shifted to states that do not need to construct such facilities to meet public policy requirements of those states. In Illinois Commerce Commission’s view, such a cost allocation approach comports with the Seventh Circuit Court of Appeals’ and the Commission’s directives regarding cost causation and ensuring that costs are commensurate with the benefits received.²⁵⁵

129. New Jersey Board, however, requests that PJM clarify various aspects of the proposed State Agreement Approach. New Jersey Board indicates that PJM should clarify the distinction between supplemental projects and state public policy projects. In addition, New Jersey Board requests that PJM indicate which entity determines whether a supplemental project should be included in the RTEP, as supplemental projects are “not reviewed by the PJM Board.”²⁵⁶

130. LS Power recognizes the considerable progress that PJM has made with the proposed State Agreement Approach. However, LS Power suggests that the State Agreement Approach would be more effective if the uncontracted portions of projects that have been proposed as merchant transmission projects were also eligible for consideration in the State Agreement Approach.²⁵⁷ LS Power proposes clarifying language to section 1.5.9(c) of Schedule 6 to this effect.

131. Atlantic Grid protests that, according to PJM’s proposal, it will not evaluate the reliability or market efficiency benefits of transmission enhancements proposed to

²⁵³ Organization of PJM States Comments, Docket No. ER13-198-000, at 7; PSEG Companies Limited Protest and Comments, Docket No. ER13-198-000, at 9-10.

²⁵⁴ Organization of PJM States Comments, Docket No. ER13-198-000, at 8.

²⁵⁵ Illinois Commerce Commission Comments, Docket No. ER13-198-000, at 5 (citing *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470 (7th Cir. 2009); Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 504).

²⁵⁶ New Jersey Board Comments, Docket No. ER13-198-000, at 6 (referencing PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.6 (2.0.0), *cited in* PJM October 25 Filing, Docket No. ER13-198-000, at 46 & n.132).

²⁵⁷ LS Power Protest, Docket No. ER13-198-000, at 37.

address public policy drivers in the first instance. Rather, Atlantic Grid contends that PJM and the PJM Transmission Owners presume the costs of projects proposed to meet public policy goals will be funded solely by individual states, or potentially by generators that interconnect to those facilities under the but-for test.²⁵⁸ Atlantic Grid asserts that PJM's failure to provide an up-front means to assess reliability and market efficiency benefits from lines proposed to meet public policy goals leaves PJM's filing deficient.²⁵⁹

132. In addition, AWEA also asserts that the proposed State Agreement Approach is inadequate to ensure that projects advancing public policy requirements are eligible to be selected in a regional plan for purposes of cost allocation "in the same manner as projects addressing economic and reliability needs."²⁶⁰

133. Maryland PSC asserts that the State Agreement Approach would incentivize free-ridership and inefficient investment. For example, Maryland PSC postulates that a state facing renewable portfolio standards and transmission constraints would face the incentive to avoid building needed transmission in the hopes that another state or group of states would build said transmission themselves. Maryland PSC also argues that PJM's proposal would chill transmission construction, impair optimal grid development, and lead to inefficient and unnecessarily duplicative transmission solutions.²⁶¹

134. AWEA states that PJM's proposal does not contain sufficient detail as to: (1) why Supplemental Projects and state public policy projects that meet public policy requirements must be submitted to the "applicable state for review and consideration"; (2) how the "applicable states" will be determined; and (3) what happens if these states fail to support a project.²⁶² AWEA further states that the proposed State Agreement Approach is not a sufficient substitute for the full consideration of transmission needs driven by public policy requirements through all phases of the RTEP process in the same manner as reliability and economic needs. AWEA asserts that the project selection through the State Agreement Approach does not satisfy Order No. 1000's directives with respect to public policy requirements, because such projects are not eligible for regional cost allocation through the RTEP. AWEA states that PJM must adopt planning criteria

²⁵⁸ Atlantic Grid Limited Protest, Docket Nos. ER13-198-000 and ER13-90-000, at 15.

²⁵⁹ *Id.* at 17-18.

²⁶⁰ AWEA Comments, Protest, Docket No. ER13-198-000, at 11-14.

²⁶¹ Maryland PSC Protest, Docket No. ER13-198-000, at 7-8.

²⁶² AWEA Protest, Docket No. ER13-198-000, at 8-9.

that will allow for projects that are driven by such public policy needs to be selected for some form of broad regional cost allocation.

135. In addition, Public Interest Organizations contend that PJM's proposal fails to provide any explicit process for federal public policy requirements following the posting of identified federal Public Policy Requirement needs on the PJM website. Public Interest Organizations assert that PJM cannot satisfy its obligation to provide a process for Public Policy Requirement consideration if no explicit process is provided in the proposal.²⁶³

(c) Answer

136. PJM asserts that the State Agreement Approach exceeds the compliance requirements of Order No. 1000, adding that the State Agreement Approach helps to ensure that a "state, as the governmental entity responsible for protecting retail ratepayers" deems the project in the public interest.²⁶⁴ PJM points out that stand-alone, public policy projects may also be included in the RTEP as Supplemental Projects.²⁶⁵

137. To further support the State Agreement Approach, PJM points out that numerous states in the PJM Region, including the collaboration of PJM states represented by Organization of PJM States, support the State Agreement Approach.²⁶⁶ PJM argues that, in a large multi-state region, the states, rather than the independent regional transmission organization, are "the appropriate decision maker on whether a public policy project adequately meets the state[s'] public policy need[s]."²⁶⁷

138. In response to arguments that the State Agreement Approach creates free-ridership issues, PJM answers that the State Agreement Approach is completely voluntary and, therefore, states cannot be forced to bear the costs of public policy projects. PJM adds that a state would only propose a public policy project through the State Agreement Approach if the state identifies a public policy benefit and determines that the project costs do not outweigh the benefits. PJM rejects the argument that any addition to the grid

²⁶³ Public Interest Organizations Comments, Docket No. ER13-198-000, at 17.

²⁶⁴ PJM Answer, Docket No. ER13-198-000, at 24.

²⁶⁵ *Id.* at 25.

²⁶⁶ *Id.* at 25-27.

²⁶⁷ *Id.* at 29.

necessarily has reliability benefits that should be attributed to all, asserting that such an expansive definition of benefits is an attempt to rewrite PJM's reliability driver.²⁶⁸

139. PJM asserts that the State Agreement Approach is similar to other instances in which the Commission has yielded authority to the states, and, thus, precedent supports the proposal. PJM points to the Southwest Power Pool, Inc., where the Regional State Committee determines whether certain transmission upgrades for renewables should be included in the regional planning process.²⁶⁹

140. In response to comments seeking clarification of how a public policy project can be developed through the Supplemental Project mechanism, PJM reiterates that a Supplemental Project is "not required for compliance with reliability, operational performance, or market efficiency criteria," is not included in the RTEP for purposes of regional cost allocation, and is not subject to PJM Board approval. Therefore, PJM explains, "in the case of a public policy project, a Supplemental Project is solely driven by an articulated public policy consideration and it cannot be simultaneously included in the RTEP with a 'pre-defined' reliability project."²⁷⁰

141. PJM asserts that the Commission should reject proposed alternatives to the State Agreement Approach that seek to change the generator and merchant interconnection paradigm. PJM rejects LS Power's proposal that the State Agreement Approach could be further enhanced by allowing the uncontracted portions of proposed merchant transmission project be eligible for consideration in the State Agreement Approach. PJM notes that the Commission determined that merchant transmission projects are outside the scope of Order No. 1000 and asserts that the proposal is simply an attempt to circumvent the Commission's decision not to address generator interconnection processes.²⁷¹

(d) Commission Determination

142. We find PJM's proposed State Agreement Approach is not needed for PJM to comply with the provisions of Order No. 1000 addressing transmission needs driven by public policy requirements. PJM's State Agreement Approach supplements, but does not conflict or otherwise replace, PJM's process to consider transmission needs driven by

²⁶⁸ *Id.* at 33.

²⁶⁹ *Id.* at 36 (referencing *Sw. Power Pool, Inc.*, 106 FERC ¶ 61,110, at P 220, *order on compliance filing*, 108 FERC ¶ 61,003, at P 102 (2004), *order on reh'g*, 110 FERC ¶ 61,138 (2005)).

²⁷⁰ PJM Answer, Docket No. ER13-198-000, at 31.

²⁷¹ *Id.* at 39.

public policy requirements as required by Order No. 1000 addressed above. Accordingly, the Commission need not find that the State Agreement Approach and corresponding cost allocation method comply with Order No. 1000. While the State Agreement Approach is not needed for Order No. 1000, it is related to other revisions PJM is making in compliance with Order No. 1000. The Commission therefore finds it is appropriate to include its determination on the State Agreement Approach in this order on PJM's compliance with Order No. 1000. We further find that, with the modifications discussed below, the State Agreement Approach is just and reasonable and not unduly discriminatory.

143. PJM states that the State Agreement Approach “represents an optional and complimentary [sic] mechanism for the PJM states to utilize to submit state-approved public policy projects for inclusion” in the RTEP.²⁷² We agree. Order No. 1000 allows market participants to negotiate alternative cost sharing arrangements voluntarily and separately from the regional cost allocation method or set of methods.²⁷³ If one or more states agree to voluntarily assume responsibility for all costs of the transmission project, the transmission project will be included in the RTEP either as a Supplemental Project or state public policy transmission project and will not be selected in the RTEP for purposes of cost allocation.²⁷⁴

144. We agree with Maryland PSC that the State Agreement Approach may incentivize a state to choose a transmission project that serves only that state's public policy requirements, rather than a multi-functional transmission line that serves both state public policy requirements and additional functions, but for which the state must voluntarily assume all cost responsibility. However, as explained above, nothing in Order No. 1000 prohibits market participants from negotiating alternative cost sharing arrangements voluntarily and separately from the regional cost allocation method or set of methods. Order No. 1000 requires public utility transmission providers to consider transmission needs driven by public policy requirements, and we reiterate that as we state above, PJM satisfies this requirement without the State Agreement Approach. Therefore, if a state decides, through the State Agreement Approach, to support a transmission project that serves only the state public policy requirements, then a state may do so. The Commission agrees that aspects of the proposed State Agreement Approach must be clarified to define the various mechanisms by which a transmission project can be included within the RTEP. We note that the proposed tariff language governing the State Agreement Approach provides that:

²⁷² PJM October 25 Filing, Docket No. ER13-198-000, at 15.

²⁷³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 561.

²⁷⁴ PJM October 25 Filing, Docket No. ER13-198-000, at 45.

State governmental entities authorized by their respective states, individually or jointly, may agree voluntarily to be responsible for the allocation of all costs of a proposed transmission expansion or enhancement that addresses state Public Policy Requirements identified or accepted by the state(s) in the PJM Region. *Such transmission enhancements or expansions may be included in the recommended plan as a (i) Supplemental Project or (ii) state public policy project, which is a transmission enhancement or expansion, the costs of which will be recovered pursuant to a FERC-accepted cost allocation proposed by agreement of one or more states and voluntarily agreed to by those state(s).*²⁷⁵

145. This tariff language does not identify which entity determines whether a Supplemental Project will be included in the RTEP as indicated in the State Agreement Approach, given that Supplemental Projects are “not subject to the PJM Board for approval.”²⁷⁶ Accordingly, we direct PJM to file, within 120 days of the date of issuance of this order, a further compliance filing that proposes tariff revisions indicating the entity that determines whether a Supplemental Project will be included in the RTEP.

146. We also note that, in response to New Jersey Board’s request, PJM clarifies in its answer that a Supplemental Project is not included in the RTEP for purposes of cost allocation and that, pursuant to the State Agreement Approach, no costs for a state public policy project may be allocated to a state that does not agree to those costs.²⁷⁷

147. However, we find that PJM’s response does not adequately explain how a proposed transmission project addressing “transmission needs driven by Public Policy Requirements” identified in the local transmission planning process could be included in the regional transmission plan. Accordingly, we direct PJM to file, within 120 days of the date of issuance of this order, a further compliance filing that: (1) proposes tariff revisions indicating the entity that determines whether a Supplemental Project should be included in the RTEP; and (2) explains how proposed transmission projects addressing transmission needs driven by Public Policy Requirements identified in the local transmission planning process could be included in the regional plan, although not necessarily for purposes of cost allocation.

²⁷⁵ PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.9 (State Agreement Approach) (3.0.0) (emphasis added).

²⁷⁶ PJM Answer, Docket No. ER13-198-000, at 31.

²⁷⁷ *Id.* at 30-31.

148. We will not require PJM to modify the State Agreement Approach, as suggested by LS Power, to allow the uncontracted portions of transmission projects that have been proposed as merchant transmission projects to also be eligible for consideration in the State Agreement Approach. The State Agreement Approach was proposed by PJM as a voluntary addition to the requirements of Order No. 1000 and we find, with the clarifications required above, that it is reasonable.

2. Nonincumbent Transmission Developer Reforms

149. Order No. 1000 institutes a number of reforms that seek to ensure that nonincumbent transmission developers have an opportunity to participate in the transmission development process. These reforms involve the elimination of federal ROFRs from Commission-jurisdictional tariffs and agreements, as well as requirements regarding qualification criteria for transmission developers and processes for evaluating proposals for new transmission facilities.

a. Federal Rights of First Refusal

150. Order No. 1000 requires that each public utility transmission provider eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal ROFR for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.²⁷⁸ Order No. 1000 defines a transmission facility selected in a regional transmission plan for purposes of cost allocation as a transmission facility that has been selected pursuant to a transmission planning region's Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation because it is a more efficient or cost-effective solution to regional transmission needs.²⁷⁹ If a public utility transmission provider's tariff or other Commission-jurisdictional agreements does not contain a federal ROFR provision, the public utility transmission provider should state this in its compliance filing.²⁸⁰

²⁷⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313. The phrase "a federal right of first refusal" (abbreviated, federal ROFR) refers only to ROFRs that are created by provisions in Commission-jurisdictional tariffs or agreements. Order No. 1000-A, 139 FERC ¶ 61,132 at P 415.

²⁷⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 5, 63.

²⁸⁰ *Id.* P 314 n.294.

151. The requirement in Order No. 1000 to eliminate a federal ROFR does not apply to local transmission facilities,²⁸¹ which are defined as transmission facilities located solely within a public utility transmission provider's retail distribution service territory or footprint that are not selected in the regional transmission plan for purposes of cost allocation.²⁸² The requirement also does not apply to the right of an incumbent transmission provider to build, own, and recover costs for upgrades to its own transmission facilities, regardless of whether an upgrade has been selected in the regional transmission plan for purposes of cost allocation.²⁸³ In addition, the Commission noted that the requirement does not remove, alter, or limit an incumbent transmission provider's use and control of its existing rights-of-way under state law.²⁸⁴

152. The Commission clarified in Order No. 1000-A that Order No. 1000 does not require elimination of a federal ROFR for a new transmission facility if the regional cost allocation method results in an allocation of 100 percent of the facility's costs to the public utility transmission provider in whose retail distribution service territory or footprint the facility is to be located.²⁸⁵ The Commission also clarified in Order No. 1000-A that the term "selected in a regional transmission plan for purposes of cost

²⁸¹ *Id.* PP 226, 258, 318.

²⁸² *Id.* P 63. The Commission clarified in Order No. 1000-A that a local transmission facility is one that is located within the geographical boundaries of a public utility transmission provider's retail distribution service territory, if it has one; otherwise, the area is defined by the public utility transmission provider's footprint. In the case of an RTO or ISO whose footprint covers the entire region, local transmission facilities are defined by reference to the retail distribution service territories or footprints of its underlying transmission owning members. Order No. 1000-A, 139 FERC ¶ 61,132 at P 429.

²⁸³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 226, 319; Order No. 1000-A, 139 FERC ¶ 61,132 at P 426. The Commission stated in Order No. 1000 that upgrades to transmission facilities included such things as tower change outs or reconductoring, regardless of whether or not an upgrade has been selected in the regional transmission plan for purposes of cost allocation. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319. The Commission clarified in Order No. 1000-A that the term "upgrade" means an improvement to, addition to, or replacement of a part of, an existing transmission facility. The term does not refer to an entirely new transmission facility. Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

²⁸⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319.

²⁸⁵ Order No. 1000-A, 139 FERC ¶ 61,132 at P 423.

allocation” excludes a new transmission facility if the costs of that facility are borne entirely by the public utility transmission provider in whose retail distribution service territory or footprint that new transmission facility is to be located.²⁸⁶ However, the Commission acknowledged in Order No. 1000-A that there may be a range of examples of multi-transmission provider zones and that it would address whether a cost allocation to a multi-transmission provider zone is regional on a case-by-case basis based on the facts presented on compliance.²⁸⁷

153. The Commission received comments during the rulemaking process regarding the applicability of the *Mobile-Sierra* doctrine to rights of transmission owners to build found in agreements subject to Commission jurisdiction.²⁸⁸ The Commission stated in Order No. 1000 that the record was not sufficient in the generic rulemaking to address such issues and that those issues are better addressed as part of the Order No. 1000 compliance proceeding, where interested parties may provide additional information.²⁸⁹ The Commission stated in Order No. 1000-A, and reiterated in Order No. 1000-B, that any compliance filing must include revisions to any Commission-jurisdictional tariffs and agreements necessary to comply with Order No. 1000 as well as the *Mobile-Sierra* arguments. The Commission will first decide—based on a more complete record, including the viewpoints of other interested parties—whether the agreement has *Mobile-Sierra* protection, and if so, whether the Commission has met the applicable standard of review such that it can require the modification of the particular provisions involved. If the Commission determines that the agreement does have *Mobile-Sierra* protection and that it cannot meet the applicable standard of review, the Commission will not consider whether the revisions submitted to the Commission-jurisdictional tariffs and agreements comply with Order No. 1000. However, if the Commission determines that the agreement is not protected by a *Mobile-Sierra* provision or that the Commission is able to meet the applicable standard of review, then the Commission will decide whether the submitted revisions to the Commission-jurisdictional tariffs and agreements comply with Order No. 1000. Moreover, if such tariffs and agreements are accepted, they would become effective consistent with the approved effective date.²⁹⁰

²⁸⁶*Id.*

²⁸⁷ *Id.* P 424; Order No. 1000-B, 141 FERC ¶ 61,044 at P 40.

²⁸⁸ The *Mobile-Sierra* doctrine originated in the Supreme Court’s decisions in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) (*Mobile*), and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Sierra*).

²⁸⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 292.

²⁹⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at P 389.

i. Mobile-Sierra

(a) PJM Parties' Filings

154. In the Indicated PJM Transmission Owners October 25 Filing, Indicated PJM Transmission Owners claim that *Mobile-Sierra* protection applies to the existing ROFR provisions in PJM's OATT for "non-economic" projects. Indicated PJM Transmission Owners state that they incorporate by reference the PJM October 25 Filing. They state that they are not able to file alternative revised tariff sheets independently, since such sheets relate to the PJM tariff, and that PJM would not include the *Mobile-Sierra* submission in its October 25 Filing. Indicated PJM Transmission Owners state that both compliance filings—their October 25 Filing and PJM's October 25 Filing—serve as companions in compliance to the requirements of Order No. 1000.

155. Indicated PJM Transmission Owners state that, in their October 25 Filing, they: (1) provide the relevant agreements upon which the PJM RTO was formed and demonstrate that these contracts protect their federal ROFR for the all non-economic projects in PJM that have not previously been held to be lacking any ROFR; (2) explain the *Mobile-Sierra* protection with respect to the ROFR; and (3) set forth the reasons why the Commission cannot make the findings necessary under the *Mobile-Sierra* line of cases to remove this ROFR.

156. The crux of Indicated PJM Transmission Owners' argument is that the ROFR, which is "essential to the *raison d'être* of licensed, franchised transmission owners with certificated service areas,"²⁹¹ was retained by PJM Transmission Owners in the "originating contracts" (i.e., the Consolidated Transmission Owners Agreement (CTOA) and Operating Agreement (OA) (together, the Agreements)), and, thus, represents negotiated, contractual terms that are protected under the *Mobile-Sierra* doctrine.²⁹² Indicated PJM Transmission Owners reserve claims previously made with respect to ROFR elimination, particularly issues on appeal of Order No. 1000²⁹³ and issues on

²⁹¹ Indicated PJM Transmission Owners October 25 Filing, Docket No. ER13-195-000, at 8.

²⁹² *See id.* at 3, 5, 12. "By the CTOA, [the PJM Transmission Owners] clearly delineated what pre-existing transmission owner rights they will continue to exercise within PJM . . . [They] contractually preserved whatever pre-existing ROFRs they had upon becoming PJM Transmission Owner members of PJM." *Id.* at 5.

²⁹³ *Id.* at 4 n.12 (citing pending appeal in *S.C. Pub. Serv. Auth. v. FERC*, No. 12-1232 (D.C. Cir. 2012)).

appeal in *Primary Power*.²⁹⁴ Indicated PJM Transmission Owners provide the relevant language in the Agreements that they believe protects their federal ROFR for “non-economic” projects, beginning with the CTOA. Indicated PJM Transmission Owners state that the Transmission Owners who voluntarily joined PJM are designated “Parties” to the CTOA under that agreement’s preamble, granting them certain explicit rights. Indicated PJM Transmission Owners state that, under the CTOA, only

Parties designated as the appropriate entities to construct and own or finance enhancements or expansions applicable to the PJM Region specified in the Regional Transmission Expansion Plan or required to modify Transmission Facilities pursuant to the PJM Tariff shall construct and own or finance such facilities.²⁹⁵

157. Indicated PJM Transmission Owners state that this language sets out a clear division of responsibilities: PJM is obligated to plan the system and the “Parties” are obligated to construct and own whatever facilities PJM determines are needed in the Regional Plan. Indicated PJM Transmission Owners also state that the CTOA does not confer a right to PJM to designate entities other than Transmission Owners to build, own, and finance new reliability upgrades.²⁹⁶ Indicated PJM Transmission Owners state that the Commission found that the obligation to build is definitive in determining whether there is a ROFR and in concluding that there was no ROFR for economic projects in *Primary Power Rehearing Order*, on the grounds that, “unlike reliability projects, transmission owners would not be required to construct economic projects.”²⁹⁷

158. Indicated PJM Transmission Owners state that the Schedule 6, section 1.4(c), which is quoted below, also contains a ROFR, further supporting the above CTOA ROFR:

²⁹⁴ *Id.* at 4 n.12 (referring to *Primary Power, LLC*, 131 FERC ¶ 61,015 (2010) (*Primary Power*), *order on reh’g*, 140 FERC 61,052 (2012) (*Primary Power Rehearing Order*) and citing pending appeal in *Pub. Serv. Elec. and Gas Co. v. FERC*, No. 12-1382 (D.C. Cir. 2012)).

²⁹⁵ *Id.* at 5 (citing CTOA § 4.2.1); *see also* PJM, Rate Schedules, TOA (Rate Schedule 42), Article 4, § 4.2.1 (Obligation to Build) (0.0.0).

²⁹⁶ Indicated PJM Transmission Owners October 25 Filing, Docket No. ER13-195-000, at 5-6.

²⁹⁷ *Id.* at 6-7 (citing *Primary Power Rehearing Order*, 140 FERC ¶ 61,052 at P 42).

The [RTEP] shall, at a minimum, include a designation of the Transmission Owner or Owners or other entity that will construct, own, and/or finance each transmission enhancement and expansion and how reasonably incurred costs are to be recovered.²⁹⁸

159. Indicated PJM Transmission Owners state that this reference to “other entity” is intended to apply to merchant transmission and market-based cost recovery and “option to build” generation interconnection projects, not cost-of-service projects for which Transmission Owners have an obligation to build, such as reliability, operational, and Stage 1A Auction Revenue Rights projects subject to Schedule 6, section 1.5.6. Indicated PJM Transmission Owners refer to these three categories generally as “reliability” projects. Indicated PJM Transmission Owners note that while the Commission interpreted the “other entities” of this provision to apply to economic projects more broadly in *Primary Power*, the Commission’s ruling was limited to the OA, Schedule 6, section 1.5.7, governing economic projects, and did not necessarily extend to section 1.5.6, governing reliability projects.²⁹⁹

160. Indicated PJM Transmission Owners state that the Schedule 6, section 1.4(d), provides that the “Regional Transmission Expansion Plan shall . . . take into account the legal and contractual rights and obligations of the Transmission Owners.”³⁰⁰ Indicated PJM Transmission Owners argue that these legal and contractual rights include legal obligations to provide reliable public utility service within their licensed franchised

²⁹⁸ *Id.* at 6.

²⁹⁹ Indicated PJM Transmission Owners October 25 Filing, Docket No. ER13-195-000, at 6-7 (citing *Primary Power Rehearing Order*, 140 FERC ¶ 61,052 at P 42).

³⁰⁰ PJM’s OATT defines “Transmission Owner” as “a Member that owns or leases with rights equivalent to ownership Transmission Facilities and is a signatory to the PJM Transmission Owners Agreement. Taking transmission service shall not be sufficient to qualify a Member as a Transmission Owner.” PJM, Intra-PJM Tariffs, OATT, Definitions (T-U-V), § 1.45 (Transmission Owner) (2.0.0). Further, the OATT defines “Member” as an entity that satisfies the requirements of section 11.6 of the OA. To be a “Member,” section 11.6 requires the entity to: (1) be a Transmission Owner, a Generation Owner, an Other Supplier, an Electric Distributor, or an End-Use Customer; and (2) accept the obligations set forth in the OA. PJM, Intra-PJM Tariffs, OA, § 11.6 (Membership Requirements) (2.0.0).

service areas and pre-existing and exclusive rights and obligations over transmission construction, ownership, and maintenance within their service territories.³⁰¹

161. Indicated PJM Transmission Owners argue that section 1.5.6(f) of Schedule 6 also expressly provides rights and obligations of the Transmission Owners:

[T]he plan ... shall designate one or more Transmission Owners or other entities to construct, own, and unless otherwise provided, finance the recommended transmission enhancement or expansion. To the extent that one or more Transmission Owners are designated to construct, own, and/or finance a recommended transmission enhancement or expansion, the recommended plan shall designate the Transmission Owner that owns transmission facilities located in the Zone where the particular enhancement or expansion is to be located.³⁰²

162. Indicated PJM Transmission Owners state that PJM explained the meaning of Schedule 6, section 1.5.6(f) in its compliance filing in Docket No. RT01-2, the proceeding in which the Commission certified PJM as an RTO:

A new paragraph (f) in section 1.5.6 provides that the RTEP also will designate the party(ies) that will be responsible for constructing, owning, and/or financing each transmission expansion or upgrade that is included in the plan. Except with respect to merchant transmission facilities, such responsibility generally will be allocated to the PJM Transmission Owner(s) that own the facilities in the Zone(s) where the new facilities will be built.³⁰³

³⁰¹ Indicated PJM Transmission Owners October 25 Filing, Docket No. ER13-195-000, at 7.

³⁰² *Id.* at 7-8 (referring to PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.6(f) (1.1.0)); *see also* PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.6(k) (3.0.0).

³⁰³ PJM Interconnection, L.L.C., Compliance Filing, Docket No. RT01-2-006, at 11 (filed Mar. 20, 2003) (citing *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61, 345, at PP 24, 26 (2002)).

163. Indicated PJM Transmission Owners therefore argue that the “other entity” language was added in compliance with a Commission order requiring PJM to accommodate merchant projects; this language was not intended to supplant incumbent transmission owner rights to build centrally-planned projects in their own zones. Indicated PJM Transmission Owners aver this conclusion is reinforced by section 1.5.6(g) of Schedule 6, which provides that PJM shall designate the Market Participant(s) . . . or any other party” with responsibility for construction of a new transmission project for which the designee “has agreed to fully fund upgrades” and to “bear cost responsibility for such enhancements or expansions.”³⁰⁴ Indicated PJM Transmission Owners argue that this use of the term “other entity” throughout Schedule 6 underscores that any entity other than a Transmission Owner is not entitled to cost-of-service for reliability projects with a ROFR or obligation to build provision. In support of the point that “entity” status means the developer can only collect the costs of the facilities under market-based rates and not cost-based rates, Indicated PJM Transmission Owners state that section 1.5.6(g) provides:

Notwithstanding the foregoing, with respect to any facilities that the [RTEP] designates to be owned by an entity other than a Transmission Owner, the plan shall designate that entity as responsible for the cost of such facilities.³⁰⁵

164. Indicated PJM Transmission Owners argue that in *Atlantic City*³⁰⁶ the court of appeals clarified that, while “utilities may choose to voluntarily give up by contract” certain of their rights, “[the Commission] lacks legal authority to require [them] to cede those rights.”³⁰⁷ Indicated PJM Transmission Owners state that the Commission’s conclusion in the *Primary Power Rehearing Order* “clearly distinguished between RTEP protocols for projects that are: (1) [economic projects], for which PJM Transmission Owners ‘were neither guaranteed the right to construct . . . nor were obligated to undertake’ to construct, and (2) all other transmission projects by which, ‘as originally

³⁰⁴ Indicated PJM Transmission Owners October 25 Filing, Docket No. ER13-195-000, at 9 (citing PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.6(g) (3.0.0) (governing responsibility for reliability and economic enhancements)).

³⁰⁵ *Id.* at 10.

³⁰⁶ *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (2002) (*Atlantic City*); *Atlantic City Elec. Co. v. FERC*, 329 F.3d 856 (D.C. Cir. 2003) (*Atlantic City II*).

³⁰⁷ Indicated PJM Transmission Owners October 25 Filing, Docket No. ER13-195-000, at 8.

constituted, the PJM Owners Agreement required transmission owners to build.”³⁰⁸ Indicated PJM Transmission Owners state that the Commission’s conclusion in the *Primary Power Rehearing Order* established that the PJM Transmission Owners have a ROFR for non-economic projects that does not extend to the newer category of economic projects. Indicated PJM Transmission Owners state that the Commission’s finding that PJM’s ROFR does not extend to economic projects is binding during the pendency of the ongoing judicial review. Similarly, Indicated PJM Transmission Owners state that the Commission should reaffirm here, in accord with the *Primary Power Rehearing Order*, that all non-economic projects remain subject to the ROFR, as was the case when the agreements were “originally constituted.”³⁰⁹

165. Indicated PJM Transmission Owners state that there may be future categories of projects such as public policy projects and multi-driver projects, and these new categories should also be found to have a ROFR that is protected by the *Mobile-Sierra* doctrine.³¹⁰

166. Indicated PJM Transmission Owners argue that because the federal ROFR for reliability transmission projects was agreed to by contract, *Mobile-Sierra* protection applies to these ROFR provisions.³¹¹ Additionally, Indicated PJM Transmission Owners assert that the “long-term objective of achieving lower rates in the future” by correcting practices that have a potential to lead to unjust and unreasonable rates does not meet the standard for eliminating the *Mobile-Sierra*-protected PJM ROFR.³¹² Indicated PJM Transmission Owners state that there is no evidence to support a finding that the PJM ROFR has produced unjust or unreasonable rates.³¹³ Indicated PJM Transmission Owners contend that the PJM ROFR is being eliminated because it “interfere[s] with eventually achieving even better rates,” rather than because the ROFR has directly caused current rates to be unjust and unreasonable, as *Mobile-Sierra* requires.³¹⁴

³⁰⁸ *Id.* at 16 (citing *Primary Power Rehearing Order*, 140 FERC ¶ 61,052 at PP 35, 37).

³⁰⁹ *Id.* at 16-17.

³¹⁰ *Id.* at 17-18.

³¹¹ *Id.* at 11.

³¹² *Id.* at 12 (referencing Order No. 1000-A, 139 FERC ¶ 61,132 at P 367).

³¹³ *Id.* at 15.

³¹⁴ *Id.* at 15-16.

167. Indicated PJM Transmission Owners request that the Commission: (1) find that the PJM ROFR for all non-economic projects is protected by the *Mobile-Sierra* doctrine; (2) determine that the public interest standard of review for setting aside the ROFR has not been met; (3) reject as moot the proposed ROFR tariff revisions contained in PJM's October 25 Filing as they relate to reliability, operational performance, and Stage 1A Auction Revenue Rights upgrades; and (4) direct PJM to make a further compliance filing consistent with these findings.

(b) Protests/Comments

168. Illinois Commerce Commission disagrees with the Indicated PJM Transmission Owners' broad application of the *Mobile-Sierra* doctrine. Illinois Commerce Commission states that the Commission should consider whether the provisions of the CTOA or the OA relating to a ROFR are more akin to "rules of general applicability" than "contractually negotiated rates" that are entitled to the *Mobile-Sierra* protection.³¹⁵ Illinois Commerce Commission avers that the Indicated PJM Transmission Owners here submit an inconsistent position, namely, that every component of a contractual arrangement—in the Agreements—is subject to *Mobile-Sierra* doctrine.³¹⁶

169. LS Power contends that Order No. 1000 did not make a blanket finding that all ROFRs must be eliminated but instead only eliminated ROFRs for projects subject to regional cost allocation.³¹⁷ In LS Power's view, there is no *Mobile-Sierra*-protected right to any particular cost allocation method.³¹⁸ LS Power explains that, in restricting access to regional cost allocation to only those projects selected in a fair and non-discriminatory process not subject to ROFRs, the Commission did not deprive incumbent transmission owners of a contractually protected right.³¹⁹ LS Power maintains that the Commission

³¹⁵ Illinois Commerce Commission Comments, Docket No. ER13-195-000, at 3, 4.

³¹⁶ *Id.* at 4, 5.

³¹⁷ LS Power Comments, Docket No. ER13-195-000, at 2-3 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313, *order on reh'g*; Order No. 1000-A, 139 FERC ¶ 61,132 at P 357); *see also id.* at 6-7, 8, 9 (averring, "the focus of the Commission's initial determination of whether Order No. 1000, infringes on a *Mobile-Sierra* protected contractual right is whether or not incumbent transmission providers have a contractual right to regional cost allocation"), 10.

³¹⁸ *Id.* at 16-17.

³¹⁹ *Id.* at 3-4. "Stated more bluntly, an incumbent transmission owner who chooses to do so can exercise the rights it always had; it can continue to build every
(continued...)

was well within its authority to determine that regional cost allocation is only available for regions and individual transmission owners that do not allow a ROFR for regional projects.

170. LS Power reads Order No. 1000 as “mandat[ing] that regional cost allocation is only available for projects that have been vetted in a non-discriminatory process that does not recognize a right of first refusal.”³²⁰ And LS Power concludes that Indicated PJM Transmission Owners’ reliance on *Primary Power*, to suggest that the Commission’s reasoning in that case is not applicable to projects other than economic projects, has no basis in law.³²¹ In response to Indicated PJM Transmission Owners’ arguments on the formation of the PJM RTO, LS Power states that the Commission found that PJM’s proposed planning procedures in its original RTO application were dominated too much by the incumbent transmission owners and required the inclusion of third parties.³²² LS Power concludes that the Commission’s removal of the preferential treatment of incumbent transmission owners applies equally to all types of projects—economic and otherwise.

171. LS Power further states that “[t]he incumbent transmission owners point to no case in the fifty-year history of *Mobile-Sierra* contract protection supporting their proposition that parties A, B, C and D can enter into a contract to exclude party E, and all other parties, from market participation and a finding that such a contract would be entitled to protection under the heightened *Mobile-Sierra* standard.”³²³ But even if *Mobile-Sierra* protection is not precluded for such ROFR provisions, LS Power maintains that “antitrust concepts are intimately involved in determining whether an action is in the public interest.”³²⁴ And that “[right of first refusals] are facially anticompetitive” because “[t]hey provide incumbent utilities with the right to foreclose competing companies from building similarly reliable and economic transmission projects, potentially at a lower

project it chooses to construct in its retail service territory so long as it allocates 100 percent of the costs of that project to its ratepayers.” *Id.* at 3 n.12; *see also id.* at 12 (ROFR maintained for local projects).

³²⁰ *Id.* at 12.

³²¹ *Id.* at 15. LS Power remarks that the Indicated PJM Transmission Owners appear to be relitigating *Primary Power*. *Id.* at 17.

³²² *Id.* at 15-16 (citing *PJM Interconnection, L.L.C.*, 96 FERC ¶ 61,236 (2001)).

³²³ *Id.* at 21.

³²⁴ *Id.* at 21-22.

cost.”³²⁵ LS Power states that the Commission must take into account the anticompetitive effects associated with ROFRs as part of its *Mobile-Sierra* public interest standard analysis. LS Power maintains that, in any case, Order No. 1000 has met the standard imposed by the *Mobile-Sierra* doctrine since it is a rule, based on national policy goals, that is generally-applied to all contracts.³²⁶ Moreover, referencing specific data and studies, LS Power argues that the Commission has made a sufficient showing.³²⁷

172. North Carolina Agencies, however, support Indicated PJM Transmission Owners’ position that both the CTOA and OA contain provisions providing the PJM Transmission Owners with a ROFR and that neither of these agreements includes any provision waiving the *Mobile-Sierra* protections. They aver that the Commission has not met its burden of showing that the ROFR would seriously harm the public interest.³²⁸

(c) Answers

173. Indicated PJM Transmission Owners reject Illinois Commerce Commission’s suggestion that the ROFR provisions of the OA and CTOA should be viewed as more akin to rules of general applicability than negotiated rate provisions entitled to *Mobile-Sierra* protection. They state that the CTOA is an agreement that was negotiated only between PJM transmission owners and PJM, and it sets out the rights and responsibilities of those parties. According to Indicated PJM Transmission Owners, it is PJM and PJM transmission owners that are bound by this agreement; the CTOA cannot be characterized as setting forth generally applicable rates that apply to other market participants in PJM.

174. Indicated PJM Transmission Owners disagree with LS Power that the Commission is not requiring the elimination of federal ROFRs by limiting the removal of ROFRs to those facilities selected in a regional transmission plan for purposes of cost allocation. They state that the Commission clearly directs transmission providers to remove federal ROFRs from their tariffs, and Order No. 1000-A sets forth a procedure for Commission review of *Mobile-Sierra* claims. Indicated PJM Transmission Owners state that they do not have to choose whether projects should be regionally allocated. Rather, Order No. 1000 requires that the cost allocation methods allocate costs so that they are roughly

³²⁵ *Id.* at 23.

³²⁶ *See id.* at 23-26.

³²⁷ *See id.* at 27-31.

³²⁸ *See* North Carolina Agencies Comments in Support, Docket No. ER13-195-000, at 3-4.

commensurate with estimated benefits, and transmission owners are obligated contractually to build anything that PJM directs them to build under the RTEP.

175. Indicated PJM Transmission Owners maintain that LS Power provides no evidence that supports a *Mobile-Sierra* public interest finding for eliminating federal ROFRs within PJM. Indicated PJM Transmission Owners state that the Commission expressly ruled just the opposite in the Order No. 1000 proceeding, stating “[t]he record in this rulemaking proceeding is not sufficient to address the specific issues raised regarding individual agreements.”³²⁹ Indicated PJM Transmission Owners maintain that the Commission already has found this evidence to be insufficient, which they state is the reason why the Commission directed that Order No. 1000 compliance filings include any *Mobile-Sierra* protection claims applicable to ROFRs.

176. Indicated PJM Transmission Owners dispute the claim that the ROFR provisions are not entitled to *Mobile-Sierra* protection because they are not the product of an arms-length negotiation. They maintain that the ROFR provisions they are defending are contained in agreements that were the subject of extensive and sometimes difficult arms-length negotiations between and among PJM transmission owners and PJM during the RTO formation process.

177. Indicated PJM Transmission Owners argue that third-party participation in transmission construction does not require the elimination of ROFRs. They state that existing RTEP provisions already provide for meaningful opportunities for third-party merchants to construct and own transmission facilities. According to Indicated PJM Transmission Owners, what LS Power advocates for is not simply participation but the ability to collect cost-of-service rates for reliability, operational performance, and Stage 1A ARR projects, contrary to the provisions of the CTOA and the OA. Indicated PJM Transmission Owners maintain that these Agreements do not provide such a right.

(d) Commission Determination

178. We start by addressing the issue of whether *Mobile-Sierra* protection applies to the provisions that Indicated PJM Transmission Owners contend include a federal right of first refusal. Specific arguments regarding whether those provisions are properly read as including a federal right of first refusal are addressed in the following section.

179. In Order No. 1000, the Commission declined to address as part of the rulemaking process arguments that transmission owners agreements, such as PJM’s CTOA, were protected under *Mobile-Sierra*. The Commission concluded that the record was not

³²⁹ Indicated PJM Transmission Owners Answer, Docket No. ER13-195-000, at 5 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 388).

sufficient to evaluate such arguments and that they could be better addressed at the compliance stage.³³⁰ The Commission stated in Order No. 1000-A that “a public utility transmission provider that considers its contract to be protected by a *Mobile-Sierra* provision may present its arguments as part of its compliance filing.”³³¹

180. Drawing on this Commission statement, Indicated PJM Transmission Owners argue in their October 25 Filing that

[s]ince . . . the PJM Transmission Owners and PJM established a federal reliability transmission project [right of first refusal] by contract, the Commission may not exercise its Section 206 authority to eliminate it except on the basis of specific findings that the contract rate “conflicts with the public interest,” which means “only in circumstances of unequivocal public necessity.”³³²

181. The remainder of Indicated PJM Transmission Owners’ discussion focuses on reasons why they contend that the Commission has not satisfied the *Mobile-Sierra* public interest standard here.

182. As a threshold matter, the fact that a federal right of first refusal is contained in a contract does not establish that the contract is entitled to a *Mobile-Sierra* presumption. The *Mobile-Sierra* presumption applies to a contract only if the contract has certain characteristics that justify the presumption. Indicated PJM Transmission Owners have not made such a showing with respect to the provisions that they contend include a federal right of first refusal, and we find that the provisions in question lack the characteristics necessary to justify a *Mobile-Sierra* presumption.

183. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the instrument at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm’s length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm’s-length negotiations. The former constitute contract rates, terms, or conditions that necessarily qualify for a

³³⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 292.

³³¹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 389.

³³² Indicated PJM Transmission Owners, Docket No. ER13-195-000, at 11 (internal citations omitted).

Mobile-Sierra presumption; the latter constitute tariff rates, terms, or conditions to which the *Mobile-Sierra* presumption does not apply, although the Commission may exercise its discretion to apply the heightened *Mobile-Sierra* standard.³³³

184. In some instances, the jurisdictional provisions of a contract may be classified in their entirety as including either contract rates, terms, and conditions that are subject to a *Mobile-Sierra* presumption or tariff rates, terms, and conditions to which the *Mobile-Sierra* presumption does not apply. On one hand, all such provisions in bilateral power sales contracts freely negotiated at arm's length between sophisticated parties generally would establish contract rates and would come within the presumption.³³⁴ On the other hand, where the terms of an agreement would, if approved, be incorporated into the service agreements of all present and future customers, those terms are properly classified as tariff rates and the *Mobile-Sierra* presumption would not apply.³³⁵

185. By contrast, the PJM CTOA cannot be classified in its entirety as containing contract rates or tariff rates. As discussed further below, we find that for two separate but reinforcing reasons, the provisions that Indicated PJM Transmission Owners contend include a federal right of first refusal lack the characteristics that justify the *Mobile-Sierra* presumption.³³⁶ Other provisions of the CTOA not at issue in this proceeding may

³³³ See *New England Power Generators Ass'n, Inc. v. FERC*, No. 11-1422, at 10-12 (D.C. Cir. Feb. 15, 2013).

³³⁴ See generally *Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527 (2008) (*Morgan Stanley*).

³³⁵ *Carolina Gas Transmission Corp.*, 136 FERC ¶ 61,014, at P 17 (2011) (holding that the *Mobile-Sierra* presumption does not apply to a settlement agreement “[b]ecause the terms of the Settlement, if approved, will be incorporated into the service agreements of all present and future shippers. . . .”); see also *High Island Offshore Sys., LLC*, 135 FERC ¶ 61,105, at P 19 (2011); *Petal Gas Storage, L.L.C.*, 135 FERC ¶ 61,152, at P 12 (2011); *Southern LNG Co., LLC*, 135 FERC ¶ 61,153, at P 19 (2011) (each finding that *Mobile-Sierra* presumption does not apply to offer of settlement which incorporates into each shipper's service agreement rates, terms, and conditions that are generally applicable “to all present and future customers”).

³³⁶ The Commission has not previously addressed the standard of review applicable to these provisions of the CTOA. Where arguments are presented in Order No. 1000 compliance filing proceedings with respect to previous Commission statements as to the standard of review applicable to provisions in another RTO's or ISO's transmission owners agreement, the Commission will address those arguments on a case-by-case basis.

have those characteristics. Given the breadth and complexity of the CTOA, we find that it is neither practical nor necessary to evaluate whether the preponderance of the CTOA's provisions include tariff rates or contract rates. Rather, we find that determining the standard of review that should apply to specific provisions of the CTOA is an appropriate way to recognize the distinctions among its provisions.

186. We agree with Illinois Commerce Commission that the CTOA provisions that Indicated PJM Transmission Owners contend include a federal right of first refusal are prescriptions of general applicability rather than negotiated rate provisions that are necessarily entitled to a *Mobile-Sierra* presumption.³³⁷ We note that in its most recent statement on the *Mobile-Sierra* doctrine, the U.S. Supreme Court acknowledged the potential distinction between “prescriptions of generally applicability” and “contractually negotiated rates.”³³⁸ Where the language of an agreement establishes rules that delimit, qualify, or restrict the ability of any other potential competitor to engage in the subject activity, that language creates generally applicable requirements.

187. This conclusion is bolstered by the fact that any new PJM Transmission Owner would have to accept these provisions as-is, with limited room for negotiation. Amending the CTOA requires action by a two-thirds majority of current PJM Transmission Owners (i.e., parties to the CTOA),³³⁹ substantially inhibiting the ability of a new PJM Transmission Owner to negotiate a change to these provisions. As a result, new PJM Transmission Owners are placed in a position that differs fundamentally from that of parties who are able to negotiate freely like buyers and sellers entering into a typical power sales contract that would be entitled to a *Mobile-Sierra* presumption. For these reasons, we disagree with Indicated PJM Transmission Owners' argument that the CTOA is not generally applicable because it was negotiated only between PJM and the PJM Transmission Owners and binds only those entities.

188. We also find that the *Mobile-Sierra* presumption does not apply to the CTOA provisions that Indicated PJM Transmission Owners contend include a federal right of first refusal because those provisions arose in circumstances that do not provide the

³³⁷ See Illinois Commerce Commission Comments, Docket No. ER13-195-000, at 3.

³³⁸ *NRG Power Marketing, LLC, v Me. Pub. Util. Comm.*, 130 S.Ct. 693, 701 (2010) (*NRG*). The Court made this statement even as it held that the *Mobile-Sierra* presumption “is not limited to challenges to contract rates brought by contracting parties. It applies, as well, to challenges initiated by third parties.” *Id.*

³³⁹ PJM, Rate Schedules, TOA (Rate Schedule 42), Article 8, § 8.5.1 (Action by Two-thirds Majority) (1.0.0).

assurance of justness and reasonableness on which the *Mobile-Sierra* presumption rests.³⁴⁰

189. Specifically, those provisions arose in a negotiation aimed at protecting a common interest among competing transmission owners. Unlike circumstances in which the Commission can presume that the resulting rate is the product of negotiations between parties with competing interests, the negotiation that led to the provisions at issue here were among parties with the same interest, namely, protecting themselves from competition in transmission development. Thus, while the Indicated PJM Transmission Owners may have engaged in extensive negotiations, because of the common interests here, the negotiations do not bear the hallmarks necessary for the *Mobile-Sierra* presumption.³⁴¹

190. The Commission has recognized a similar point in other contexts that are relevant here. For instance, the Commission has observed that “the self-interest of two merger partners converge sufficiently, even before they complete the merger, to compromise the market discipline inherent in arm’s-length bargaining that serves as the primary protection against reciprocal dealing.”³⁴² The Commission’s policy on market-based rates incorporates similar principles.³⁴³

³⁴⁰ *Morgan Stanley*, 554 U.S. at 554 (stating that “the premise on which the *Mobile-Sierra* presumption rests” is “that the contracts are the product of fair, arm’s length negotiations.”). Arm’s-length bargaining serves an important role in confirming that the transaction price reflects fair market value.

³⁴¹ We also note that in reaching these conclusions we do not imply that the parties have acted in bad faith. Rather, for purposes of *Mobile-Sierra* analysis, the courts have found that it is relevant whether, in seeking to advance their interests, the parties are situated in relation to each other in a way that allows one to make a specific assumption about the results of their negotiations. We reach our conclusions here based in part on that analysis.

³⁴² *Delmarva Power & Light Co.*, 76 FERC ¶ 61,331, at 62,582 (1996) (quoting *Cinergy, Inc.*, 74 FERC ¶ 61,281, at 61,900 (1996)).

³⁴³ *See, e.g.*, 18 C.F.R. § 35.36(a)(9)(iii) (2012) (making possible absence of arm’s-length bargaining a potential ground for finding that it is necessary or appropriate in the public interest to treat entities as affiliates for purposes of the Commission’s market-based rate regulations); *see also Central Maine Power Co.*, 85 FERC ¶ 61,272 (1998) (accepting implementing agreements as just and reasonable where the rates, terms and conditions in the agreements were determined through a competitive bidding process

(continued...)

191. In response to North Carolina Agencies, we note that the absence of a provision in the Agreements waiving the *Mobile-Sierra* presumption is not relevant here. To reach the question of a waiver, it must first be shown that such protection applies. That showing has not been made here. Since *Mobile-Sierra* does not protect the provisions in question, we do not need to address Indicated PJM Transmission Owners' argument that the Commission has not demonstrated that the provisions adversely affect the public interest. We note only that we reject their contention that we directed that Order No. 1000 compliance filings include any *Mobile-Sierra* protection claims for a federal right of first refusal because we found the evidence in the record insufficient to rule on such claims. The Commission stated in Order No. 1000-A that it would decide whether an agreement had *Mobile-Sierra* protection based on a more complete record, "including the viewpoints of other interested parties," and if it found that the agreement was protected, it would determine whether the applicable standard of review has been met.³⁴⁴ These statements cannot be read as a conclusion that the evidence in the record was insufficient to make a public interest finding. What was necessary, above all, to create a more complete record was a full discussion of the contracts themselves. As we have explained here, whether a *Mobile-Sierra* presumption is warranted depends on the specific features of the individual contract in question. The Commission concluded that such an inquiry was beyond the scope of the Order No. 1000 rulemaking. In recognizing the need for appropriate procedures, the Commission was in no way commenting on what the evidence in the record might imply for any individual proceeding based on those procedures.

ii. **Existing Federal Right of First Refusal and Exceptions to the Requirement to Eliminate the Federal Right of First Refusal**

(a) **PJM Parties' Filings**

192. With respect to the federal right of first refusal, PJM notes that, notwithstanding the obligation to build set forth in its OA, at Schedule 6, section 1.4(c), the Commission found in *Primary Power* that Schedule 6 "does not require" but "permits" PJM to designate a nonincumbent transmission developer to build an RTEP project as a baseline reliability project or economic project.³⁴⁵ Thus, PJM concludes that the Commission's

and subsequent arm's-length negotiations where neither party could exercise market power).

³⁴⁴ Order No. 1000-A, 139 FERC ¶ 61,132 at P 389.

³⁴⁵ PJM October 25 Filing, Docket No. ER13-198-000, at 49 (citing *Primary Power*, 131 FERC ¶ 61,015 at P 62).

own findings have established that there is no such right of first refusal in PJM's tariffs.³⁴⁶

193. PJM proposes to add a new proposal process under section 1.5.8 of Schedule 6 that will provide the opportunity for clearer participation by nonincumbent transmission developers.³⁴⁷ PJM states that the proposed process is a sponsorship model³⁴⁸ and its revisions detail how both incumbent transmission owners and nonincumbent transmission developers may propose transmission projects for inclusion in the RTEP.³⁴⁹

194. PJM proposes revisions to its RTEP process to include a competitive solicitation process that provides for proposal windows through which an entity who has pre-qualified as a Designated Entity³⁵⁰ may submit a project proposal and may notify PJM of whether or not it desires to be designated rights to the project if the project is selected for inclusion in the RTEP.³⁵¹ PJM states that this process is in compliance with Order No. 1000's goal of expanding the transmission planning process to provide for greater participation by nonincumbent transmission developers.³⁵² PJM further states that the

³⁴⁶ *Id.* at 48-49 (citing *Primary Power*, 131 FERC ¶ 61,015 at PP 62, 70).

³⁴⁷ *Id.* at 13.

³⁴⁸ The Commission explained that, under a sponsorship model, the regional transmission planning process could allow the sponsor of a transmission project selected in the regional transmission plan for purposes of cost allocation to use the regional cost allocation method associated with the transmission project. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 336.

³⁴⁹ PJM October 25 Filing, Docket No. ER13-198-000, at 13-14.

³⁵⁰ PJM proposes to define Designated Entity as: "The entity designated by the Office of the Interconnection with the responsibility to construct, own, operate, maintain, and finance Immediate-need Reliability Projects, Short-term Projects, and Long-lead Projects pursuant to section 1.5.8 of Schedule 6 of [the Operating] Agreement." PJM October 25 Filing, Docket No. ER13-198-000, at 49 n.144 (citing PJM, Intra-PJM Tariffs, OATT, Definitions (C-D), § 1.7A (1.0.0); *see also* PJM, Intra-PJM Tariffs, OA, Definitions (C-D), § 1.9A (3.0.0)).

³⁵¹ PJM October 25 Filing, Docket No. ER13-198-000, at 49-50; *see* PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(a) (3.0.0).

³⁵² PJM October 25 Filing, Docket No. ER13-198-000, at 49 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 291; Order No. 1000-A, 139 FERC ¶ 61,132 at P 178 n.480).

potential for competitive solicitation of proposals is included in each of the three categories of projects proposed in Schedule 6, section 1.5.8, which include: Long-lead Projects,³⁵³ Short term-Projects,³⁵⁴ and Immediate-need Reliability Projects.³⁵⁵

³⁵³ PJM proposes to define Long-lead Projects to mean: “A transmission enhancement or expansion with an in-service date more than five years from the year in which, pursuant to section 1.5.8(c) of this Schedule 6, the Office of the Interconnection posts the violations, system conditions, economic constraints and Public Policy Requirements to be addressed by the enhancement or expansion.” PJM October 25 Filing, Docket No. ER13-198-000, at 14 n.36 (citing PJM, Intra-PJM Tariffs, OATT, Definitions (L-M-N), § 1.17B (3.0.0); *see also* PJM, Intra-PJM Tariffs, OA, Definitions (I-L), § 1.19A (1.0.0).

³⁵⁴ PJM proposes to define Short-term Projects to mean: “A transmission enhancement or expansion with an in-service date of more than three years but no more than five years from the year in which, pursuant to section 1.5.8(c) of this Schedule 6, the Office of the Interconnection posts the violations, system conditions, economic constraints and Public Policy Requirements to be addressed by the enhancement or expansion.” PJM October 25 Filing, Docket No. ER13-198-000, at 14 n.37 (citing PJM, Intra-PJM Tariffs, OATT, Definitions (R-S), § 1.42.001 (3.0.0); *see also* PJM, Intra-PJM Tariffs, OA, Definitions (S-T), § 1.41A.01 (3.0.0).

³⁵⁵ PJM proposes to define Immediate-need Reliability Projects to mean: “A reliability-based transmission enhancement or expansion: (i) with an in-service date of three years or less from the year the Office of the Interconnection identified the existing or projected limitations on the Transmission System that gave rise to the need for such enhancement or expansion pursuant to the study process described in section 1.5.3 of this Schedule 6; or (ii) for which the Office of the Interconnection determines that an expedited designation is required to address existing and projected limitations on the Transmission System due to immediacy of the reliability need in light of the projected time to complete the enhancement or expansion. In determining whether an expedited designation is required, the Office of the Interconnection shall consider factors such as, but not limited to, the time necessary: (i) to obtain regulatory approvals; (ii) to acquire long lead equipment; (iii) to meet construction schedules; (iv) to complete engineering plans; and (v) for other time-based factors impacting the feasibility of achieving the required in-service date.” PJM October 25 Filing, Docket No. ER13-198-000, at 14 n.38 (citing PJM, Intra-PJM Tariffs, OA, Definitions (I-L), § 1.15A (1.0.0); *see also* PJM, Intra-PJM Tariffs, OATT, Definitions (I-L), § 1.14A.001 (1.0.0).

195. PJM states that it has applied Order No. 1000's flexibility given to RTOs to craft right of first refusal requirements that work for their regions.³⁵⁶ PJM first proposes to adopt Order No. 1000's "solution-based" exceptions to the competitive solicitation requirement.³⁵⁷ PJM uses the term "solution-based" exceptions to refer to the exceptions to eliminate federal rights of first refusal that are recognized by Order No. 1000.³⁵⁸ Specifically, PJM lists the instances where it proposes to designate projects to the incumbent transmission owner in the zone in which facilities are located (e.g., for an upgrade to an incumbent's own transmission facilities).³⁵⁹ PJM also proposes to designate a project to the incumbent transmission owner when required by state law, regulation, or administrative agency order.³⁶⁰

196. In addition to these "solution-based" exceptions, PJM proposes a time element for each category of projects, foregoing competitive solicitation where PJM determines that there is not enough time to conduct a competitive solicitation process prior to the needed in-service date for transmission solutions required for system reliability.³⁶¹ PJM proposes to post identified violations, economic constraints, system conditions, and public policy requirements on its website and to provide notice of proposal windows for

³⁵⁶ PJM October 25 Filing, Docket No. ER13-198-000, at 51 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 157).

³⁵⁷ *Id.* at 50 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 226, *order on reh'g*; Order No. 1000-A, 139 FERC ¶ 61,132 at P 357).

³⁵⁸ *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 226, *order on reh'g*; Order No. 1000-A, 139 FERC ¶ 61,132 at P 357).

³⁵⁹ The Commission notes that PJM does not explicitly define "upgrade" in its October 25 Filing. Further, in its OATT and Agreements, PJM has several distinct types of "upgrades" for which it has a definition or at least an explanation, as discussed further in this order. *See* PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(1) (3.0.0); *see also* PJM October 25 Filing, Docket No. ER13-198-000, at 72-73 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 262, 253 n.231).

³⁶⁰ *See* PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8 (1)(iv) (3.0.0).

³⁶¹ PJM states that is not proposing a timeline for market efficiency projects and, as a result, that all such projects would be categorized under Long-lead Projects and subject to competitive solicitation. PJM October 25 Filing, Docket No. ER13-198-000, at 51 n.149; *see also* PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8 (Development of Long-lead Projects, Short-term Projects, and Immediate-need Reliability Projects) (3.0.0).

Long-lead, Short-term, and Immediate-need Reliability Projects. PJM states that for identified violations, economic constraints, system conditions, and public policy requirements, PJM proposes to provide notice of the opening of a 120-day proposal window for projects that are needed in-service more than five years out (i.e., Long-lead Projects). For identified violations, PJM states that it proposes to give notice of the opening of a 30-day proposal window for projects that are needed to be in service more than three years but less than five years out (i.e., Short-term Projects).

197. With respect to time constraints, PJM explains the procedures it will follow if it does not receive proposals during the proposal window to address all of the violations, economic constraints, or system conditions.³⁶² If PJM determines that there is insufficient time to re-evaluate and re-post the unresolved violations through another proposal window process without jeopardizing the project's needed in-service date,³⁶³ PJM will identify the transmission solution and present it to the TEAC for review. PJM states that, in that case, it will designate the project to the incumbent transmission owner in the zone in which the facilities are located.³⁶⁴ Finally, PJM states that if, in its judgment, there is sufficient time for a shortened proposal window (i.e., less than 30 days), it will post violations that could be addressed by an Immediate-need Reliability Project that are needed to be in service within three years or less.³⁶⁵ PJM states that if it determines that there is either: (1) not sufficient time for a shortened proposal window, or (2) there is sufficient time, but PJM does not receive proposals to address all of the violations or system conditions, PJM will, in both instances, identify the transmission solution and designate such project to the incumbent transmission owner in the zone in which the facilities are located.³⁶⁶

198. PJM argues that this time element is necessary because Order No. 1000's exceptions do not match up with the sequencing of PJM's transmission planning process in which transmission needs are identified and vetted before transmission solutions are considered. PJM explains that its determination that there is not enough time for a competitive solicitation will be "based on a defined set of criteria and in a transparent

³⁶² See PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(g), (h) (3.0.0).

³⁶³ See *id.* § 1.5.8(e)(1) (3.0.0).

³⁶⁴ PJM October 25 Filing, Docket No. ER13-198-000, at 54-56; *see also* PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(g), (h) (3.0.0).

³⁶⁵ PJM October 25 Filing, Docket No. ER13-198-000, at 65-67.

³⁶⁶ *Id.* at 56-57; *see also* PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(m) (3.0.0).

manner.”³⁶⁷ According to PJM, this additional procedure ensures that Order No. 1000’s requirements do not adversely impact PJM’s ability to timely address near-term reliability needs.

199. PJM acknowledges that the Commission has expressed concern with using the incumbent transmission owner as the default rather than holding another proposal window or solicitation. However, PJM claims that its approach aligns with Order No. 1000,³⁶⁸ because it limits the use of the incumbent transmission owner as the default to scenarios implicating system reliability needs and time constraints.³⁶⁹ PJM provides an illustration: it compares the number of projects that would have defaulted to the incumbent transmission owner under the “solution-based” exceptions of Order No. 1000 versus PJM’s proposed “time-based” criteria, based on a review of all PJM’s baseline projects from 1999 to the present.³⁷⁰ PJM proffers this illustration to show that the difference between PJM’s “time-based” defaults versus Order No. 1000’s “solution-based” defaults is *de minimis* when balanced against the need to ensure the reliability of the system.³⁷¹ PJM thus argues that its “time-based” proposal is consistent with and superior to Order No.1000’s requirements,³⁷² and consistent with the flexibility given to RTOs by Order No. 1000.

200. In addition, in their October 25 Filing, Indicated PJM Transmission Owners October 25 Filing, assert that PJM Agreements contain an existing right of first refusal provisions in for “non-economic” projects. Indicated PJM Transmission Owners arguments are summarized in the preceding section of this order.

(b) Protests/Comments

201. LS Power notes that the elimination of the federal right of first refusal as required by Order No. 1000 only applies to projects that are subject to regional planning and regional cost allocation. LS Power further states that the Commission’s intent in Order

³⁶⁷ PJM October 25 Filing, Docket No. ER13-198-000, at 51.

³⁶⁸ *Id.* at 59 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 264).

³⁶⁹ *Id.* at 58-59 (contending it would be impractical to hold another proposal window).

³⁷⁰ *Id.* at 59-63.

³⁷¹ *Id.* at 59-61.

³⁷² *Id.* at 60 (citing 18 C.F.R. § 35.28(c)(4)(ii); Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 151); *see also id.* at 62-63.

No. 1000 was not to change those rights that are traditionally granted to a transmission owner.³⁷³ LS Power takes issue with the Indicated PJM Transmission Owners October 25 Filing, in which Indicated PJM Transmission Owners ask the Commission to ignore the reasons behind its finding in *Primary Power* that the PJM Transmission Owners do not have a right of first refusal and, specifically, in which Indicated PJM Transmission Owners request the Commission to find that such reasoning is not applicable to projects other than economic projects. LS Power asserts that this argument has no basis in law. Moreover, LS Power points out that Indicated PJM Transmission Owners' arguments that the language in question creates a right of first refusal in favor of incumbent PJM Transmission Owners flies in the face of consistent findings by the Commission that the incumbents should not receive such preferential treatment.³⁷⁴

202. PSEG Companies submit a limited protest of the PJM October 25 Filing to the extent it purports to eliminate rights of first refusal that benefit the PJM Transmission Owners. PSEG Companies state that for all of the reasons set forth in the Indicated PJM Transmission Owners October 25 Filing, as well as previous filings on the right of first refusal issue, and as memorialized in foundational documents for the PJM RTO, the PJM Transmission Owners have retained exclusive rights to construct and build transmission projects in their respective transmission zones. PSEG Companies state that in lieu of simply repeating the arguments made in prior filings, PSEG Companies hereby incorporate by reference the arguments set forth in Indicated PJM Transmission Owners October 25 Filing and in their previous protests and rehearing request in the *Primary Power* docket as the basis for their limited protest here on the right of first refusal elimination issue.³⁷⁵

203. North Carolina Agencies state that they agree with Indicated PJM Transmission Owners that both the Agreements contain provisions that provide the PJM Transmission Owners with a right of first refusal to the construction of transmission projects needed to meet reliability standards. North Carolina Agencies note that PJM Transmission Owners have continuously asserted their reliability rights of first refusal and that PJM and its

³⁷³ LS Power Protest, Docket No. ER13-195-000, at 7.

³⁷⁴ *Id.* at 15-16 (citing, e.g., *PJM Interconnection, L.L.C.*, 96 FERC ¶ 61,061, at 61,236 (2001) (“[T]ransmission owners currently have too large a role in planning and expansion decisions and we will eliminate this preferential role In addition, we will allow third parties to construct and own new transmission facilities.”); *id.* at 61,241; *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,345 at P 20).

³⁷⁵ PSEG Companies Limited Protest and Comments, Docket No. ER13-198-000, at 7-8.

members have continuously recognized these reliability rights of first refusal through the Agreements.³⁷⁶

204. North Carolina Agencies also state that they have serious concerns that the construction and ownership of transmission facilities by nonincumbent developers would pose new kinds of risks for North Carolina's electric consumers.³⁷⁷ North Carolina Agencies state that the North Carolina Utilities Commission will exercise its undisputed broad jurisdiction over the construction of new transmission facilities in North Carolina to determine whether its citizens would be well served by allowing a proposed project to be built by a nonincumbent instead of an incumbent transmission owner. If the public is not well served, the North Carolina Utilities Commission states that it will order Dominion or another North Carolina electric public utility to build the electric infrastructure that the North Carolina Utilities Commission finds is necessary in order to reasonably and adequately serve the public.³⁷⁸

205. Exelon states that the Commission should consider PJM's proposed procedure to clarify nonincumbent developers' rights to propose a project to be limited only to those categories of projects for which nonincumbents currently have the right to propose a project. In other words, the Commission should clarify that nonincumbent developers in PJM may be eligible to build only "at-risk" merchant or market-based projects, and not cost-based transmission projects.³⁷⁹

206. LS Power contends that the project proposal process and definitions proposed by PJM are highly discriminatory and provide PJM the tools for unfettered discretion to completely shut the door to new entrants in a variety of situations.³⁸⁰ LS Power raises specific concerns regarding the creation of *de facto* or explicit rights of first refusal as a result of PJM's proposed types of projects.

³⁷⁶ North Carolina Agencies Comments in Support, Docket No. ER13-195-000, at 2-4; North Carolina Agencies Comments, Docket No. ER13-198-000, at 6.

³⁷⁷ North Carolina Agencies Comments, Docket No. ER13-198-000, at 3-4 (referring to report by North Carolina Utilities Commission, "Investigation of Federal Requirements to Consider Transmission Ownership by Non-Incumbent Developers," Docket No. E-100, Sub 132 (issued Oct. 11, 2012), *available at* <http://www.ncuc.net>).

³⁷⁸ *Id.* at 6.

³⁷⁹ Exelon Comments, Docket No. ER13-198-000, at 8 (citing *Primary Power Rehearing Order*, 140 FERC ¶ 61,052 at P 37).

³⁸⁰ LS Power Protest, Docket No. ER13-198-000, at 6.

207. With regard to Immediate-need Reliability Projects, LS Power states that PJM's proposal creates a *de facto* time-based right of first refusal, which is neither contemplated nor allowed by Order No. 1000. Several parties state that PJM's establishment of a *de facto* right of first refusal for any type of reliability project that is needed within an arbitrary time horizon (as, in this case, three years) is in direct conflict with the requirements of Order No. 1000.³⁸¹

208. LS Power asserts that a determination that any project needed within three years has a right of first refusal, under PJM's proposed terms, cannot be legally supported by Order No. 1000. LS Power acknowledges that Order No. 1000 allows "local projects" to retain a right of first refusal,³⁸² therefore, LS Power states that it would not object to a right of first refusal for Immediate-need Reliability Projects if PJM amended its definition to make clear that in order for a project to qualify as an Immediate-need Reliability Project, a project must also be a "local" project as defined by Order No. 1000. LS Power bases its assertion on PJM's argument in the PJM October 25 Filing that the majority of Immediate-need Reliability Projects would be local, so revising the definition should pose no burden to PJM.³⁸³

209. In the same vein, LS Power states that the concept of a right of first refusal to incumbent transmission providers for any "reliability-based transmission enhancement or expansion" that is needed within three years under the definition of Immediate-need Reliability Projects is too broad from a technical standpoint. LS Power states that a "reliability-based transmission enhancement or expansion" could include: overhead transmission lines, power cables, large power transformers, circuit breakers and switches, substations, static var compensators, phase angle regulators, shunt capacitors, and all other types of emerging grid technologies. LS Power concludes, as a result, that PJM's proposal would shut off any and all other "transmission enhancements and expansions"

³⁸¹ *Id.* at 7-10 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 262-264, *order on reh'g*; Order No. 1000-A, 139 FERC ¶ 61,132 at P 428); Illinois Commerce Commission Comments, Docket No. 13-198-000, at 8 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 430).

³⁸² LS Power Protest, Docket No. ER13-198-000, at 9-10 n.12 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63 ("A local transmission facility is a transmission facility located solely within a public utility transmission provider's retail distribution service territory or footprint that is not selected in a regional plan for purposes of cost allocation.")).

³⁸³ LS Power Protest, Docket No. ER13-198-000, at 9-10 n.12 (citing PJM October 25 Filing, Docket No. ER13-198-000, at 60).

from new entrants for projects that are needed within three years.³⁸⁴ Furthermore, LS Power contends that PJM has not established that three years is the right “cut-off” point for each transmission enhancement or expansion that PJM could require.

210. LS Power also argues that PJM’s proposal precludes new entrants from proposing transmission solutions to meet “immediate-term reliability needs” that should be addressed within three years, including advanced technologies; is in direct conflict with the Commission’s policies promoting grid technologies advancement; and will have the effect of limiting the identification and evaluation of potential transmission solutions. LS Power points to the facts surrounding the *Primary Power* complaint as an example of the adverse consequences of PJM’s proposed three-year right of first refusal.³⁸⁵ Finally, LS Power contends that PJM’s proposed Immediate-need Reliability Project definition proposes rights of first refusal that go beyond all projects needed within three years. Specifically, LS Power expresses concern that PJM’s proposal provides PJM with unfettered discretion to expedite a project (i.e., to re-characterize a Long-lead Project as an Immediate-need Reliability Project) even if the projects were needed more than three years out.³⁸⁶ LS Power suggests that if PJM wants a provision to address the unusual circumstance when a project cannot go through either an abbreviated transmission planning process (i.e., a Short-term Project) or the standard transmission planning process (i.e., a Long-lead Project), PJM should develop an appropriately tailored provision to address these instances.³⁸⁷

211. Additionally, LS Power contends that, in conjunction with its proposed changes to PJM’s proposed Immediate-need Reliability Project definition, the proposed definition of

³⁸⁴ *Id.* at 10.

³⁸⁵ *Id.* at 11-12.

³⁸⁶ *Id.* at 14-15.

³⁸⁷ *Id.* at 16. LS Power cites as an example Southwest Power Pool, Inc.’s proposal limiting the circumstances in which a proposed regional project can be assigned to an incumbent transmission owner without going through the competitive process. LS Power contends that this language is far more reasonable than a blanket three-year right of first refusal. LS Power states that it would not oppose defining an Immediate-need Reliability Project in this manner and contends that it would not be unduly burdensome for PJM to implement a sponsorship process for projects needed within three years, given how few projects PJM has identified as qualifying for such a process. *See id.* at 16 n.28 & App. III.

Short-term Project would need to be modified to place these open projects in an expedited proposal window.³⁸⁸

212. Illinois Commerce Commission states that in order for PJM's proposal to be in compliance with Order No. 1000, PJM must either: (1) eliminate its proposed time-based exemptions from the competitive selection process; or (2) eliminate the regional cost sharing feature from the projects that PJM wishes to exempt from the competitive selection process.³⁸⁹

213. LS Power objects, as inconsistent with Order No. 1000,³⁹⁰ to PJM's proposal that the incumbent transmission owner has a right of first refusal by default for any unsponsored Long-lead or Short-term Project.³⁹¹ LS Power states that, in order to be compliant with Order No. 1000, there should not be any "default" right of first refusal to an incumbent transmission owner; instead, there should be equal opportunity for both a new entrant and the incumbent transmission owner in those cases where PJM's transmission solution is ultimately advanced in the transmission planning process. Therefore, LS Power urges the Commission to remove all references to a default right of first refusal as contained in PJM's proposed Schedule 6 language in sections 1.5.8(f)-(g). In its place, LS Power proposes language which states: "The Office of Interconnection shall conduct a non-discriminatory and non-preferential process for the selection of the Designated Entity from previously Qualified Entities if the Office of Interconnection proposes the Short-term or Long-term Project."³⁹²

³⁸⁸ LS Power proposes to revise the definition of a Short-term Project such that a qualifying project has an in-service date of "less than five years," rather than "more than three but less than five," as proposed by PJM. *See* LS Power Protest, Docket No. ER13-198-000, at 17.

³⁸⁹ Illinois Commerce Commission Comments, Docket No. 13-198-000, at 8-9.

³⁹⁰ LS Power Protest, Docket No. ER13-198-000, at 30 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 336).

³⁹¹ *Id.* at 30 (citing PJM October 25 Filing, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8 (g) (3.0.0) ("The Transmission Owner(s) in the Zone(s) where the project is to be located shall be the Designated Entity(ies) for such Project"); Schedule 6, § 1.5.8(h) (3.0.0) ("The Transmission Owner(s) in the Zone where the Short-Term Project is to be located shall be the Designated Entity(ies) for the Project.")).

³⁹² *Id.* at 30-31.

214. LS Power requests that the Commission modify or reject provisions identifying circumstances where the incumbent by default is to be the Designated Entity.³⁹³

LS Power states that while it understands that upgrades, as defined by Order No. 1000, are reserved for the incumbent utilities, Order No. 1000-A clearly stated that a right of first refusal would not apply to entirely new transmission facilities that are proposed.³⁹⁴

LS Power requests that PJM's proposed Schedule 6 language in section 1.5.8 be clarified in order to be consistent with Order No. 1000-A.³⁹⁵

215. In addition, LS Power asks that the Commission reject PJM's proposed provision in section 1.5.8(iv) of Schedule 6, in which PJM proposes to designate the incumbent transmission owner for a transmission expansion or enhancement that is "(iv) proposed to be located on a Transmission Owner's existing right of way and the project would alter the Transmission Owner's use and control of its existing rights of way under state law."³⁹⁶ LS Power states that this is an issue of state law. LS Power contends, therefore, that such a determination should not be made by any entity other than a state court, regulation, or law. LS Power states that it would not object to a revision to this provision stating that a portion of a project should be assigned to the transmission owner if a state court, regulation, or law determines that said transmission owner has the exclusive rights of way for a project route.³⁹⁷

216. Duquesne Light Company supports PJM's proposed exceptions to the removal of a federal right of first refusal.³⁹⁸ However, Duquesne Light Company states that it does not support the 30-day window for Short-term Projects because it believes that it will take longer to develop and test internally a quality proposal, especially one that may address multiple drivers, and include with it a reasonable cost estimate. Furthermore, Duquesne

³⁹³ *Id.* at 32-33 (citing PJM, Intra-PJM Tariffs, OA, Schedule 6 § 1.5.8(l) (3.0.0)).

³⁹⁴ *Id.* (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 426).

³⁹⁵ *Id.* at 32 ("The proposed project must not be an upgrade to an existing facility, meaning an improvement to, addition to, or replacement of a part of an existing transmission facility. This reservation of the project to the existing transmission provider is only related to the portion of such enhancement or expansion that is an upgrade. The term upgrade does not refer to an entirely new transmission facility, and does not refer to rights of way.").

³⁹⁶ *Id.*

³⁹⁷ *Id.* at 32-33.

³⁹⁸ Duquesne Light Company Comments, Docket No. ER13-198-000, at 5.

Light Company contends that this schedule is compounded by the following factors: (1) when there are multiple violations in the same proposal window that need to be addressed, particularly if these violations occur in the same zone; and (2) by the extensive proposal information per proposed Schedule 6, section 1.5.8(c) that must be compiled to avoid submitting a deficient proposal. Moreover, Duquesne Light Company asserts that the need for a short window is not apparent since the projects themselves are a minimum of 36 months long. Duquesne Light Company states that a 60-day window would be adequate to create a complete proposal and address its concerns, but it also suggests that a 45-day window is an appropriate compromise.³⁹⁹

(c) **Answer**

217. In its answer, PJM states that its October 25 Filing is compliant with or superior to Order No. 1000 and, as a result, is just and reasonable. Therefore, PJM asserts that LS Power's alternative proposals to modify PJM's "solution-based" exceptions are unnecessary and should be rejected.⁴⁰⁰ Specifically, PJM states that there is no need to add additional language to Schedule 6, section 1.5.8(l)(i), to further describe the term "upgrade," as suggested by LS Power. Similarly, PJM asserts that section 1.5.8(l)(vi) requires no modification to make this provision just and reasonable and that striking section 1.5.8(l)(vi), as LS Power suggests, would be inconsistent with Order No. 1000-A.⁴⁰¹

218. PJM asserts that PJM and the stakeholders struck a reasonable balance in determining that 30 days is the appropriate length of time to prepare and submit project proposals for Short-term Projects and argues that the Commission should give deference to such stakeholder-vetted provisions. PJM explains that the 30-day time period should be considered in light of the need to move forward on a Short-term Project, the inherent time needed to allow for consideration of proposals, and the potential for litigation occurring right up to or after the day that construction should begin. PJM states that this balance should not be disturbed by looking solely at the time developers need to prepare proposals.⁴⁰²

219. PJM maintains that a shortened proposal window for Immediate-need Reliability Projects will provide opportunities for new entrants to propose such projects. PJM

³⁹⁹ *Id.* at 5-6.

⁴⁰⁰ PJM Answer, Docket No. ER13-198-000, at 60-62.

⁴⁰¹ *Id.* at 61 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 427).

⁴⁰² *Id.* at 63-64.

disputes LS Power's characterization that, under PJM's proposal, Immediate-need Reliability Projects would not be assigned to nonincumbents, and that PJM has effectively proposed a ROFR for these projects. PJM points out that LS Power ignores the proposed shortened proposal window. While PJM acknowledges that "there may be instances when there will be insufficient time to open an Immediate-need Reliability Project proposal window," PJM's proposal balances a competitive solicitation process "with the practical needs to meet real short-term deadlines to address imminent reliability needs."⁴⁰³

220. PJM states that LS Power misunderstands the reasoning behind the three-year cut-off for what is considered an Immediate-need Reliability Project. PJM explains that, in determining this cut-off the consideration was not whether a nonincumbent developer is capable of meeting the transmission enhancements or expansions within the three-year time frame, but rather whether there would be sufficient time to conduct a competitive solicitation process in which whatever entity, incumbent or nonincumbent, could complete the necessary upgrade to timely address the reliability concern. PJM states that the three-year cut-off for Immediate-need Reliability Projects is based on the length of time that the competitive solicitation process will take for Short-term Projects and Long-lead Projects and the anticipated time it will take to complete the type of projects that likely will be needed to meet urgent reliability needs. PJM reiterates that for projects with shorter development times, its proposed section 1.5.8(m) provides an abbreviated solicitation process for Immediate-need Reliability Projects.

(d) Commission Determination

(1) Existing Federal Right of First Refusal

221. At the outset, we disagree with PJM's conclusion that we determined in *Primary Power* that there is no federal right of first refusal in PJM's OATT and Agreements. We confirm that our findings in *Primary Power* were based on the issue raised in the complaint and therefore limited to nonincumbent transmission developers' ability to receive cost-based recovery for economic projects.⁴⁰⁴ We find that PJM's OATT and Agreements are not in compliance with Order No. 1000's requirement to eliminate any federal right of first refusal from Commission-jurisdictional tariffs and agreements, and, therefore, we direct PJM to revise its OATT and Agreements to address any provision that could be read as supplying a federal right of first refusal for any type of transmission project that is selected in the regional transmission plan for purposes of cost allocation. We also find that portions of the Indicated PJM Transmission Owners October 25 Filing

⁴⁰³ *Id.* at 45.

⁴⁰⁴ *Primary Power Rehearing Order*, 140 FERC ¶ 61,052 at PP 1, 31-42.

revisit our determinations in *Primary Power*; however, Indicated PJM Transmission Owners present no new or newly persuasive argument within the context of this proceeding. In response to Indicated PJM Transmission Owners' arguments that the intent of "other entities" in section 1.5.6(f) is to limit nonincumbent transmission developer participation to merchant transmission projects and market-based projects only, we note that the Commission considered this issue in the *Primary Power Rehearing Order*.⁴⁰⁵ In that proceeding, Primary Power, LLC (Primary Power) requested transmission rate incentives and assurances that it was eligible to build an economic expansion project under PJM's RTEP procedures. Primary Power sought to construct a cost-of-service or cost-based project as a nonincumbent transmission developer. In its initial order, the Commission determined that PJM may designate a nonincumbent transmission owner as a PJM Transmission Owner⁴⁰⁶ to build an economic expansion or enhancement project and receive cost-based or cost-of-service compensation for the use of its facilities.⁴⁰⁷

222. Nevertheless we find here that these provisions of the OATT and Agreements are ambiguous and open to interpretation and potential undue discrimination. Therefore, we direct PJM to revise the provisions of its OATT and Agreements that could be read as supplying a federal right of first refusal for transmission projects that are selected in the regional transmission plan for purposes of cost allocation. PJM must clarify these provisions so that they are consistent with Order No. 1000; namely, by removing or revising any provision that could be read as supplying a federal right of first refusal for any type of transmission project that is selected in the regional transmission plan for purposes of cost allocation. Moreover, such clarification must include revision to any provision that could purport to preclude the section 205 filing rights of nonincumbent utilities without their consent, in a manner inconsistent with *Atlantic City*.⁴⁰⁸

⁴⁰⁵ See Indicated PJM Transmission Owners October 25 Filing, Docket No. ER13-195-000, at 7-9; PSEG Request for Rehearing, Docket No. ER10-253-001, at 9-12.

⁴⁰⁶ Under the PJM Operating Agreement, the term "Transmission Owner" (as capitalized) refers to an incumbent transmission owner that "owns or leases with rights equivalent to ownership Transmission Facilities and is a signatory to the PJM Transmission Owners Agreement." It does not refer to future or potential owners of transmission facilities that will become "Transmission Owners" upon the in-service date of their facilities. See *Primary Power Rehearing Order*, 140 FERC ¶ 61,052 at 1 n.6.

⁴⁰⁷ *Primary Power Rehearing Order*, 140 FERC ¶ 61,052 at P 1.

⁴⁰⁸ *Atlantic City*, 295 F.3d 1 (2002); *Atlantic City II*, 329 F.3d 856 (D.C. Cir. 2003).

223. We disagree with Indicated PJM Transmission Owners' assertion that we upheld their interpretation of section 4.2.1 of the CTOA as permitting a federal right of first refusal in perpetuity because of their obligation to build. The section refers to parties "required to expand or modify Transmission Facilities" as the parties that will be designated to construct facilities. In *Primary Power*, we held that "PJM Transmission Owners are not required to construct economic facilities, so such a requirement does not apply to economic construction pursuant to section 1.5.7 [of Schedule 6] or the Operating Agreement."⁴⁰⁹ In any case, in Order No. 1000 the Commission addressed the difference between an obligation to build in one's transmission zone and a federal right of first refusal:

[W]e do not believe that [the] obligation [to build] is necessarily dependent on the incumbent transmission provider having a corresponding federal right of first refusal to prevent other entities from constructing and owning new transmission facilities located in that region.⁴¹⁰

224. Nothing in Order No. 1000 limits public utility transmission providers from developing mechanisms to impose an obligation to build transmission facilities in a regional transmission plan, consistent with the requirements regarding the treatment of nonincumbent transmission developers; nothing limits any such obligation that may exist under state or local laws or regulations.⁴¹¹ At the same time, nothing in the Commission's regulations allows PJM Transmission Owners to bar a nonincumbent transmission developer from cost-based recovery for its transmission facilities, or to bar that nonincumbent transmission developer from filing under section 205 for cost-based rate recovery of its transmission facilities. Each transmission developer is permitted to make its own filing to recover the costs of its own transmission facilities. The FPA states that the Commission shall have jurisdiction over the rates, terms, and conditions charged by all transmission facilities for the transmission of electric energy in interstate commerce, and the FPA defines a public utility as any person who owns or operates transmission facilities subject to the jurisdiction of the Commission.⁴¹² The traditional mechanism for establishing the rates for transmission facilities is to use the developer's cost of service. While the Commission has permitted other approaches, such as merchant transmission facilities, these approaches are additional options; they do not place a bar on

⁴⁰⁹ *Primary Power Rehearing Order*, 140 FERC ¶ 61,052 at P 60.

⁴¹⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 261.

⁴¹¹ *Id.* P 127 n.155.

⁴¹² 16 U.S.C. §§ 824 and 824e.

“other entities” from proposing to use the traditional cost-of-service approach. Consistent with this determination, we direct PJM to revise those provisions of its OATT and Agreements that lock nonincumbent transmission developers into market-based rates before they enter the regional transmission planning process, as discussed further in this order.

(2) **Exceptions to the Requirement to Eliminate a Federal Right of First Refusal**

225. We find that the proposed revisions comply in part, and do not comply in part, with the requirements of Order No. 1000, as discussed below. Therefore, we conditionally accept PJM’s proposed revisions, subject to further amendment, as detailed below.

226. As stated above, PJM proposes certain exceptions, labeled “solutions-based” exceptions where it would designate transmission projects to the incumbent transmission owner in the zone in which transmission facilities are located when the transmission project is: (1) an upgrade to an incumbent transmission owner’s own transmission facilities; (2) located solely within an incumbent transmission owner’s zone and for which the costs are allocated solely to the incumbent; (3) located solely in the incumbent transmission owner’s zone and not included in the RTEP for cost allocation purposes; (4) proposed to be located on the incumbent transmission owner’s right of way and the transmission project would alter the incumbent’s use and control of its existing right of way under state law.⁴¹³ PJM also proposes in its fourth exception to designate a transmission project to the incumbent transmission owner when required by state law, regulation, or administrative agency order with regard to enhancements or expansions or portions of such enhancements or expansions located within that state.⁴¹⁴

227. PJM states that it has used the flexibility Order No. 1000 provides to public utility transmission providers “to craft, in consultation with stakeholders, requirements [regarding the right of first refusal] that work for [the] transmission planning region.”⁴¹⁵ While we agree that Order No. 1000 allows for such flexibility, we find that PJM’s proposed exceptions to the removal of a federal right of first refusal, though partially

⁴¹³ See PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(l)(i) to (iv) (3.0.0).

⁴¹⁴ See PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8 (l)(iv) (3.0.0); *see also* PJM October 25 Filing, Docket No. ER13-198-000, at 50, 72-73.

⁴¹⁵ PJM October 25 Filing, Docket No. ER13-198-000, at 51 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 157).

compliant, fail in part to comply with Order No. 1000. We find that PJM's proposed "solution-based" exceptions in Schedule 6, section 1.5.8(1)(i) to (iv), only partially comply with the federal right of first refusal exceptions contemplated in Order No. 1000.⁴¹⁶ First, we agree with LS Power that the term "upgrade" as it is used in section 1.5.8(1)(i) is unclear. PJM's OATT and Agreements contain definitions for, and references to, several different types of upgrades.⁴¹⁷ It is unclear what, if any, type of previously defined upgrade PJM intended to reference in section 1.5.8(1)(i). Therefore, we direct PJM to revise section 1.5.8(1)(i) of Schedule 6 to clarify and define the term "upgrade" and make any necessary conforming revisions to Schedule 6, its OATT and Agreements.

228. Next, we find as consistent with the exceptions to the requirement to eliminate a federal right of first refusal provided for in Order No. 1000,⁴¹⁸ PJM's proposed "solution-based exceptions in section 1.5.8(1)(ii) and (iii) of Schedule 6 which propose to designate an incumbent owner as the Designated Entity for a transmission project when that transmission project is: (1) located solely within a Transmission Owner's Zone and the costs of the project are allocated solely to the Transmission Owner's Zone; (2) located solely within a Transmission Owner's Zone and is not selected in the Regional Transmission Expansion Plan for purposes of cost allocation.

229. The exception contained in section 1.5.8(1)(iv) of Schedule 6, proposes to designate an incumbent transmission owner as the Designated Entity for a transmission project when the transmission project at issue is "proposed to be located on a Transmission Owner's existing right of way and the project would alter the Transmission Owner's use and control of its existing rights of way under state law."⁴¹⁹ The other exception contained in section 1.5.8 of Schedule 6 proposes to designate an incumbent transmission owner to build a transmission project "when required by state law, regulation or administrative agency order with regard to enhancements or expansions or portions of such enhancements or expansions located within that state."⁴²⁰ We find that

⁴¹⁶ See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 318-319.

⁴¹⁷ See, e.g., PJM, Intra-PJM Tariffs, OATT, Definitions (C-D) § 1.7A.01 (Customer-Funded Upgrade) (2.0.0); Definitions (L-M-N), §§ 1.17A (Local Upgrades) and 1.18D (Merchant Network Upgrades), 1.26 (Network Upgrades) (3.0.0); see also, e.g., PJM, Intra-PJM Tariffs, OA, Schedule 6, §§ 1.5.1(a), 1.5.6(j) (3.0.0).

⁴¹⁸ See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 318-319.

⁴¹⁹ See PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(1)(iv) (3.0.0).

⁴²⁰ See *id.*

PJM's proposed exception in Schedule 6, section 1.5.8(1)(iv), which proposes to designate an incumbent transmission owner as the Designated Entity for a transmission project when the transmission project at issue is "proposed to be located on a Transmission Owner's existing right of way and the project would alter the Transmission Owner's use and control of its existing rights of way under state law,"⁴²¹ establishes a federal right of first refusal in PJM's OA that is not permitted by Order No. 1000. The Commission acknowledged in Order No. 1000 that its reforms "are not intended to alter an incumbent transmission provider's use and control of its existing rights-of-way[.]" that Order No. 1000 does not "grant or deny transmission developers the ability to use rights-of-way held by other entities, even if transmission facilities associated with such upgrades or uses of existing rights-of-way are selected in the regional transmission plan for purposes of cost allocation[.]" and that the "retention, modification, or transfer of rights-of-way remain subject to relevant law or regulation granting the rights-of-way."⁴²² However, the Commission did not find that, as part of its compliance filing, a public utility transmission provider may add a federal right of first refusal for a new transmission facility built on an existing right-of-way.

230. Similarly, Order No. 1000 does not require removal from Commission-jurisdictional tariffs or agreements references to state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities.⁴²³ However, PJM's proposal goes beyond mere reference to state or local laws or regulations; it references state and local laws and then uses that reference to create a federal right of first refusal. Order No. 1000 does not permit a public utility transmission provider to add a federal right of first refusal for a new facility based on state law.

⁴²¹ See PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(1)(iv) (3.0.0).

⁴²² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319.

⁴²³ See Order No. 1000, FERC Stats. & Regs ¶ 31,323 at P 253, n.231:

Nothing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities. This Final Rule does not require removal of references to such state or local laws or regulations from Commission-approved tariffs or agreements.

See also Order No. 1000-A, FERC Stats. & Regs ¶ 31,132 at P 381.

231. For these reasons, we reject these aspects of PJM's proposal. Accordingly, we direct PJM to file, within 120 days of the date of issuance of this order, a further compliance filing to revise its Schedule 6 to: (1) remove the proposed language related to rights-of-way as detailed above; and (2) remove the proposed language related to designating an incumbent transmission owner as the Designated Entity when required by state law, regulation, or administrative agency order.

232. While public utility transmission providers may not use state laws and regulations to automatically exclude proposals from consideration as the more efficient or cost effective solution to regional transmission needs, it is not necessarily impermissible to consider the effect of the state regulatory process at appropriate points in the regional transmission planning process. Indeed, the Commission has identified points at which such consideration might be appropriate. For example, in Order No. 1000-A, the Commission stated that public utility transmission providers in a transmission planning region must adopt a transparent and not unduly discriminatory evaluation process and must use the same process to evaluate a new transmission facility proposed by a nonincumbent transmission developer as it does for a transmission facility proposed by an incumbent transmission developer.⁴²⁴ This statement does not preclude public utility transmission providers in regional transmission planning processes from taking into consideration the particular strengths of either an incumbent transmission provider or a nonincumbent transmission developer during its evaluation.⁴²⁵ As the Commission acknowledged, an incumbent public utility transmission provider is free to highlight such strengths to support transmission project(s) in the regional transmission plan, or in bids to undertake transmission projects in regions that choose to use solicitation processes.⁴²⁶ An incumbent transmission provider may have unique knowledge of its own transmission systems, familiarity with the communities they serve, economies of scale, experience in building and maintaining transmission facilities, and access to funds needed to maintain reliability, and the Commission did not believe removing the federal right of first refusal diminishes the importance of these factors.⁴²⁷

233. The Commission has also identified other points at which such consideration might be appropriate. In Order No. 1000-A, the Commission stated that public utility transmission providers are required to describe the circumstances and procedures under which public utility transmission providers will reevaluate the regional transmission plan

⁴²⁴ Order No. 1000-A, FERC Stats. & Regs. ¶ 31,132 at P 454

⁴²⁵ *Id.*

⁴²⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 260.

⁴²⁷ *Id.*

to determine if delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation require evaluation of alternative solutions, including those proposed by the incumbent transmission provider, to ensure the incumbent transmission provider can meet its reliability needs or service obligations.⁴²⁸ Order No. 1000-A further addresses concerns relating to the progress of a transmission developer for a transmission project selected in the regional transmission plan for purposes of cost allocation toward achieving state approvals to construct that project. With respect to this issue, Order No. 1000-A provides:

As part of the ongoing monitoring of the progress of the transmission project once it is selected [in the regional transmission plan for purposes of cost allocation], the public utility transmission providers in a transmission planning region must establish a date by which state approvals to construct must have been achieved that is tied to when construction must begin to timely meet the need that the project is selected to address. If such critical steps have not been achieved by that date, then the public utility transmission providers in a transmission planning region may remove the transmission project from the selected category and proceed with reevaluating the regional transmission plan to seek an alternative solution.⁴²⁹

234. Accordingly, we direct PJM to file, within 120 days of the date of issuance of this order, a further compliance filing to revise its Schedule 6 to: (1) clarify and define the term “upgrade” as used consistent with Order No. 1000, as well as make any necessary conforming revisions to Schedule 6, its OATT and Agreements; (2) remove the proposed language related to rights- of -way as detailed above; and (3) remove the proposed language related to designating an incumbent transmission owner as the Designated Entity when required by state law, regulation, or administrative agency order.

(3) **Time-Based Transmission Project Proposal Process**

235. We conditionally accept PJM’s proposed “time-based” transmission project proposal process, as discussed further below. We find that, as part of this proposed

⁴²⁸ Order No. 1000-A, FERC Stats. & Regs. ¶ 31,132 at P 477. *See also* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329 (“[A]n incumbent transmission provider must have the ability to propose solutions that it would implement within its retail distribution service territory or footprint that will enable it to meet its reliability needs or service obligations.”).

⁴²⁹ Order No. 1000-A, FERC Stats. & Regs. ¶ 31,132 at P 442.

process, PJM will rely on a competitive solicitation process to evaluate and select new transmission projects in the regional transmission plan for the purposes of cost allocation. We further note that by establishing three categories of transmission projects, namely, Immediate-need Reliability Projects, Short-term Projects, and Long-lead Projects, PJM proposes specific “time-based” exceptions to the elimination of the federal right of first refusal. As PJM states, it has limited the use of the incumbent transmission owner as the default to those scenarios where, due to system reliability transmission needs and time constraints, it would be impractical and potentially imprudent to hold an initial proposal window, in the case of Immediate-need Reliability Projects, or to hold another proposal window, in the case of Short-term Projects.⁴³⁰ We find that PJM’s proposal giving PJM the discretion to designate an incumbent transmission owner as the entity responsible for constructing, financing, and owning a transmission project (i.e., the Designated Entity) in certain circumstances (i.e., “time-based” exceptions) represents a reasonable exercise of judgment by PJM, as the entity in charge of ensuring that the system remains reliable. We recognize that in certain instances time constraints may not allow for the exercise of the transmission project proposal process, that is, the open solicitation of transmission projects, without risking reliability of the system.

236. We clarify that even where PJM proposes to assign a transmission project selected in the regional transmission plan for the purposes of cost allocation to an incumbent transmission owner in accord with PJM’s “time-based” transmission project proposal process, any such incumbent transmission owner must have been certified by PJM as eligible to be a Designated Entity. This additional process comports with the requirement of Order No. 1000 that all entities, both incumbent and nonincumbent transmission developers, be subject to a determination as to their eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation. While we will not require PJM to revise its definition of “Designated Entity,” we nonetheless clarify that in PJM’s RTEP a nonincumbent transmission developer must be provided with an opportunity comparable to that of an incumbent transmission developer to allocate the cost of a transmission facility through a regional cost allocation method or methods. We address below New Jersey Board’s recommendation that PJM further refine the specific information PJM requests to be used in making a determination of an entity’s eligibility to be a Designated Entity.⁴³¹

⁴³⁰ PJM October 25 Filing, Docket No. ER13-198-000, at 58-59.

⁴³¹ New Jersey Board Comments, Docket No. ER13-198-000, at 7-8 (emphasis added).

(i) **Short-term and Long-lead
Projects Definitions/Proposal
Processes**

237. We find that PJM's proposed definitions of Short-term and Long-lead Projects partially comply with Order No. 1000. While PJM's proposed definitions for Short-term and Long-lead Projects, respectively, make clear that transmission projects proposed to solve a reliability violation (i.e., a reliability projects) may be proposed and evaluated as either a Short-term or Long-lead Project, it is unclear whether the same applies to a transmission project proposed to solve an economic constraint (i.e., a market efficiency or economic transmission project). We note that PJM's proposed definitions for Short-term and Long-lead Projects, respectively, appear to indicate that a transmission project proposed to solve an economic constraint (i.e., a market efficiency or economic transmission project) may be proposed and evaluated as either a Short-term or Long-lead Project. Conversely, PJM's asserts in its October 25 Filing that "[n]o timeline is proposed for market efficiency projects and, as a result, all such projects would be categorized under Long-lead Projects and would be put out for competitive solicitation."⁴³² Therefore, we direct PJM to provide in a further compliance filing, a clarification as to what category in the transmission project proposal process (i.e., Long-lead and/or Short-term Projects) a market efficiency project can be proposed and evaluated as in PJM's proposed transmission project proposal process.

238. Regarding the length of the default proposal windows for Short-term and Long-lead Projects, we find them to be compliant Order No. 1000. As to the 120 day proposal window for Long-lead Projects, we find that it provides sufficient opportunity for both incumbent and nonincumbent transmission developers to propose transmission projects for PJM to evaluate, and potentially select as part of its regional transmission plan for purposes of cost allocation. We note that no party asserts that this proposal window would be unjust, unreasonable or unduly discriminatory. However, we acknowledge that Duquesne Light Company does not agree with the 30 day proposal window for Short-term Projects. We recognize that to resolve reliability issues within the 12-month planning cycle, as required for Short-term Projects, limiting the proposal window to 30 days may be necessary to identify and evaluate such transmission projects, and to permit time for a reevaluation of a transmission project should the need occurred. Therefore, we find that limiting the proposal window to 30 days is reasonable as it may be necessary to identify and evaluate such transmission projects, and to permit time for a reevaluation of a project should the need occur.

239. In addition, the proposed Schedule 6 revisions grant PJM considerable discretion in shortening or lengthening these proposal windows. Specifically, PJM's proposal

⁴³² PJM October 25 Filing, Docket No., ER13-198-000, at 51 n.149.

allows it to “shorten the proposal windows should the identified transmission need require a shorter proposal window to meet the needed in-service date” or “extend the window as needed to accommodate updated information regarding system conditions.”⁴³³ While we find that PJM’s proposal to shorten or extend the default proposal window for Short-term and Long-lead Projects is generally reasonable, we are concerned with the lack of transparency in PJM’s proposed revisions with regard to how PJM will make this determination. Specifically, for Short-term and Long-lead Projects, there is no provision in PJM’s proposed revisions that would enable stakeholders to understand how PJM arrived at its determination to shorten or extend the default proposal window. Therefore, we conditionally accept PJM’s proposal subject to PJM making a further compliance filing to include in its OATT revisions that: (1) list the criteria that PJM will use to make the determination to shorten or extend the proposal window for Short-term and Long-lead Projects; and (2) provide an explanation of how PJM proposes to evaluate the criteria in order to enable stakeholders to understand how PJM determines to shorten or extend the default proposal window for Short-term and Long-lead Projects.

240. In addition, for both Short-term and Long-lead Projects, PJM proposes procedures in Schedule 6 to address the situation where no Short-term or Long-lead Projects are determined to be the more efficient or cost-effective solution. For Short-term Projects, if PJM determines that none of the proposed Short-term Projects it receives during the proposal window is the more efficient or cost-effective solution, then the Office of Interconnection will propose a Short-term Project to solve the posted violation or system condition for inclusion in the plan, present the project to the TEAC for review, and assign the Short-term Project to the transmission owner in whose zone the Short-term Project is to be located.⁴³⁴ As discussed below, we find that this process complies, subject to conditions, with Order No. 1000.

241. As for Long-term Projects, section 1.5.8(g) of Schedule 6 provides that if none of the proposed Long-lead Projects received during the proposal window would be the more efficient or cost-effective solution to resolve a posted violation, system condition, or economic constraint, then PJM will reevaluate and repost the unresolved violations, system conditions, or economic constraints provided that such reevaluation and reposting would not affect the ability of the Office of the Interconnection to timely address the identified reliability need.⁴³⁵ If the Office of Interconnection determines that reposting and reevaluation will prevent it from timely addressing the existing and projected

⁴³³ PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(c) (Project Proposal Windows) (3.0.0).

⁴³⁴ *Id.*

⁴³⁵ *Id.* § 1.5.8(h) (3.0.0).

limitations, then the Office of the Interconnection will propose a project to solve the posted violation, system condition or economic constraint for selection in the plan, present the transmission project to the TEAC, and assign the transmission project to the transmission owner in whose zone the transmission project is to be located.⁴³⁶ In determining whether there is insufficient time for reevaluation and reposting, PJM proposes to consider such factors as the time necessary: (1) to obtain regulatory approvals; (2) to acquire long-lead equipment; (3) to meet construction schedules; (4) to complete the required in-service date; and (5) for other time-based factors impacting the feasibility of achieving the required in-service date.⁴³⁷

242. While the enumerated criteria listed above provide some transparency regarding how PJM will make the determination as to whether there is sufficient time to reevaluate and repost unresolved violations, system conditions, and economic constraints, we find that the process is not sufficiently transparent. Therefore, we require PJM in a further compliance filing to explain how PJM proposes to consider the enumerated criteria listed above to determine whether there is insufficient time for re-posting and reevaluation, and how such a determination requires that an incumbent transmission owner be assigned to build a Long-lead Project proposed by the Office of Interconnection.

243. We reject LS Power's contention that Order No. 1000 does not permit PJM to assign a Short-term or Long-lead Project to an incumbent transmission owner after PJM has held an initial proposal window. We note that in Order No. 1000, the Commission stated that in requiring public utility transmission providers to remove a federal right of first refusal from their Commission jurisdictional tariffs and agreements it sought to "provide nonincumbent transmission developers with the opportunity to propose and construct transmission projects, consistent with state and local laws and regulations."⁴³⁸ Further, Order No. 1000 acknowledged that there "may be situations in which an incumbent transmission provider has an obligation to build a project that is selected in the regional transmission plan for purposes of cost allocation but has not been sponsored by another transmission developer."⁴³⁹ Accordingly, we find PJM's proposal to assign a transmission project to the incumbent transmission owner if it determines that none of the proposed Short-term or Long-lead Projects is the more efficient or cost-effective solution complies with Order No. 1000 because, at that point, both incumbent and nonincumbent

⁴³⁶ *Id.* § 1.5.8(g) (3.0.0).

⁴³⁷ *Id.*

⁴³⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 259.

⁴³⁹ *Id.* P 267.

transmission developers will have had an opportunity to submit proposals to address the identified need.

244. In its October 25 Filing, PJM recognizes the Commission's concerns with using the incumbent transmission owner as the default Designated Entity. In response, PJM explains that it has limited the use of the incumbent transmission owner as the default to those scenarios where, due to system reliability transmission needs and time constraints, it would be impractical and even perhaps imprudent to hold another proposal window.⁴⁴⁰ We agree with PJM's contention that its approach aligns with Order No. 1000, which provides that the function of the RTEP process is to "identify those transmission facilities that are needed to meet identified needs on a timely basis," and, thereby enable incumbent transmission owners to meet their service obligations.⁴⁴¹ Further, we note that PJM also states that, "[i]t expects that, in most cases, [...] solutions [will] be offered by incumbent transmission owners and merchant transmission developers to address [...] violations, economic constraints, and system conditions." Consequently, PJM "does not think it is likely that no solution would be submitted during a proposal window that would 'efficiently or cost effectively' solve a reliability violation such that PJM would have to either re-post or else assign projects to an incumbent transmission owner."⁴⁴²

245. Finally, we note that each instance in PJM's proposed time-based transmission proposal process in which PJM would assign a transmission project it proposes to an incumbent transmission owner, requires that PJM make an affirmative determination that none of the proposed transmission projects are the more efficient or cost-effective transmission solution. Furthermore, in each instance, PJM commits to presenting each unsponsored transmission project that it develops to the TEAC for review and comment.⁴⁴³ Therefore, we disagree with LS Power's assertion that Order No. 1000 requires that PJM's proposed process in this instance must not permit an unsponsored transmission project to "default" to incumbent transmission owner. Further, we find that PJM's proposal to develop transmission projects in these limited circumstances to be just and reasonable. We also find PJM's requirement to provide stakeholders, including LS Power, an opportunity to review and comment on these transmission projects just and reasonable, as it provides any stakeholder the opportunity to raise concerns it may have with that transmission project within the stakeholder process.

⁴⁴⁰ *Id.* 58-59.

⁴⁴¹ PJM October 25 Filing, Docket No. ER13-198-000, at 59 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 264).

⁴⁴² *Id.* at 57.

⁴⁴³ *See* PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(g), (h), (m), (1) (3.0.0).

246. Accordingly, we direct PJM to file, within 120 days of the date of issuance of this order, a further compliance filing to include revisions to Schedule 6 as well as any conforming edits to its OATT, as needed, that: (1) clarify the category of project(s) in which a market efficiency project can be proposed, evaluated, and selected in the plan for the purposes of cost allocation; (2) list the criteria that PJM will use to make the determination to shorten or extend the proposal window for Short-term and Long-lead Projects; (3) provide an explanation of how PJM proposes to evaluate these criteria in order to enable stakeholders to understand how PJM determines to shorten or extend the default proposal window for Short-term and Long-lead Projects; and (4) provide an explanation of how PJM proposes to evaluate the enumerated criteria that it will consider in determining whether there is insufficient time for re-posting and reevaluation, and how such a determination requires that an incumbent transmission owner be designated as the Designated Entity for a Long-lead Project.

(ii) **Immediate-need Reliability
Projects Definition/Proposal
Process**

247. We find that PJM's proposal regarding Immediate-need Reliability Projects partially complies with Order No. 1000. PJM defines an Immediate-need Reliability Project as a reliability-based transmission enhancement or expansion: (1) with an in-service date of three years or less from the year the Office of the Interconnection identified the existing or projected limitations on the transmission system that gave rise to the need for such enhancement or expansion; or (2) for which the Office of the Interconnection determines that an expedited designation is required to address existing and projected limitations on the transmission system due to immediacy of the reliability need in light of the projected time to complete the enhancement or expansion.⁴⁴⁴ Under PJM's Schedule 6, PJM will develop and recommend Immediate-need Reliability Projects for inclusion in the RTEP and will designate the transmission owner in the zone in which the Immediate-need Reliability Project is located as the designated entity unless the Office of Interconnection determines that there is sufficient time to hold a shortened proposal window.⁴⁴⁵ PJM offers analysis that demonstrates that, at some point, PJM cannot hold a competitive solicitation process because there is not enough time.⁴⁴⁶ We agree with PJM that there may be instances in which it may not be feasible to hold a

⁴⁴⁴ PJM, Intra-PJM Tariffs, OA, Definitions (I-L), § 1.15A (Immediate-need Reliability Projects) (1.0.0); *see also* PJM, Intra-PJM Tariffs, OATT, Definitions (I-L), § 1.14A.001 (Immediate-need Reliability Projects) (1.0.0).

⁴⁴⁵ PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(m) (3.0.0).

⁴⁴⁶ PJM October 25 Filing, Docket No. ER13-198-000, at 57-58.

competitive solicitation process to solve a reliability violation. Thus, to avoid delays in the development of transmission facilities needed to resolve a time-sensitive reliability criteria violation, we find that it is just and reasonable to include a class of transmission projects that are exempt from the competitive solicitation.

248. However, we also find that such an exception should only be used in certain limited circumstances and, therefore, we adopt the following five criteria. Since PJM does not propose to hold a competitive solicitation in the first instance for Immediate-need Reliability Projects, we believe that these five criteria will place reasonable bounds on PJM's discretion to determine whether there is sufficient time to hold a competitive solicitation for Immediate-need Reliability Projects and, as a result, will ensure that an exception from the requirement to eliminate a federal right of first refusal for reliability projects will be used in limited circumstances. First, the Immediate-need Reliability Project must be needed in three years or less to solve reliability criteria violations. Second, PJM must separately identify and then post an explanation, whether or not it intends to provide for a proposal window, of the reliability violations and system conditions in advance for which there is a time-sensitive need. The explanation must be in sufficient detail to allow stakeholders to understand the need and why it is time-sensitive. Third, the process that PJM uses to decide whether an Immediate-need Reliability Project is assigned to an incumbent transmission owner must be clearly outlined in PJM's OATT and must be open, transparent, and not unduly discriminatory. PJM must provide to stakeholders and post on its website a full and supported written description explaining: (1) the decision to designate an incumbent transmission owner as the entity responsible for construction and ownership of the project, including an explanation of other transmission or non-transmission options that the region considered but concluded would not sufficiently address the immediate reliability need; and (2) the circumstances that generated the immediate reliability need and an explanation of why that immediate reliability need was not identified earlier. Fourth, stakeholders must be permitted time to provide comments in response to the description in criterion three and such comments must be made publicly available. Finally, PJM must maintain and post a list of prior year designations of all projects in the limited category of transmission projects for which the incumbent transmission owner was designated as the entity responsible for construction and ownership of the project. The list must include the project's need-by date and the date the incumbent transmission owner actually energized the project. Such list must be filed with the Commission as an informational filing in January of each calendar year covering the designations of the prior calendar year.

249. Regarding the first criterion, we note that PJM has proposed two types of projects that fall within the Immediate-need Reliability project category. First, PJM proposes to include a reliability-based transmission enhancement or expansion "with an in-service date of three years or less from the year the Office of the Interconnection identified the

existing or projected limitations on the Transmission System that gave rise to the need for such enhancement or expansion”⁴⁴⁷ We find that, on balance, three years is just and reasonable. We note that this part of PJM’s proposed definition is consistent with criterion one above, as it pertains only to a transmission project that is needed to resolve a reliability violation within three years. On one side of the balance in our consideration of the definition of an Immediate-need Reliability Project is Order No. 1000’s removal of barriers to entry that discourage nonincumbent transmission developers from proposing alternative solutions at the regional level and its basic recognition that it is not in the economic self-interest of public utility transmission providers to expand the transmission grid to permit access to competing sources of supply.⁴⁴⁸ The Commission therefore directed the removal of the federal right of first refusal to decrease the potential of undermining the identification and evaluation of more efficient or cost-effective transmission solutions, which in turn can result in rates that are unjust, unreasonable, or unduly discriminatory.⁴⁴⁹ The more transmission projects that an exception for Immediate-need Reliability Projects covers, the longer such barriers are maintained against potential competitive transmission solutions proposed by nonincumbent transmission developers. As LS Power notes, new and emerging grid technologies that could solve reliability needs “more efficiently and cost-effectively” have the potential to be implemented within a relatively short time period.⁴⁵⁰

250. On the other side of the balance is the fact that delays in the development of an Immediate-need Reliability Project could adversely affect the ability of incumbent transmission providers, and PJM, to meet their reliability transmission needs.⁴⁵¹ When balancing these goals of Order No. 1000, we find that defining Immediate-need Reliability Projects as projects needed in three years or less to solve a reliability violation strikes a reasonable balance. Further, we note that PJM expects, moving forward, that the use of its 24-month planning cycle will allow for more transmission projects to fall into the Short-term or Long-lead Project categories and, therefore, will reduce the need for

⁴⁴⁷ PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(m) (3.0.0).

⁴⁴⁸ *Id.* PP 254 (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,682 (1996); Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 524), 256.

⁴⁴⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 253, 263.

⁴⁵⁰ LS Power Protest, Docket No. ER13-198-000, at 10-11.

⁴⁵¹ *Id.* P 263.

having to direct as many Immediate-need Reliability Projects as has occurred in the past.⁴⁵²

251. Without additional information, we cannot accept PJM's proposal to include in the definition of Immediate-need Reliability Projects those reliability-based transmission enhancement or expansions "for which the Office of the Interconnection determines that an expedited designation is required to address existing and projected limitations on the Transmission System due to immediacy of the reliability need in light of the projected time to complete the enhancement or expansion."⁴⁵³ Including reliability-based expansions or enhancements that are needed within some indeterminate amount of time would negate the time limit imposed in the first section of the definition. PJM has provided no analysis or examples of transmission projects that are needed so urgently that a proposal window could not be conducted, beyond those transmission projects that are needed within three years or less. Also, PJM has not explained why it is necessary for it to have this discretion given the three year exception discussed above. Furthermore, for determining whether an expedited designation is required, PJM states that it will consider the following factors, such as, but not limited to, the time necessary: (i) to obtain regulatory approvals; (ii) to acquire long lead equipment; (iii) to meet construction schedules; (iv) to complete engineering plans; and (v) for other time-based factors impacting the feasibility of achieving the required in-service date. However, PJM has not explained how it will implement these factors in making its decision.

252. Therefore, we direct PJM, in a further compliance filing, to: (1) explain why part (ii) of its definition for Immediate-need Reliability Projects is necessary; and (2) how it will implement these factors in making its decision. We will determine whether PJM's filing complies with Order No. 1000 after PJM makes its further compliance filing directed herein.

253. As for the remaining four criteria, we direct PJM to file a further compliance filing demonstrating how the definition and procedures related to Immediate-need Reliability Projects comply with criteria two through five discussed above. In addition, if PJM cannot demonstrate that its current definition and procedures related to Immediate-need Reliability Projects comply with these criteria, we direct PJM to file OATT revisions to comply with these criteria.

254. In response to LS Power, we note that PJM's proposal allows PJM to hold a competitive solicitation for Immediate-need Reliability Projects if, in PJM's judgment,

⁴⁵² PJM October 25 Filing, Docket No. ER13-198-000, at 58.

⁴⁵³ PJM, Intra-PJM Tariffs, OA, Schedule 6, Definitions (I-L), § 1.15A (1.0.0); *see also* PJM, Intra-PJM Tariffs, OATT, Definitions (I-L), § 1.14A.001 (1.0.0).

there is sufficient time. For those reliability needs that are too immediate to accommodate a competitive solicitation, as explained above we find that PJM's proposal, with the modifications required above, strikes a reasonable balance. We therefore decline LS Power's suggestion to amend the definition of Immediate-need Reliability Projects to require that such projects also must be "local" as defined by Order No. 1000. In the limited circumstances described above, assignment of a transmission project that is selected in the regional transmission plan for purposes of cost allocation complies with the requirements of Order No. 1000 with respect to elimination of federal rights of first refusal from Commission-jurisdictional agreements and tariffs.

255. Accordingly, we direct PJM to file, within 120 days of the date of issuance of this order, a further compliance filing to include the following: (1) an explanation of why part (ii) of its definition for Immediate-need Reliability Projects is necessary; (2) an explanation of how, in making its decision, it will implement the factors included in part (ii) of its definition for Immediate-need Reliability Projects; and (3) a demonstration of how the definition and procedures related to Immediate-need Reliability Projects comply with criteria two through five discussed above; or if such a demonstration is not possible, revisions to the definition and procedures related to an Immediate-need Reliability Project to comply with those criteria.

b. Qualification Criteria

256. Order No. 1000 requires each public utility transmission provider to revise its OATT to demonstrate that the regional transmission planning process in which it participates has established appropriate qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, whether that entity is an incumbent transmission provider or a nonincumbent transmission developer.⁴⁵⁴ Appropriate qualification criteria must be fair and not unreasonably stringent when applied to either the incumbent transmission provider or nonincumbent transmission developer.⁴⁵⁵ These criteria must not be unduly discriminatory or preferential and must provide each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate, and maintain transmission facilities.⁴⁵⁶

⁴⁵⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 225, 323.

⁴⁵⁵ *Id.* P 324.

⁴⁵⁶ *Id.* P 323.

257. The qualification criteria should also allow for the possibility that an existing public utility transmission provider already satisfies the criteria.⁴⁵⁷ There must be procedures in place for timely notifying transmission developers of whether they satisfy the region's qualification criteria and opportunities to remedy any deficiencies.⁴⁵⁸ In addition, the qualification criteria should not be applied to an entity proposing a transmission project for consideration in the regional transmission planning process if that entity does not intend to develop the proposed transmission project.⁴⁵⁹

258. The Commission clarified in Order No. 1000-A that it would be an impermissible barrier to entry to require, as part of the qualification criteria, that a transmission developer demonstrate that it has, or can obtain, state approvals necessary to operate in a state, including state public utility status and the right to eminent domain, to be eligible to propose a transmission facility.⁴⁶⁰

i. PJM Parties' Filings

259. PJM states that within its proposed sponsorship model,⁴⁶¹ to pre-qualify as a Designated Entity⁴⁶² and, thus, to be eligible to be designated rights (i.e., the responsibility to construct, own, operate, maintain, and finance) to a project that is selected in PJM's regional transmission planning process for the purposes of cost allocation, all entities must apply on an annual basis during the pre-qualification window by submitting the information required in Schedule 6, section 1.5.8(a).⁴⁶³ PJM states that this pre-qualification window will occur prior to the opening of a proposal window.⁴⁶⁴ PJM proposes that the pre-qualification demonstration may include, but is not limited to:

⁴⁵⁷ *Id.* P 324.

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.* P 324 n.304; Order No. 1000-A, 139 FERC ¶ 61,132 at P 439 n.520.

⁴⁶⁰ Order No. 1000-A, 139 FERC ¶ 61,132 at P 441.

⁴⁶¹ PJM October 25 Filing, Docket No. ER13-198-000, at 13.

⁴⁶² *See* PJM October 25 Filing, Docket No. ER13-198-000, at 49 n.144 (citing PJM, Intra-PJM Tariffs, OATT, Definitions (C-D), § 1.7A (1.0.0)); *see also* PJM, Intra-PJM Tariffs, OA, Definitions (C-D), § 1.9A (3.0.0) (Designated Entity).

⁴⁶³ PJM October 25 Filing, Docket No. ER13-198-000, at 63; *see also* PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(a) (Pre-Qualification Requirements) (3.0.0).

⁴⁶⁴ PJM October 25 Filing, Docket No. ER13-198-000, at 63.

(1) identifying information about the entity including, as used here, its affiliate, partner, or parent company; (2) the entity's technical and engineering qualifications, experience, previous record, capability to adhere to industry standards, ability to remedy emergency situations, and experience in acquiring rights of way; and (3) the entity's financial liquidity.⁴⁶⁵ During a proposal window, stakeholders may propose potential enhancements or expansions to address transmission system needs that PJM has posted.⁴⁶⁶ Only entities that have pre-qualified to be a Designated Entity may be considered by PJM in its determination for a Short-term or Long-lead Project that is recommended for inclusion in the plan for the purposes of cost allocation.⁴⁶⁷ PJM states that it must notify the applying entity prior to the opening of the next project proposal window as to whether or not the entity pre-qualified as a Designated Entity for purposes of submitting a proposal. PJM also states that if it determines that the entity is not qualified, PJM must state the basis for its determination.

260. If an entity is determined not qualified, PJM further states that an entity may subsequently submit additional information for reevaluation to qualify as a Designated Entity. PJM states that it must notify the entity prior to the opening of the next transmission project proposal window as to whether or not the entity cured the deficiency and pre-qualified as a Designated Entity. If the entity still did not pre-qualify, the entity may request dispute resolution. Further, PJM notes that an entity may pre-qualify outside the annual qualification window for good cause, as determined by PJM.

ii. Protests/Comments

261. Duquesne Light Company states that the qualification process for a Designated Entity is thorough but fair and is necessary to ensure that a proposed Designated Entity will have the requisite financial and technical resources to construct, own, and operate transmission facilities for PJM to make an informed decision.⁴⁶⁸ Duquesne Light Company further states that the Designated Entity must be focused not just on securing the construction project but on system reliability for the future, beyond a project's completion and cost recovery. New Jersey Board recommends that PJM further refine the three categories of necessary information that an entity must submit to prequalify for

⁴⁶⁵ PJM October 25 Filing, Docket No. ER13-198-000, at 64.

⁴⁶⁶ PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(b) (Posting of Transmission Needs) (3.0.0).

⁴⁶⁷ PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(f) (Entity-Specific Criteria Considered in Determining the Designated Entity for a Project) (3.0.0).

⁴⁶⁸ Duquesne Light Company Comments, Docket No. ER13-198-000, at 4.

consideration to “win” a competitively bid project as the Designated Entity, so as to ensure that only proficient, qualified companies are selected to build transmission projects.⁴⁶⁹

262. Exelon states that PJM appropriately requires consideration of an entity’s capability for emergency response and restoration of damaged equipment. Specifically, Exelon asserts that these capabilities should include: (1) the ability to perform timely emergency repairs on transmission lines and substations, including testing to ensure that the equipment can be returned to service; (2) maintenance of a sufficient inventory of spare parts, spare structures, and other spare equipment that is available for prompt use in an emergency; (3) the ability to perform major rebuilding of structures following major damage such as can result from a major weather event; and (4) the ability to coordinate restoration efforts with neighboring and interconnected transmission owners, including timely sharing of operational data. Exelon contends that requiring both incumbents and nonincumbents to maintain emergency response and restoration capability will help ensure system reliability and create a level playing field for all transmission owners.⁴⁷⁰

263. LS Power generally believes that PJM’s proposed qualification criteria meet the standard of not being unduly discriminatory or unreasonable. LS Power states that the focus on the qualification review on the “entity or its affiliate, partner, or parent company” provides the needed flexibility for PJM to evaluate a variety of corporate structures that might seek qualification. However, LS Power proposes a few clarifying comments to the proposed qualification criteria. First, in section 1.5.8(a)(ix) of Schedule 6, LS Power proposes to broaden this language to allow consideration of the experience of the entity’s affiliate, partner, or parent company in acquiring rights of way. Second, while LS Power does not object to submitting information regarding the ability of a prospective developer to construct, maintain and operate transmission facilities as requested in section 1.5.8(a)(iii), it proposes modifying this section to make it clear that lack of transmission experience is not an automatic disqualification of a prospective developer. LS Power contends that providing information consistent with Commission precedent from the gas pipeline and hydroelectric facilities industries is appropriate.⁴⁷¹

⁴⁶⁹ New Jersey Board Comments, Docket No. ER13-198-000, at 7-8.

⁴⁷⁰ Exelon Comments, Docket No. ER13-198-000, at 6-7.

⁴⁷¹ LS Power Protest, Docket No. ER13-198-000, at 17-19. LS Power states that the exact language is that applicant “[m]ust show that it has the ability to construct and operate the project, which includes the ability to hire contractors to construct and operate.” (citing 18 C.F.R. Part 4.30, *et seq.*).

264. Further, LS Power asserts that the detailed nature of the “pre-qualification” criteria of section 1.5.8(a) of Schedule 6 make them *qualification* criteria, as the “pre-qualification” criteria are more than adequate and complete for determining whether an entity is qualified to develop, build, own, and operate transmission under the requirements of Order No. 1000.⁴⁷² LS Power asserts that the reason it is significant whether PJM is qualifying or “pre-qualifying” an entity is apparent in section 1.5.8(f), which sets forth PJM’s “Sponsorship Model”. In section 1.5.8(f), LS Power contends that PJM proposes “super-qualification” criteria that will be used to determine the ultimate Designated Entity to construct and own its project selected in the plan. LS Power argues that all qualifications should be undertaken before the project submission window and therefore objects to the vast additional “super-qualification” criteria established by PJM as a means to provide PJM with unfettered discretion in selecting the Designated Entity and undercut the *Primary Power* mandates under which PJM currently operates.⁴⁷³ LS Power states that the inclusion of criteria such as “any other factors that may be relevant to the proposed project” heightens this concern.⁴⁷⁴ While LS Power states that it does not object to the qualification criteria or requirements to be submitted with a project proposal, it argues that the proposed Schedule 6 language is not consistent with the *Primary Power* precedent that the entity proposing the regional project must be assigned the project, unless PJM can adequately justify denying the sponsor of the project the right to construct and receive the economic benefit of the project.⁴⁷⁵ LS Power states it is seeking to compete on a level playing field and contends that PJM’s approach could have a potential chilling effect on potential transmission developers pursuing innovative solutions.⁴⁷⁶

265. LS Power contends that two aspects of the language in section 1.5.8(j) of Schedule 6, which provides the requirements for a party to be deemed a Designated Entity, are vague. First, LS Power objects to the call for a letter of credit to be posted within 60 days of becoming the Designated Entity in section 1.5.8(j)(ii) because: (1) LS Power does not understand how one calculates “the incremental costs of construction resulting from (potential) reassignment” when the project has not been developed and certainly has not failed to meet any milestones; and (2) it is not clear if this language applies to incumbent transmission owners upon assignment of projects to

⁴⁷² *Id.* at 19 (emphasis added).

⁴⁷³ *Id.* at 19-20.

⁴⁷⁴ *Id.* at 21.

⁴⁷⁵ *Id.* at 22.

⁴⁷⁶ *Id.* at 23-24.

them. Second, LS Power objects to the requirement related to the Designated Entity's executed agreement with PJM in section 1.5.8(j)(iii) as vague and requests that the Commission should also clarify that any such agreement should be consistent with and no more onerous than the CTOA. LS Power also contends that the language should be revised to make clear that the provision applies equally to new entrants and incumbents, or it should be struck.⁴⁷⁷

266. LS Power objects to the consideration of existing rights of way as a selection criterion, except in specific circumstances. LS Power asserts that the important point here is not the law of rights of way, but the fact that PJM has no way of knowing the nature of those rights, or of valuing them, and that in most instances, a sponsor's use of an existing right of way is not "exclusive" as long as a secondary use does not infringe on the initial use.⁴⁷⁸ If the Commission nevertheless allows PJM to continue its practice to consider existing rights of way as a "key" selection criterion, LS Power proposes to include them as a selection factor only under the following parameters: (1) the entity must control 100 percent of the rights of way needed for the proposed project length; (2) the entity, to the extent it seeks cost recovery for acquiring the existing rights of way, should affirmatively state that those costs are included in its cost estimate for comparison purposes; (3) the entity should also include any incremental costs associated with utilizing those existing rights of way; and (4) even if a party has 100 percent of the proposed land needed for a project, rights of way cannot be a selection factor if a federal environmental impact statement is required for any portion of the route.⁴⁷⁹

267. PJM IMM states that the current sponsorship model does not ensure that transmission projects are built at the least cost, as it requires the Commission to rely on the traditional cost of service approach that it has found inadequate for regulating supply. PJM IMM states that once PJM has selected the projects to develop through the RTEP process, "PJM should select the source of capital based on a competitive process rather than the traditional cost of service and/or incentive rate."⁴⁸⁰ PJM IMM believes that competitive procurement of capital could attract nonincumbents to provide capital for all projects included in the RTEP and avoid the difficult issue of who holds title to a project and who constructs a project.⁴⁸¹ PJM IMM further states that this compliance proceeding

⁴⁷⁷ *Id.* at 31-32.

⁴⁷⁸ *Id.* at 33-34.

⁴⁷⁹ *Id.* at 35-36.

⁴⁸⁰ PJM IMM Comments, Docket No. ER13-198-000, at 4.

⁴⁸¹ *Id.* at 5-6.

presents an opportunity for the Commission to direct PJM to develop a process for pricing transmission projects consistent with competition. PJM IMM contends that competition among suppliers of capital willing to bear investment risks at least cost would allow the Commission to facilitate the robust transmission system that it has determined the nation needs, at substantially lower cost than would otherwise be possible.⁴⁸²

268. PJM IMM asserts that if the proposal to adopt the competitive financing model is not accepted, then the *Primary Power* sponsorship model still requires substantial improvement. PJM IMM argues that allowing incumbents to hold out proposals until very late in the process, even after PJM approves a competing project, allows incumbents the opportunity to oppose a project in the RTEP and to offer a competing proposal only when it is clear that some project addressing a system issue will go forward, and asserts that the timeframe for proposing and considering projects should be redesigned to discourage such stratagems.⁴⁸³

269. Duke supports PJM's proposal to adopt a sponsorship model for regional transmission planning. Duke states that the proposed sponsorship model incentivizes creative solutions while providing the opportunity to consider cost in all selections. Thus, Duke asserts, the sponsorship model is likely to result in more creative, lower-cost projects than the competitive bidding model and will ultimately lead to the most long-term value and benefit to transmission customers in the region.⁴⁸⁴

iii. Answer

270. PJM avers that its pre-qualification and qualification criteria assure that the nonincumbent or incumbent has the expertise and financial resources to develop, construct, own, operate, and maintain transmission facilities to be included in the regional plan for purposes of regional cost allocation.⁴⁸⁵ PJM takes issue with LS Power's suggestion that a developer demonstrate that it is qualified before the project submission window opens. PJM contends that its approach "will facilitate more nonincumbent developer participation in, and less exclusion from, the competitive process," while LS

⁴⁸² *Id.* at 7.

⁴⁸³ *Id.* at 7-9.

⁴⁸⁴ Duke Comments, Docket No. ER13-198-000, at 3-5.

⁴⁸⁵ PJM Answer, Docket No. ER13-198-000, at 49-50; *see also id.* at 50 (discussing sections 1.5.8(a) (general pre-qualification criteria) and 1.5.8(f) (qualification criteria for a specific project)).

Power's approach "would be unfair and could chill participation by nonincumbent developers."⁴⁸⁶ Further, PJM maintains that its qualification criteria neither minimize the requirement in *Primary Power* that PJM adequately justify any denial of a project sponsor to construct the project, nor give PJM "unfettered discretion," notwithstanding PJM's consideration of "any other [relevant] factor" in its determination of whether a developer is qualified.⁴⁸⁷

271. PJM clarifies that the letter of credit requirement applies to all Designated Entities. PJM explains that the letter of credit provides a degree of certainty that costs related to reassignment can be recovered if a project is abandoned or there is a material default. PJM also clarifies that the Designated Entity Agreement will be developed through the stakeholder process and, if required by the FPA and Commission regulations, will be filed with the Commission for acceptance. PJM asserts that any agreement developed for this purpose will be non-discriminatory and treat similarly situated Designated Entities (i.e., incumbents and nonincumbents) similarly.⁴⁸⁸

272. PJM disputes PJM IMM's comments on the competitive procurement of capital. First, PJM asserts that it has demonstrated that its proposed competitive solicitation process, as is, complies with Order No. 1000, and is just and reasonable. Second, PJM argues that the PJM IMM proposal is outside the scope of Order No. 1000 because it is an entirely different paradigm of competitive solicitation than was ever proposed in the Commission deliberations on Order No. 1000, or the stakeholder deliberations on PJM's compliance filing. Moreover, PJM asserts that the regulator will determine the reasonableness of the cost of a project, when the developer seeks approval for cost recovery, and it is not the role of the transmission provider to make this determination or usurp the Commission's role in ensuring just and reasonable rates for transmission projects. Third, PJM states that it should not be required to modify its October 25 Filing to include a completely different construct, one which was not vetted in the stakeholder process and is not contemplated by Order No. 1000.⁴⁸⁹

⁴⁸⁶ *Id.* at 50, 51 ("PJM's proposal will permit more diverse nonincumbent developers to qualify.").

⁴⁸⁷ *Id.* at 51-52 (referring to the criteria listed in section 1.5.8(f)).

⁴⁸⁸ *Id.* at 58-60.

⁴⁸⁹ *Id.* at 65-67.

iv. **Commission Determination**

273. We find that PJM’s proposal partially complies with Order No. 1000’s directives regarding the criteria by which incumbent and nonincumbent transmission developers may qualify to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation. Therefore, we conditionally accept PJM’s proposed criteria subject to further compliance as discussed below.

274. LS Power contends that PJM’s proposed Schedule 6 language conflicts with the *Primary Power* precedent through its “super-qualification” criteria needed to become a Designated Entity. Specifically, LS Power argues that through the Schedule 6 “super-qualification” criteria, PJM has discretion to deny a project sponsor’s qualification as a Designated Entity and re-assign a nonincumbent transmission developer’s project to an incumbent transmission owner, thus denying the sponsor its right to construct its project, contrary to *Primary Power*. Further, LS Power argues that PJM does not have to justify its action if it finds the project sponsor does not fulfill the qualification criteria. LS Power contends that this is contrary to the Commission’s requirement in *Primary Power*, requiring that the sponsor build the project and that PJM justify its action if it denied the project sponsor the right to build.⁴⁹⁰ We disagree. These “super-qualification” criteria apply to both incumbent transmission owners and nonincumbent transmission owners, and so nonincumbent transmission owners are treated no differently than incumbent transmission owners. In Order No. 1000-A, we addressed LS Power’s very request for rehearing on these issues, declining to require public utility transmission providers in a region to adopt an ongoing sponsorship process, as potentially adversely impacting the regional planning process. In Order No. 1000-A, we further rejected LS Power’s request for adequate justification of the selection, noting that this requirement was met through Order No. 890 planning principles.⁴⁹¹ Further, we disagree with LS Power that the qualification process should cease immediately following the closing of the transmission project submission window. We find it reasonable for PJM to continue its evaluation process beyond the point where PJM selects the applying entity as the Designated Entity for a specific transmission project.

275. However, we further find that some of PJM’s proposed criteria, requiring that a Designated Entity provide a letter of credit and sign a Designated Entity Agreement that outlines a Designated Entity’s rights and responsibilities, are vague.

276. First, we find that the qualification criteria proposed by PJM, as clarified and modified below, are not unduly discriminatory or preferential. The proposed criteria in

⁴⁹⁰ LS Power Docket No. ER13-198-000, at 19-24.

⁴⁹¹ Order No. 1000-A, 139 FERC ¶ 61,132 at PP 449-451, 455-456.

section 1.5.8(a) of Schedule 6 provide PJM with information to determine whether an entity is generally qualified to develop, construct, maintain and operate a transmission facility, while the proposed criteria in section 1.5.8(c) provide PJM with information to determine whether an entity is qualified to develop, construct, maintain and operate a specific transmission facility. All entities must meet the pre-qualification criteria as a Designated Entity on an annual basis, while section 1.5.8(c) addresses the qualification criteria for an entity proposing specific transmission projects during a proposal window. Therefore, we direct PJM to file to clarify that these proposed criteria apply to both incumbent transmission owners and nonincumbent transmission developers.

277. LS Power raises several issues with the language in section 1.5.8 of Schedule 6. LS Power suggests that the Commission direct PJM to add "...entity or its affiliate, partner, or parent company" to section 1.5.8(a)(ix) as a clarification. When reading section 1.5.8(a)(ix) within the context of section 1.5.8(a), it appears the phrase, "... entity, its affiliate, partner, or parent company," is intended to apply throughout all of section 1.5.8(a). Accordingly, we direct PJM to file a further compliance filing that includes this phrase throughout all of section 1.5.8(a) or that demonstrates why such language should not be included in this particular provision.

278. We decline to require PJM to modify Schedule 6, section 1.5.8(a)(iii), to make it clear that lack of transmission experience is not an automatic disqualification of a prospective developer, as LS Power requests.⁴⁹² While we agree with LS Power that PJM should not disqualify an entity solely on this basis, we find that section 1.5.8(a)(iii) does not require PJM to make that determination. Moreover, section 1.5.8(a) provides that, in the event that PJM determines the entity is not qualified to be a Designated Entity, the entity has an additional 30 days to submit additional information that PJM shall consider in re-evaluating whether the entity is qualified to be a Designated Entity. Consequently, PJM's proposed revisions allow an incumbent or nonincumbent transmission developer, such as LS Power, recourse for reconsideration, should it be deemed by PJM as not to be qualified to be a Designated Entity. Therefore, we find that it is appropriate for PJM to consider the experience of an entity developing, constructing, maintaining and operating transmission facilities as part of its determination of whether an entity should be pre-qualified as a Designated Entity. In addition, we note that in this evaluation process, PJM must also consider an entity's contracts with third parties to develop, construct, maintain and/or operate transmission facilities in making this determination. Consideration of contracts with third parties to carry out these functions for a transmission project that is selected in the plan for purposes of cost allocation is consistent with PJM's Schedule 6, which states that "...Transmission Owners designated as the appropriate entities to construct, own and/or finance enhancements or expansions

⁴⁹² LS Power Protest, Docket No. ER13-198-000, at 18-19.

specified in the [RTEP] shall construct, own and/or finance such facilities *or enter into appropriate contracts to fulfill such obligations.*”⁴⁹³

279. However, we find that the PJM October 25 Filing and the proposed Schedule 6 revisions are vague as to the how the pre-qualification window for an entity to qualify as a Designated Entity interacts with PJM’s proposed competitive solicitation process. PJM’s proposed revisions to Schedule 6 state simply that PJM will make a determination as to whether an entity is qualified to be a Designated Entity and notify the entity, “prior to the next proposal window.”⁴⁹⁴ PJM also includes similar language in the event that it determines that an entity is not qualified to be a Designated Entity and allows the entity to submit additional information for PJM to consider in reevaluating whether the entity is qualified to be a Designated Entity. PJM will notify the entity of the results of this reevaluation “within 15 business days of receiving the additional information or such other reasonable time period as needed by [PJM] to make the determination [...] *prior to the opening of the next project proposal window.*”⁴⁹⁵ Therefore, we direct PJM to make a further compliance filing, within 120 days of issuance of this order, to clarify the interaction between, and timeline of: (1) the pre-qualification window; (2) the reevaluation of an entity’s pre-qualification; and (3) the proposed Short-term and Long-lead Project proposal windows. Such clarification must include, but is not limited to, which proposal window PJM is referring to when it states in its proposed revisions that its determinations regarding whether an entity is qualified to be Designated Entity in both the first instance and in PJM’s reevaluation of its decision that an entity is not qualified to be a Designated Entity, must be made, “prior to the *next* proposal window.”⁴⁹⁶

280. Additionally, we further find that the language in section 1.5.8(j) of Schedule 6 is vague, and direct PJM to submit a compliance filing to clarify that regardless whether a Designated Entity is an incumbent transmission developer or a nonincumbent transmission developer, an entity that accepts its designation as a Designated Entity must submit to the Office of Interconnection within 60 days of becoming the Designated Entity: (1) a letter of credit; (2) an executed agreement; and (3) construction and state approval milestones. When reading section 1.5.8(j) in conjunction with section 1.5.8(k), we find that the provision to provide a letter of credit applies to all Designated Entities,

⁴⁹³ PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.7 (Obligation to Build) (1.0.0) (emphasis added).

⁴⁹⁴ PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(a) (Pre-qualification Requirements) (3.0.0).

⁴⁹⁵ *Id.* (emphasis added).

⁴⁹⁶ *Id.* (emphasis added).

whether or not they are incumbent transmission developers or nonincumbent transmission developers, but believe revisions to 1.5.8(j) consistent with PJM's clarification in its answer will forestall any future ambiguity. For similar reasons, we interpret the provision for the Designated Entity to submit an executed agreement to PJM within 60 days of receiving notification of its designation as Designated Entity to apply equally to incumbent transmission developers. PJM asserts that any Designated Entity Agreement developed through the stakeholder process will treat similarly-situated Designated Entities in a non-discriminatory manner. Moreover, we direct PJM to submit any such *pro forma* Designated Entity Agreement for review by the Commission.

281. PJM IMM requests that the Commission require PJM to implement a competitive process for the procurement of capital. We find this request to be beyond the scope of this proceeding.

282. Finally, Duquesne Light Company, New Jersey Board, and Exelon propose additional expansions and refinements of the proposed criteria for pre-qualifying as a Designated Entity. We find that these proposals are not necessary to ensure that PJM's proposed qualification criteria are not unduly discriminatory or preferential. While we do not adopt these expansions and refinements here, parties may raise such recommendations to PJM through the stakeholder process.

283. Accordingly, we direct PJM to file, within 120 days of the issuance of this order, a further compliance filing to clarify that the proposed criteria discussed above apply to both incumbent transmission owners and nonincumbent transmission developers, as directed.

c. Information Requirements

284. Order No. 1000 requires that each public utility transmission provider revise its OATT to identify the information that a prospective transmission developer must submit in support of a transmission project the developer proposes in the regional transmission planning process.⁴⁹⁷ The public utility transmission provider must identify this information in sufficient detail to allow a proposed transmission project to be evaluated in the regional transmission planning process on a basis comparable to other transmission projects that are proposed in this process.⁴⁹⁸ The information requirements must not be so cumbersome that they effectively prohibit transmission developers from proposing transmission projects, yet not be so relaxed that they allow for relatively unsupported

⁴⁹⁷ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 325.

⁴⁹⁸ *Id.* P 326.

proposals.⁴⁹⁹ They may require, for example, relevant engineering studies and cost analyses and may request other reports or information from the transmission developer that are needed to facilitate evaluation of the transmission project in the regional transmission planning process.⁵⁰⁰

285. Each public utility transmission provider must also revise its OATT to identify the date by which information in support of a transmission project must be submitted to be considered in a given transmission planning cycle.⁵⁰¹ Each transmission planning region may determine for itself what deadline is appropriate and may use rolling or flexible dates to reflect the iterative nature of their regional transmission planning process.⁵⁰²

i. PJM Parties' Filings

286. PJM states that during the proposal windows for Short-term and Long-lead Projects and Immediate-need Reliability Projects, entities may submit proposals for potential enhancements or expansions to address the posted violations, constraints, system conditions and public policy requirements. Proposals must include the following information: (1) the name and address of the proposing entity; (2) a statement whether the entity intends to be the Designated Entity for the proposed project; (3) the location of proposed project, including source and sink, if applicable; (4) relevant engineering studies, and other relevant information as described in the PJM Manuals pertaining to the proposed project; (5) a proposed initial construction schedule including projected dates on which needed permits are required to be obtained in order to meet the required in-service date; and (6) cost estimates and analyses that provide sufficient detail for the Office of Interconnection to review and analyze the proposed cost of the project.⁵⁰³

287. PJM states that if an entity wants to be the Designated Entity for a project that it proposes, it must have pre-qualified to be a Designated Entity and must submit, to the extent not previously provided in the pre-qualification application, more detailed information specific to the scope of the project proposal. PJM also states that it may request any additional reports or information needed to evaluate the specific project proposal. Information provided in response to PJM's request for additional information

⁴⁹⁹ *Id.*

⁵⁰⁰ *Id.*

⁵⁰¹ *Id.* P 325.

⁵⁰² *Id.* P 327.

⁵⁰³ PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(c)(1) (Posting and Review of Projects) (3.0.0).

may only be used to clarify the proposed project, not to submit a new project or modify the existing project once the project window has closed. If the proposing entity fails to provide the additional information in the time required, the proposed project will not be considered for inclusion in the recommended plan.⁵⁰⁴

288. PJM states that after the close of the proposal window(s), PJM will post all the submitted proposals. PJM further states that all of the submitted proposals that address state public policy requirements will be provided to the applicable states for review and consideration as either a Supplemental Project or a state public policy project.⁵⁰⁵

ii. Protests/Comments

289. Duquesne Light Company does not fully support section 1.5.8(i) of Schedule 6, because it does not believe that PJM should be the entity to provide the dates by which all necessary approvals must be obtained in section 1.5.8(i). Duquesne Light Company contends that the Designated Entity is in the best position to ascertain the required approvals in each state and when the required approvals should be obtained in order to meet the required in-service date. Therefore, Duquesne requests that if PJM provides the date by which the required approvals must be obtained under section 1.5.8(i), PJM's report should be superseded by the Designated Entity's construction milestones it subsequently provides to PJM pursuant to section 1.5.8(j). Alternatively, Duquesne Light Company recommends that the requirement of dates by which all necessary state approvals must be obtained be stricken from the notification of Designated Entity in section 1.5.8(i), because it is addressed as a milestone provided by the Designated Entity in section 1.5.8(j). Duquesne Light Company states that the purpose of its proposed changes is for PJM to base the deadlines and milestones on the best available information, and either approach is consistent with PJM's planning schedule and is consistent with Order No. 1000-A requirements.⁵⁰⁶

290. LS Power generally agrees with PJM that an entity submitting a project proposal in the proposal window should not be allowed to submit a new project proposal or modifications to a proposed project once the proposal window is closed. LS Power asserts, however, that if PJM changes the assumptions posted in Schedule 6, section 1.5.8(b), modifications should be allowed. LS Power reasons that there is often

⁵⁰⁴ PJM October 25 Filing, Docket No. ER13-198-000, at 65-67; *see also* PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(c)(4) (3.0.0).

⁵⁰⁵ PJM October 25 Filing, Docket No. ER13-198-000, at 67; *see also* PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(d) (3.0.0).

⁵⁰⁶ Duquesne Light Company Comments, Docket No. ER13-198-000, at 6-7.

significant back and forth between the project sponsor and PJM and asserts that it is only reasonable to prohibit modifications if PJM agrees to not change the assumptions.⁵⁰⁷ LS Power proposes the following specific language for section 1.5.8(c)(4):

In response to the Office of 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 unless PJM changes its assumptions or tariff after the posting of transmission system needs in Section 1.5.8(b). Any change in PJM assumptions or models shall be posted promptly to allow for reasonable modification to proposals.⁵⁰⁸

291. New Jersey Board asks that PJM clarify the specific information required when an entity seeks to pre-qualify as a transmission developers. New Jersey Board states that with respect to the evolving right of first refusal, PJM addresses the requirements for an entity to prequalify for consideration to “win” a competitively bid transmission project. PJM list three categories of necessary information “including but not limited to: (1) identifying information about the entity wishing to be designated; (2) the entity’s technical and engineering qualifications, experience, previous record, capability to adhere to industry standards, ability to remedy emergency situations and experience in acquiring rights of way; and (3) the entity’s financial liquidity.”⁵⁰⁹ New Jersey Board recommends that PJM further refine the specific information to be requested by PJM, so as to ensure only proficient, qualified companies are selected to build transmission projects.⁵¹⁰

iii. Answer

292. PJM states that Duquesne Light Company’s suggestion to eliminate the requirement that PJM provide the date by which all necessary state approvals must be obtained would be inconsistent with Order No. 1000-A. PJM explains that, in Order No. 1000-A, the Commission specifically requires that:

once [a project] is selected, the public utility transmission providers in a transmission planning region must establish a

⁵⁰⁷ LS Power Protest, Docket No. ER13-198-000, at 28-29.

⁵⁰⁸ *Id.* at 29.

⁵⁰⁹ New Jersey Board Comments, Docket No. ER13-198-000, at 7 (citing PJM October 25 Filing, Docket No. ER13-198-000, at 46).

⁵¹⁰ *Id.* at 7-8.

date by which state approvals to construct must have been achieved that is tied to when construction must begin to timely meet the need that the project is selected to address.⁵¹¹

293. PJM argues that it, and not the Designated Entity, is the “public utility transmission provider” and is required to provide this date. Moreover, PJM asserts that it is in a good “position to ascertain the required approvals and when they should be obtained in order to meet the required in-service date” and it is appropriate that PJM determine this date to facilitate the on-going monitoring process of the selected project to ensure its timely completion.⁵¹²

294. Once the proposal window has closed, PJM states that modifications to proposals should not be permitted in order to, among other reasons, prevent giving an unfair advantage to those entities to which PJM merely directed a request for additional information (following the close of the window). PJM is not in favor of an additional process for unsponsored projects, as LS Power requests. PJM states that LS Power’s proposal ignores the fact that timeliness is an important factor in addressing reliability issues.⁵¹³ PJM states that it will only propose “unsponsored” projects, which PJM expects to become rare, when required to *timely* meet reliability needs.⁵¹⁴ According to PJM, more such process would add delay.

iv. Commission Determination

295. We conditionally accept PJM’s proposed “time-based” transmission project proposal process, finding that PJM’s proposal is compliant with the information requirement of Order No. 1000, subject to further clarification. Consistent with Order No. 1000, we find that PJM’s proposal identifies what information a transmission developer must submit regarding its proposed transmission project, and that this information allows for the evaluation of proposals on a comparable basis..

296. Regarding Duquesne Light Company’s proposal to revise or remove PJM’s obligation to provide the dates by which all necessary state approvals must be obtained, we find that PJM may need to determine such dates to ensure that sufficient time is available to determine when a project is experiencing delays and to conduct a

⁵¹¹ PJM Answer, Docket No. ER13-198-000, at 64.

⁵¹² *Id.* at 64-65.

⁵¹³ *Id.* at 54-56 (referring to LS Power’s comments on Schedule 6, sections 1.5.8(g) and 1.5.8(h)).

⁵¹⁴ *Id.* at 57 (emphasis in original).

reevaluation, thereby ensuring that the transmission project is completed by its needed in-service date. Nevertheless, in Order No. 1000-A, we required first that “the transmission developer of that transmission facility must submit a development schedule that indicates the required steps, such as granting of state approvals, necessary to develop and construct the transmission facility such that it meets the transmission needs of the region.”⁵¹⁵

PJM’s role in determining when the approvals need to be obtained then begins:

As part of the ongoing monitoring of the progress of the transmission project once it is selected, the public utility transmission providers in a transmission planning region must establish a date by which state approvals to construct must have been achieved that is tied to when construction must begin to timely meet the need that the project is selected to address.⁵¹⁶

297. In response to LS Power’s comments on PJM’s Schedule 6, section 1.5.8(c)(4), we note that PJM’s proposal permits it to extend the proposal windows for Long-lead and Short-term Projects in order to accommodate updated information regarding system conditions.⁵¹⁷ PJM also has the option of opening a new proposal if assumptions change after a proposal window closes. These options will provide the proposing entity additional time to submit a new proposal or modifications to a proposed project.

298. Accordingly, we direct PJM to file, within 120 days of the issuance of this order, a further compliance filing to revise Schedule 6, section 1.5.6, to clarify that PJM’s intended use of dates by which all necessary state approvals must be obtained is part of its ongoing monitoring of progress of the estimated construction schedules, consistent with Order No. 1000-A.

d. Evaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation

299. Order No. 1000 requires each public utility transmission provider to amend its OATT to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for

⁵¹⁵ Order No. 1000-A, 139 FERC ¶ 61,132 at P 442.

⁵¹⁶ *Id.*

⁵¹⁷ PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(c) (Development of Long-lead Projects, Short-term Projects, and Immediate-need Reliability Projects) (3.0.0).

purposes of cost allocation.⁵¹⁸ Public utility transmission providers should both explain and justify the non-discriminatory evaluation process proposed in their compliance filings.⁵¹⁹

300. The evaluation process must ensure transparency and provide the opportunity for stakeholder coordination.⁵²⁰ The public utility transmission providers in a transmission planning region must use the same process to evaluate a new transmission facility proposed by a nonincumbent transmission developer as it does for a transmission facility proposed by an incumbent transmission developer.⁵²¹ When cost estimates are part of the selection criteria, the regional transmission planning process must scrutinize costs in the same manner whether the transmission project is sponsored by an incumbent or nonincumbent transmission developer.⁵²² The evaluation process must culminate in a determination that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.⁵²³

i. PJM Parties' Filings

301. PJM describes the process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation in Schedule 6. PJM states that it will evaluate all project proposals submitted to address posted transmission needs during a proposal window. Following the close of the proposal window, PJM states that it will post on its website all submitted proposals and evaluate and select, for review by the TEAC, those projects determined to provide the more efficient or cost-effective solutions based on the criteria detailed in section 1.5.8(e) and (f).⁵²⁴ These criteria include: (1) the extent to which a posted violation, system

⁵¹⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328, *order on reh'g*; Order No. 1000-A, 139 FERC ¶ 61,132 at P 452.

⁵¹⁹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 268.

⁵²⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328, *order on reh'g*; Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

⁵²¹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

⁵²² *Id.* P 455.

⁵²³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328, *order on reh'g*; Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

⁵²⁴ PJM October 25 Filing, Docket No. ER13-198-000, at 67-68.

condition, or economic constraint is addressed; (2) whether the relative benefits meet a Benefit/Cost Ratio Threshold of at least 1.25:1; (3) the extent to which there are secondary benefits, such as addressing additional system reliability, operational performance, economic efficiency issues, or federal or state public policy requirements; and (4) other factors such as: (i) cost effectiveness; (ii) the ability to timely complete the project; (iii) project development feasibility; (iv) and the potential risk and delay associated with obtaining necessary and timely regulatory approvals.⁵²⁵

302. PJM also proposes Schedule 6 revisions that detail the procedures that PJM will undertake if no Long-lead or Short-term Project proposals are determined to be the more efficient or cost effective solution to resolve a posted violation, system condition, or economic constraint.⁵²⁶ Ultimately, in each scenario, PJM states it would act as the backstop authority, proposing a project to solve a posted violation, system condition or economic constraint for inclusion in the RTEP, present the project to stakeholders for review and comment, and designate the project to the incumbent transmission owner(s) whose zone(s) the project is located in. PJM states that if none of the Long-lead Projects proposals submitted during the proposal window solve the identified violations, economic constraints, or system conditions and there is time to hold another proposal window for the unresolved violations, economic constraints, or system conditions, PJM shall include such transmission needs in another window for proposals. PJM states that if it determines there is not enough time to hold another proposal window for Long-lead Projects, or if none of the proposals submitted as a Short-term or Immediate-need Reliability Project solve the identified violations, economic constraints, or system conditions, PJM shall identify the project to solve the posted violations, economic constraint, or system condition and present such project to the TEAC for review and comment.⁵²⁷

303. PJM states that, consistent with Order No. 1000, these procedures provide an opportunity for a nonincumbent transmission developer to submit a project proposal through a proposal window and, if the project is included in the RTEP, to be designated construction, ownership, and financial responsibility for its proposed project.⁵²⁸ PJM

⁵²⁵ PJM October 25 Filing, Docket No. ER13-198-000, at 68. *See also* PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(e) (Criteria for Considering Inclusion of a Project in the Recommended Plan) (3.0.0).

⁵²⁶ *Id.* § 1.5.8(g) (Procedures if No Long-lead Project Proposal is Determined to be the More Efficient or Cost-Effective Solution), (h) (Procedures if No Short-term Project Proposal is Determined to be the More Efficient or Cost-Effective Solution) (3.0.0).

⁵²⁷ PJM October 25 Filing, Docket No. ER13-198-000, at 69-70.

⁵²⁸ *Id.* at 52.

also states that, considering this process is thoroughly vetted through the TEAC and the Subregional RTEP Committees and posted on the PJM website, the “completely transparent” process is sufficiently detailed for stakeholders to understand why a particular transmission project is selected or not selected in the RTEP for cost allocation purposes.⁵²⁹

304. Finally, PJM proposes revisions throughout its Schedule 6 to make clear that the test for selecting a project for inclusion in the plan for the purposes of cost allocation, with a few situational exceptions, results in a determination that the project is the most efficient or cost effective project.⁵³⁰

ii. Protests/Comments

305. LS Power protests that PJM’s proposed tariff revisions do not ensure a non-discriminatory proposal window and evaluation process.⁵³¹ It is concerned that dialogues between the incumbent transmission owner and PJM on possible solutions during the proposal window may permit discriminatory evaluation and selection of transmission solutions. LS Power proposes language to Schedule 6, section 1.5.8(c), that permits only public discussions between PJM and stakeholders during the proposal window and evaluation process, and requires that conversations initiated by PJM in order to obtain answer to questions to proposals be publically documented.

306. LS Power is concerned that while PJM’s proposal outlines several factors that it will use in order to determine the more efficient or cost effective solution, PJM’s Schedule 6 does not obligate it to use cost (e.g., how PJM will evaluate the relative economics and effectiveness of various proposals) as one of these factors. LS Power asserts that Order No. 1000 requires that cost-effectiveness be one of the criteria used to determine the most efficient or cost-effective solution.⁵³² Therefore, LS Power states that the Commission should order PJM to: (1) provide more specifics on the role of cost and cost-effective selection in its regional planning process; and (2) revise section 1.5.8(e)(iv)

⁵²⁹ *Id.* at 71.

⁵³⁰ *See, e.g.*, PJM, Intra-PJM Tariffs, OA, Schedule 6, §§ 1.5.6 (e) (2.0.0); 1.5.8(d) (Posting and Review of Projects), (e) (Criteria for Considering Inclusion of a Project in the Recommended Plan), (g), (h), (m)(2) (Immediate-need Reliability Projects) (3.0.0).

⁵³¹ LS Power Protest, Docket No. ER13-198-000, at 27.

⁵³² *Id.* at 24-25 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331 & n.307).

of Schedule 6 such that it is expanded to include cost-effectiveness as one of the factors that PJM must utilize to determine the more efficient or cost effective solution.⁵³³

307. PJM IMM contends that Schedule 6 should not permit project sponsors to recover costs in excess of the cost estimates used in the project selection process, or recovery should be limited to within a narrowly defined band to avoid arbitrary underbidding strategies. PJM IMM states that this approach would remedy the issues raised in *Primary Power*, where PJM cited lower costs for the basis of its selection, but there was and could be no actual support for that position. PJM IMM states that PJM's proposal should provide some assurance to sponsors that they will not be unfairly undercut, and should define what changes to a project are material to its remaining the same project or its becoming a different project.⁵³⁴

iii. Answer

308. With respect to transparency related to the proposal window and project evaluation processes, PJM "recognizes that reasonable rules will be necessary" to ensure such transparency but requests the Commission to "resist the invitation to micro-manage or require PJM to tariff every ministerial detail of the process of receiving and processing proposal solicitations."⁵³⁵ It states that such additional rules are best vetted through the stakeholder process and addressed in the PJM manuals.

309. Regarding LS Power's request that Schedule 6, section 1.5.8(e) include a requirement to look at project costs, PJM states that this proposal already includes "cost effectiveness" in the list of "other factors" to be considered in the evaluation process. To the extent that LS Power desires cost be favored as a criterion, PJM states that cost is not the only criterion, nor should it be the dispositive one. It notes that the cheapest transmission solution may not always be the most cost-effective or efficient solution. PJM states that it is the role of the Commission to ensure just and reasonable rates and there is no basis in law to shift this regulatory function to PJM. Regarding LS Power's request that "secondary benefits" be "clear and quantifiable benefits," PJM states that it must be able to look at secondary considerations that may not be quantifiable in dollars or

⁵³³ *Id.* at 25-26. LS Power states that it incorporates by reference those comments that are relevant for the discussion on cost-effective selection, from the extensive protest that LS Power submitted in the California Independent System Operator Corp.'s Order No. 1000 proceeding in Docket No. ER13-103-000. *See, id.* at 25 & n.42.

⁵³⁴ PJM IMM Comments, Docket No. ER13-198-000, at 3, 9-10.

⁵³⁵ PJM Answer, Docket No. ER13-198-000, at 54 (citation omitted).

megawatts if it is evaluating two proposals that perform equally in addressing potential reliability concerns.⁵³⁶

iv. Commission Determination

310. We find that PJM's proposal is generally consistent with the evaluation requirements of Order No. 1000 because we find that PJM's proposed evaluation criteria apply equally to transmission projects proposed by incumbent and nonincumbent transmission developers. We also find PJM's evaluation process to be transparent as PJM's evaluation of each proposed transmission project is vetted through the TEAC and the Subregional RTEP Committee, and posted on the PJM public website. However, we find that additional clarification is necessary regarding the evaluation of more efficient or cost-effective solutions. Therefore, we conditionally accept PJM's proposal subject to a further compliance filing.

311. We do not agree with LS Power's proposal that PJM only be permitted to conduct public discussions between PJM and stakeholders during the proposal window and evaluation process. We find that there are circumstances in which it would be prudent for PJM to keep confidential the substance of discussions with stakeholders, both incumbent and nonincumbent transmission developers. However, we believe that during the course of confidential discussions, the substance of the discussion may include information concerning the transmission project proposal process that would be beneficial for all stakeholders participating in the regional planning process. Therefore, we direct PJM in a further compliance filing, to propose a process and/or procedures whereby PJM will: (1) determine whether any generally applicable information regarding the transmission project proposal process is discussed in a confidential meeting; and (2) publicly provide that generally applicable information. We note that this directive is not intended to require PJM to make public any confidential, or commercially sensitive data, or any data that would be appropriately classified as Critical Energy Infrastructure Information (CEII). Commission-approved procedures currently in place governing the release of any such data would apply in this situation as with all other CEII that may be raised in the regional transmission planning process.⁵³⁷ It is important, however, that all stakeholders involved in the PJM regional transmission planning process are aware of useful information that may arise in discussions between PJM and a stakeholder relating to the transmission project proposal process.

⁵³⁶ *Id.* at 52-54.

⁵³⁷ *See, e.g.*, PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.4(d) (Supply of Data) (3.0.0).

312. PJM proposes to amend its existing evaluation process for economic-based enhancements or expansions so that it allows PJM to consider other factors in addition to the Benefit/Cost Ratio when determining whether to select an economic transmission project in the regional transmission plan for the purposes of cost allocation.⁵³⁸ We note, however, that PJM's proposal does not specify these other factors. This lack of specificity may permit PJM to use an unduly discriminatory evaluation process to select transmission projects in the regional transmission plan for purposes of cost allocation. Accordingly, we direct PJM to file, a further compliance filing to provide additional detail in its OATT about the other factors that will be used in the evaluation process.

313. Regarding LS Power's request that PJM propose additional Schedule 6 revisions specifically obligating it to consider cost-effectiveness in determining the more efficient or cost-effective transmission solutions, we note that, as proposed, PJM's Schedule 6 revisions provide that PJM shall consider the cost-effectiveness of a proposed transmission project, to the extent this factor is applicable, in determining whether a proposed transmission project is a more efficient or cost-effective transmission solution to regional transmission needs. However, while the Commission granted public utility transmission providers flexibility in developing the procedures to evaluate those transmission solutions that may meet the region's transmission needs more efficiently or cost-effectively, we note that the cost-effectiveness of a proposed transmission solution is fundamental to such evaluation. In Order No. 1000, the Commission stated that the criteria by which the public utility transmission provider will evaluate and select among competing transmission solutions and resources should include the relative economics and effectiveness of performance for each alternative offered for consideration.⁵³⁹ Therefore, we require PJM to further explain the circumstances, if any, under which a proposed transmission solution's cost-effectiveness would not be applicable in PJM's evaluation.

314. We disagree with PJM IMM that a cap on the recovery of costs of transmission projects that are selected in the regional transmission plan for purposes of cost allocation is necessary to ensure that transmission project sponsors are not unfairly undercut. We find PJM's answer that the letter of credit requirements apply equally to incumbent transmission owners as nonincumbent transmission developers helpful. This requirement will suppress the strategy to erroneously and excessively underbid a transmission project, because all Designated Entities including incumbent transmission owners and nonincumbent transmission developers will be required to provide a letter of credit in the amount of the difference between their bid and the next lowest bid from theirs.

⁵³⁸ PJM October 25 Filing, Docket No. ER13-198-000, app. I at 9 (referring to PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.7(d) (3.0.0)).

⁵³⁹ Order No. 1000, FERC Stats & Regs. ¶ 31,323 at P 315.

Transmission project cost estimates are dynamic and change often. We note that the initial transmission project cost estimates used in the regional transmission planning process are rough estimates put together early in the process, and transmission project costs can change significantly due to circumstances beyond the transmission developer's control such as fluctuating real estate values, changing prices for materials and commodities, routing changes/delays required by the federal, state and local regulatory approval for transmission project siting and permitting, or changes in the transmission project scope or configuration that result when transmission planning processes perform restudies to account for changes in economic and system conditions.⁵⁴⁰ We therefore decline to impose a generic limit on the recovery of legitimate and prudently-incurred costs that are incurred due to circumstances beyond the public utility's control for facilities used in service to meet public transmission needs.⁵⁴¹

e. **Reevaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation**

315. Each public utility transmission provider must amend its OATT to describe the circumstances and procedures under which public utility transmission providers in the regional transmission planning process will reevaluate the regional transmission plan to determine if delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation require evaluation of alternative transmission solutions, including those that the incumbent transmission provider proposes, to ensure the incumbent transmission provider can meet its reliability needs or service obligations.⁵⁴² If an evaluation of alternatives is needed, the regional transmission planning process must allow the incumbent transmission provider to propose transmission solutions that it would implement within its retail distribution service territory or footprint, and if that solution is a transmission facility, then the

⁵⁴⁰ We also note that PJM's proposed Schedule 6 revisions allow PJM to obtain information regarding the costs of a proposed transmission project. Such information includes the managerial ability of the proposing entity, its affiliate, partner, or parent company to contain costs. *See* PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(c)(2) (3.0.0). Further, PJM may request additional reports or information that it determines are reasonably necessary to evaluate a specific transmission project proposal. *See id.* § 1.5.8(c)(3) (3.0.0).

⁵⁴¹ Under *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944), public utilities are protected from confiscatory.

⁵⁴² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 263, 329, *order on reh'g*; Order No. 1000-A, 139 FERC ¶ 61,132 at P 477.

proposed transmission facility should be evaluated for possible selection in the regional transmission plan for purposes of cost allocation.⁵⁴³

i. PJM Parties' Filings

316. PJM states that, if a Designated Entity that has been selected to build a project that was accepted in PJM's regional transmission plan for the purposes of cost allocation fails to provide a development schedule, provide a letter of credit, or meet a milestone in its development schedule that delays a project's in-service date, PJM will reevaluate the need for the project.⁵⁴⁴ Based on that reevaluation, PJM states that it may: (1) retain the project in the RTEP; (2) remove the project from the RTEP; or (3) include an alternative solution.⁵⁴⁵ PJM further states that if it retains the project, it will determine whether to retain the Designated Entity or to designate the project to the incumbent transmission owner in the zone where the project is located. In the event an incumbent transmission owner is the Designated Entity, PJM states that it will seek recourse through the CTOA or the Commission, as appropriate. PJM states that all modifications to the RTEP will be presented to the TEAC and approved by the PJM Board.

ii. Protests/Comments

317. No protests or comments were filed.

iii. Commission Determination

318. We find that PJM's proposed reevaluation process for proposed transmission projects partially complies with the requirements of Order No. 1000. PJM's proposal clearly identifies the circumstances and procedures for when it will reevaluate transmission projects that are selected in the regional transmission plan for purposes of cost allocation, and for what purposes. We acknowledge that as a result of its reevaluation PJM may: (1) retain transmission projects in the RTEP; (2) remove transmission projects from the RTEP; or (3) include alternative solutions in the RTEP. We interpret that if PJM determines that it will include alternative solutions in the RTEP, PJM will utilize its proposed transmission project proposal process to evaluate and select alternative projects in the regional transmission plan for the purposes of cost allocation. However, we are concerned that the lack of description regarding how PJM will decide

⁵⁴³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329.

⁵⁴⁴ PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(k) (Failure of Designated Entity to Meet Milestones) (3.0.0).

⁵⁴⁵ PJM October 25 Filing, Docket No. ER13-198-000, at 72.

whether to retain the transmission project, remove the transmission project, or select an alternative transmission solution following such reevaluation may allow PJM too much discretion in making this determination. Accordingly, we conditionally accept PJM's proposal, subject to PJM making a subsequent compliance filing, within 120 days of the date of issuance of this order, providing an explanation of the basis upon which PJM will retain or remove a selected transmission project, or select an alternative transmission solution.

f. **Cost Allocation for Transmission Projects Selected in the Regional Transmission Plan for Purposes of Cost Allocation**

319. Order No. 1000 requires each public utility transmission provider to participate in a regional transmission planning process that provides that a nonincumbent transmission developer has an opportunity comparable to that of an incumbent transmission developer to allocate the cost of a transmission facility through a regional cost allocation method or methods.⁵⁴⁶ A nonincumbent transmission developer must have the same eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for purposes of cost allocation.⁵⁴⁷ If a transmission project is selected in a regional transmission plan for purposes of cost allocation, Order No. 1000 requires that the transmission developer of that transmission facility (whether incumbent or nonincumbent) must be able to rely on the relevant cost allocation method or methods within the region should it move forward with its transmission project.⁵⁴⁸

320. Order No. 1000 specifies that the regional transmission planning process could use a non-discriminatory competitive bidding process as the mechanism to ensure that all projects are eligible to be considered for selection in the regional transmission plan for purposes of cost allocation.⁵⁴⁹ A region may use or retain an existing mechanism that relies on a competitive solicitation to identify preferred transmission solutions to regional transmission needs, and such an existing process may require little or no modification to comply with the framework adopted in Order No. 1000.⁵⁵⁰ The regional transmission

⁵⁴⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 332.

⁵⁴⁷ *Id.*

⁵⁴⁸ *Id.* P 339.

⁵⁴⁹ *Id.* P 336.

⁵⁵⁰ *Id.* P 321.

planning process could allow the sponsor of a transmission project selected in the regional transmission plan for purposes of cost allocation to use the regional cost allocation method associated with the transmission project.⁵⁵¹ If it uses a sponsorship model, the regional transmission planning process would also need to have a fair and not unduly discriminatory mechanism to grant to an incumbent transmission provider or nonincumbent transmission developer the right to use the regional cost allocation method for unsponsored transmission facilities selected in the regional transmission plan for purposes of cost allocation.⁵⁵²

i. PJM Parties' Filings⁵⁵³

321. PJM Transmission Owners note that currently, Schedule 12 applies only to cost allocation of RTEP facilities constructed by PJM Transmission Owners. They state, however, that PJM may designate in the RTEP an entity that does not yet have transmission facilities in service to construct and own and/or finance a Required Transmission Enhancement.⁵⁵⁴ They further state that any entity owning transmission facilities in service that has transferred functional control over those facilities to PJM

⁵⁵¹ *Id.* P 336.

⁵⁵² *Id.*

⁵⁵³ PJM, as the Transmission Provider, is required to comply with Order No. 1000. However, Section 9.1 of the OATT provides that “The Transmission Owners shall have the exclusive and unilateral rights to file pursuant to Section 205 . . . for any changes in or relating to the establishment and recovery of the Transmission Owners’ transmission revenue requirements or the transmission rate design under the PJM [OATT].” The PJM Transmission Owners made a filing in Docket No. ER13-90-000 to modify Schedule 12 of the OATT so as to change the allocation of costs of transmission system expansions and enhancements approved by PJM in its RTEP. In *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,074 (2013), issued on January 31, 2012, the Commission conditionally accepted and nominally suspended the proposed cost allocation methods for filing, to be effective February 1, 2013, subject to refund and to a future order in PJM’s Order No. 1000 compliance proceeding (i.e., this order).

⁵⁵⁴ Required Transmission Enhancements are “[e]nhancements and expansions of the Transmission System that (1) a Regional Transmission Expansion Plan . . . or (2) the Coordinated System Plan [*between PJM and MISO*] designates one or more of the Transmission Owner(s) . . . to construct and own or finance.” PJM, Intra-PJM Tariffs, OATT, Definitions (R-S), § 1.38C (3.0.0).

must become a PJM Transmission Owner by becoming a party to the CTOA.⁵⁵⁵ PJM Transmission Owners propose to add new definitions to Schedule 12 and to clarify that Schedule 12 applies to facilities constructed by such entities, as well as to those constructed by PJM Transmission Owners.⁵⁵⁶ Specifically, PJM Transmission Owners propose the following definition for the purposes of Schedule 12:

“Transmission Owner” shall include any entity that undertakes to construct and own and/or finance a Required Transmission Enhancement even if such entity is not eligible to become a party to the Consolidated Transmission Owners Agreement.⁵⁵⁷

322. PJM Transmission Owners further state that this revision to the definition of “Transmission Owner” for purposes of Schedule 12 will ensure that a nonincumbent that is designated under the RTEP to construct a transmission project will be eligible to recover construction work in progress.⁵⁵⁸ PJM Transmission Owners state that under section 9.1 of the OATT and Article 7 of the CTOA, PJM Transmission Owners have exclusive authority and responsibility under section 205 to submit filings “in or relating to... transmission rate design in PJM.” PJM Transmission Owners also state that they have the voting rights to change Schedule 12.⁵⁵⁹

⁵⁵⁵ PJM Transmission Owners October 11 Filing, Docket No. ER13-90-000, at 13 (citing CTOA § 3.1); *see also* PJM, Rate Schedules, TOA (Rate Schedule 42), Article 3, § 3.1 (Parties) (0.0.0).

⁵⁵⁶ PJM Transmission Owners October 11 Filing, Docket No. ER13-90-000, at 13.

⁵⁵⁷ PJM, Intra-PJM Tariffs, OATT, Schedule 12 (Transmission Enhancement Charges), § (a) (5.0.0).

⁵⁵⁸ PJM Transmission Owners October 11 Filing, Docket No. ER13-90-000, at 13 (“Although any entity owning transmission facilities in service that has transferred functional control over those facilities to PJM must become a PJM Transmission Owner (by becoming a party to the CTOA), PJM may designate in the RTEP an entity that does not yet have transmission facilities in service to construct and own and/or finance a Required Transmission Enhancement. The proposed amendments apply Schedule 12 to facilities constructed by such entities, as well as those constructed by PJM Transmission Owners,” (citing PJM, Rate Schedules, TOA (Rate Schedule 42), Article 3, § 3.1 (Parties) (0.0.0) and PJM, Intra-PJM Tariffs, OATT, Schedule 12 (Transmission Enhancement Charges), § (a) (5.0.0))).

⁵⁵⁹ PJM Transmission Owners October 11 Filing, Docket No. ER13-90-000, at 2.

ii. Protests/Comments

323. LS Power argues that the PJM Transmission Owners October 11 Filing should be clarified to ensure comparable treatment for incumbents and new entrants with regard to cost recovery. LS Power disagrees that the PJM Transmission Owners' proposal to revise the definition of "Transmission Owner" will result in such comparable treatment, for two reasons. First, it states that, to treat nonincumbents that are designated to construct transmission projects under the RTEP comparably with incumbents as required by Order No. 1000, nonincumbents must be allowed to recover all recoverable costs once a project is included in the RTEP, not just construction work in progress.⁵⁶⁰ Second, LS Power argues that the term "Transmission Owner" should not be defined differently in Schedule 12 than elsewhere, and that rather, a new term should be used (such as "Designated Entity") that reflects the fact that entities other than incumbent transmission owners may be constructing RTEP projects.⁵⁶¹

iii. Answer

324. PJM Transmission Owners disagree with LS Power's assertion that further clarification is necessary to ensure that new entrants receive comparable treatment to incumbent transmission owners under Schedule 12. PJM Transmission Owners state that they have changed the definition of "Transmission Owner" in Schedule 12 to include any entity designated in the RTEP to construct transmission enhancements, including nonincumbents, and this change addresses LS Power's concern.

iv. Commission Determination

325. The Commission finds that the PJM Transmission Owners October 11 Filing partially complies with the requirement of Order No. 1000 as to a nonincumbent transmission developer's eligibility to use a regional cost allocation method for a transmission facility selected in the regional transmission plan for purposes of cost allocation.

326. Order No. 1000 requires that "a nonincumbent transmission developer must have the same eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for the purposes of cost allocation."⁵⁶² We find that PJM

⁵⁶⁰ LS Power Protest, Docket No. ER13-90-000, at 7-8 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 332).

⁵⁶¹ *Id.* at 8.

⁵⁶² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 332.

complies with this requirement because PJM allows a transmission project sponsor to indicate whether it wants to build a transmission project that it proposes to be selected in the regional transmission plan for purposes of cost allocation, and if so, PJM will use non-discriminatory criteria to determine whether the transmission project sponsor is qualified to be the Designated Entity. If the transmission project sponsor is selected to build the transmission project, then it will be able to use the regional cost allocation associated with the transmission project.

327. Additionally, PJM Transmission Owners, pursuant to the FPA section 205, proposed to revise the definition of “Transmission Owner” in Schedule 12 in order to allow an entity that has no transmission facilities in service in PJM (and thus is not a party to the CTOA), but that is designated under the RTEP to construct a transmission project, to begin recovering the costs of that transmission project, including construction work in progress. . We find that, in concept, PJM Transmission Owners’ revisions to Schedule 12 are just and reasonable. However, we also find, as explained more fully below, that, other parts of the OATT and other PJM Agreements contain definitions and provisions that appear to preclude nonincumbent transmission developers from filing for transmission cost-based rates prior to becoming a party to the CTOA. For example, provisions of the OATT and CTOA appear to conflict with Schedule 12 of the OATT which states that a Transmission Owner designated by the RTEP to construct, own and/or finance a Required Transmission Enhancement may recover costs by making a section 205 filing to revise its transmission rates.⁵⁶³ As such, we require PJM and/or the PJM Transmission Owners to explain how the various provisions work together to achieve the intended result of Schedule 12, i.e., to allow an entity designated in RTEP to construct a transmission project to begin recovering the costs of that transmission project.

328. We note that, while the PJM Transmission Owners propose to revise the definition of “Transmission Owner” in Schedule 12, in the rest of the OATT, Transmission Owner is defined as “Each entity that owns, leases or otherwise has a possessory interest in facilities *used for the transmission of electric energy in interstate commerce under the [OATT]*.”⁵⁶⁴ Transmission of electric energy in this clause is in the present tense,

⁵⁶³ PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (a)(2) (Establishment of Transmission Enhancement Charges) (5.0.0).

⁵⁶⁴ PJM, Intra-PJM Tariffs, OATT, Definitions (T-U-V), § 1.45F (Transmission Owner) (2.0.0) (emphasis added). PJM CTOA, Article 1, section 1.28 defines Transmission Owners slightly differently from the OATT definition, “Transmission Owners shall mean those entities that own or lease (with rights equivalent to ownership) Transmission Facilities. For purposes of [the CTOA] only, a Transmission Owner who is a generation and transmission cooperative (in addition to being the Transmission Owner for its own Transmission Facilities) shall also be the Transmission Owner for the

(continued...)

indicating that transmission lines must already be supplying pre-existing Commission-jurisdictional transmission service in order to qualify as a “Transmission Owner” in all other provisions of the OATT.

329. Similarly, Part I, section 9.1 of the OATT explains that “Transmission Owners” (as defined in the OATT, Definitions (T-U-V), section 1.45F, having a “possessory interest in facilities *used* for the transmission of electric energy in interstate commerce under the [OATT]”) have exclusive rights to file cost-based transmission rates in PJM.⁵⁶⁵

330. The reading of the “Transmission Owner” definition in 1.45F of the OATT together with section 9.1 of the OATT, implies that a nonincumbent transmission developer is barred from filing with the Commission its rates, charges, classifications, and services under Schedule 12 of the OATT until it has a possessory interest in transmission facilities that provide Commission-jurisdictional transmission service under the OATT.

331. Also under the terms of the OATT, nonincumbent transmission developers must execute an Interconnection Agreement before being permitted to connect its project to an incumbent PJM Transmission Owner’s facilities.⁵⁶⁶ Cost allocation for a project built by an entity that is not a Party to the CTOA is determined at the time the Interconnection

Transmission Facilities of its cooperative members, with all rights and obligations specified under this agreement with regard to such Transmission Facilities, provided, however, that (a) it has been affirmatively granted in writing binding authority by such cooperative members to assume such rights and obligations, (b) that it affirmatively represents and warrants in writing to the other Parties and PJM that it has authority to act for and on behalf of such members, and (c) that any such cooperative member shall not be a Transmission Owner.” PJM, Rate Schedules, TOA (Rate Schedule 42), Article 1, § 1.28 (Transmission Owners) (1.0.0).

⁵⁶⁵ Emphasis added.

⁵⁶⁶ PJM, Rate Schedules, TOA (Rate Schedule 42), Article 4, § 4.10 (Connections):

No Party shall permit its Transmission Facilities or distribution facilities to be connected with the facilities of any entity which is not a Party [to the CTOA] without an interconnection agreement that contains provisions for the safe and reliable operation of each interconnection

Agreement is executed.⁵⁶⁷ Under these provisions of the OATT and the *pro-forma* Interconnection Agreement, only affected incumbent PJM Transmission Owners as defined in Section 1.45F of the OATT are allowed cost-based rate recovery for costs they incur, while all others are allocated 100 percent cost responsibility for their project in return for merchant transmission compensation in the form of auction revenue rights or financial transmission rights under the *pro-forma* Interconnection Agreement. Parts IV and VI of the OATT do not allow cost-based recovery for interconnection customers that are not “Transmission Owners” as defined in Section 1.45F of the OATT.

332. Finally, we note that Article 7, section 7.1 of the CTOA appears to limit section 205 filing rights to signatories or “Parties” to the CTOA, and it is not clear whether Article 7, section 7.1.3 purports to limit those rights to parties that have Zones:

7.1 Individual Transmission Owner Rates.

Notwithstanding any other provision of this Agreement, each Party expressly and individually reserves unto itself the following rights:

7.1.1

Each Party shall have the exclusive right to file unilaterally at any time pursuant to Section 205 of the Federal Power Act to establish or change the transmission revenue requirement for services provided under the PJM Tariff with respect to its Transmission Facilities (regardless of whether such revenue requirement is used to support rates and charges for delivery within its Zone or outside its Zone). This right includes, but is not limited to, the right to file a transmission revenue requirement, or a revenue requirement that is based on incentive or performance-based factors.

7.1.3

Each Party shall have the *exclusive right to file unilaterally, at any time pursuant to Section 205 of the Federal Power Act, to change rates and charges for transmission and ancillary services* (including, without limitation, incentive rates, and

⁵⁶⁷ See PJM, Intra-PJM Tariffs, OATT, Part IV (Interconnections with the Transmission System) and Part VI (Administration and Study of New Service Requests; Rights Associated with Customer-Funded Upgrades).

rates and charges for new services) *for delivery within its Zone*, which rates and charges are based solely on the costs of the Transmission Facilities of such Party.⁵⁶⁸

333. Accordingly, while we believe the intent of the PJM Transmission Owners' proposed revisions to Schedule 12 is to provide a cost-recovery framework for nonincumbent transmission developers similar to the framework available to incumbents, as noted above, it appears that other provisions of the OATT and CTOA would preclude nonincumbent transmission developers from filing the agreements under Schedule 12 for cost allocation and filing for transmission cost-based rates under Attachment H of the OATT until after they have already provided transmission service under the OATT over facilities they own. Therefore, we direct PJM and the PJM Transmission Owners to submit a compliance filing, within 120 days of the date of this order, that either revises the various OATT and CTOA provisions discussed above so as to enable a nonincumbent transmission developer to file related agreements on cost allocation under Schedule 12 and recover the costs of an RTEP transmission project or else explains why the OATT and CTOA provisions discussed above do not prevent a nonincumbent transmission developer from doing so.

3. Cost Allocation

334. Order No. 1000 requires each public utility transmission provider to have in place a method, or set of methods, for allocating the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation.⁵⁶⁹ Each public utility transmission provider must show on compliance that its regional cost allocation method or methods are just and reasonable and not unduly discriminatory or preferential by demonstrating that each method satisfies six regional cost allocation principles described in Order No. 1000.⁵⁷⁰ The Commission took a principles-based approach because it recognized that regional differences may warrant distinctions in cost allocation

⁵⁶⁸ See PJM, Rate Schedules, TOA (Rate Schedule 42), Article 7, § 7.1 (Individual Transmission Owner Rates) (0.0.0) (emphasis added).

⁵⁶⁹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 558.

⁵⁷⁰ *Id.* P 603.

methods among transmission planning regions.⁵⁷¹ In addition, Order No. 1000 permits participant funding, but not as a regional or interregional cost allocation method.⁵⁷²

335. If a public utility transmission provider is in an RTO or ISO, Order No. 1000 requires that the regional cost allocation method or methods be set forth in the RTO or ISO OATT. In a non-RTO/ISO transmission planning region, each public utility transmission provider located within the region must set forth in its OATT the same language regarding the cost allocation method or methods that is used in its transmission planning region.⁵⁷³ Each public utility transmission provider must have a regional cost allocation method for any transmission facility selected in a regional transmission plan for purposes of cost allocation.⁵⁷⁴

336. Regional Cost Allocation Principle 1 specifies that the cost of transmission facilities must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits. Cost allocation methods must clearly and definitively specify the benefits and the class of beneficiaries.⁵⁷⁵ In determining the beneficiaries of transmission facilities, a regional transmission planning process may consider benefits including, but not limited to, the extent to which transmission facilities, individually or in the aggregate, provide for maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting Public Policy Requirements.⁵⁷⁶ Regional Cost Allocation Principle 1 precludes an allocation where the benefits received are trivial in relation to the costs to be borne.⁵⁷⁷

337. The Commission stated in Order No. 1000-A that while Order No. 1000 does not define “benefits” and “beneficiaries,” it does require the public utility transmission providers in each transmission planning region to be definite about benefits and beneficiaries for purposes of their cost allocation methods.⁵⁷⁸ In addition, for a cost

⁵⁷¹ *Id.* P 604.

⁵⁷² *Id.* P 723.

⁵⁷³ *Id.* P 558.

⁵⁷⁴ *Id.* P 690.

⁵⁷⁵ Order No. 1000-A, 139 FERC ¶ 61,132 at P 678.

⁵⁷⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 622.

⁵⁷⁷ *Id.* P 639.

⁵⁷⁸ Order No. 1000-A, 139 FERC ¶ 61,132 at P 679.

allocation method or methods to be accepted by the Commission as Order No. 1000-compliant, they will have to specify clearly and definitively the benefits and the class of beneficiaries.⁵⁷⁹ A benefit used by public utility transmission providers in a regional cost allocation method or methods must be an identifiable benefit, and the transmission facility cost allocated must be roughly commensurate with that benefit.⁵⁸⁰ Each regional transmission planning process must provide entities who will receive regional or interregional cost allocation an understanding of the identified benefits on which the cost allocation is based.⁵⁸¹ The public utility transmission providers in a transmission planning region may propose a cost allocation method that considers the benefits and costs of a group of new transmission facilities, although there is no requirement to do so.⁵⁸²

338. The regional transmission plan must include a clear cost allocation method or methods that identify beneficiaries for each of the transmission facilities selected in a regional transmission plan for purposes of cost allocation.⁵⁸³ Order No. 1000-A stated that public utility transmission providers in each transmission planning region, in consultation with their stakeholders, may consider proposals to allocate costs directly to generators as beneficiaries that could be subject to regional or interregional cost allocation, but any such allocation must not be inconsistent with the generator interconnection process under Order No. 2003.⁵⁸⁴

339. Regional Cost Allocation Principle 2 specifies that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those transmission facilities.⁵⁸⁵ All cost allocation methods must provide for allocation of the entire prudently incurred cost of a transmission project to prevent stranded costs.⁵⁸⁶ To the extent that public utility transmission providers propose a cost allocation method or methods that consider the

⁵⁷⁹ *Id.* P 678.

⁵⁸⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 625.

⁵⁸¹ Order No. 1000-A, 139 FERC ¶ 61,132 at P 746.

⁵⁸² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 627, 641.

⁵⁸³ *Id.* P 11; Order No. 1000-A, 139 FERC ¶ 61,132 at P 585.

⁵⁸⁴ Order No. 1000-A, 139 FERC ¶ 61,132 at P 680.

⁵⁸⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 637.

⁵⁸⁶ *Id.* P 640.

benefits and costs of a group of new transmission facilities and adequately support their proposal, Regional Cost Allocation Principle 2 would not require a showing that every individual transmission facility in the group of transmission facilities provides benefits to every beneficiary allocated a share of costs of that group of transmission facilities.⁵⁸⁷

340. The Commission clarified in Order No. 1000-A that public utility transmission providers may rely on scenario analyses in the preparation of a regional transmission plan and the selection of new transmission facilities in the regional transmission plan for purposes of cost allocation. Regional Cost Allocation Principle 2 would be satisfied if a project or group of projects is shown to have benefits in one or more of the transmission planning scenarios identified by public utility transmission providers in their Commission-approved Order No. 1000-compliant cost allocation methods.⁵⁸⁸ The Commission clarified in Order No. 1000-B that it did not intend to remove the “likely future scenarios” concept from transmission planning and that likely future scenarios can be an important factor in public utility transmission providers’ consideration of transmission projects and in the identification of beneficiaries consistent with the cost causation principle.⁵⁸⁹

341. Regional Cost Allocation Principle 3 specifies that if a benefit to cost threshold is used to determine which transmission facilities have sufficient net benefits to be selected in a regional transmission plan for the purpose of cost allocation, the threshold must not be so high that transmission facilities with significant positive net benefits are excluded from cost allocation. Public utility transmission providers may choose to use such a threshold to account for uncertainty in the calculation of benefits and costs. If adopted, such a threshold may not include a ratio of benefits to costs that exceeds 1.25 unless the transmission planning region or public utility transmission provider justifies, and the Commission approves, a higher ratio.⁵⁹⁰

342. Regional Cost Allocation Principle 4 specifies that the allocation method for the cost of a transmission facility selected in a regional transmission plan for purposes of cost allocation must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. However, the transmission planning process in the original region must identify consequences for other transmission planning regions,

⁵⁸⁷ *Id.* P 641.

⁵⁸⁸ Order No. 1000-A, 139 FERC ¶ 61,132 at P 690.

⁵⁸⁹ Order No. 1000-B, 141 FERC ¶ 61,044 at P 72.

⁵⁹⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 646.

such as upgrades that may be required in another region and, if the original region agrees to bear costs associated with such upgrades, then the original region's cost allocation method or methods must include provisions for allocating the costs of the upgrades among the beneficiaries in the original region.⁵⁹¹

343. Regional Cost Allocation Principle 5 specifies that the cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility.⁵⁹²

344. Regional Cost Allocation Principle 6 specifies that a transmission planning region may choose to use a different cost allocation method for different types of transmission facilities in the regional transmission plan, such as transmission facilities needed for reliability, congestion relief, or to achieve Public Policy Requirements.⁵⁹³ If the public utility transmission providers choose to have a different cost allocation method for each type of transmission facility, there can be only one cost allocation method for each type.⁵⁹⁴ In addition, if public utility transmission providers choose to propose a different cost allocation method or methods for different types of transmission facilities, each method would have to be determined in advance for each type of facility.⁵⁹⁵ A regional cost allocation method for one type of regional transmission facility or for all regional transmission facilities may include voting requirements for identified beneficiaries to vote on proposed transmission facilities.⁵⁹⁶ However, the public utility transmission providers in a region may not designate a type of transmission facility that has no regional cost allocation method applied to it.⁵⁹⁷

⁵⁹¹ *Id.* P 657.

⁵⁹² *Id.* P 668.

⁵⁹³ *Id.* P 685.

⁵⁹⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 686; *see also id.* P 560.

⁵⁹⁵ *Id.* P 560.

⁵⁹⁶ *Id.* P 689.

⁵⁹⁷ *Id.* P 690.

i. PJM Parties' Filings

345. PJM Transmission Owners propose cost allocation methods⁵⁹⁸ that distinguish between Regional Facilities, Necessary Lower Voltage Facilities, and Lower Voltage Facilities. PJM Transmission Owners state that, for the purpose of cost allocation, a Regional Facility is defined to include double-circuit facilities planned to operate at voltages of at least 345 kV, but less than 500 kV, as well as all facilities planned to operate at voltages of at least 500 kV. Necessary Lower Voltage Facilities are defined as new facilities or enhancements to existing facilities that are below the voltage limit for a Regional Facility, but must be constructed or strengthened to support new Regional Facilities.⁵⁹⁹ Lower Voltage Facilities are defined as any Required Transmission Enhancements that are neither Regional Facilities nor Necessary Lower Voltage Facilities.⁶⁰⁰

346. PJM Transmission Owners also propose to apply the same cost allocation method used for alternating current (AC) projects to high-voltage direct current (DC) projects included in the RTEP and made available for PJM to schedule. According to the proposal, a DC project may qualify as a Regional Facility if it meets two criteria. First, it must be connected to at least one substation or switching station that is also connected to an AC facility that qualifies as a Regional Facility. Second, the transformer between the DC converter and the AC substation or switching station must have a low-side phase-to-phase voltage rating of at least 345 kV. PJM must also have made a determination in its RTEP process confirming the low-side phase-to-phase voltage rating of the transformer in this instance as necessary. As an alternative, a DC project may qualify as a Regional Facility if it is connected to a DC facility that has previously been classified as a Regional Facility.⁶⁰¹

⁵⁹⁸ As noted above, section 9.1 of the OATT gives the PJM Transmission Owners the exclusive right “to file pursuant to Section 205 . . . for any changes in or relating to the establishment and recovery of the Transmission Owners’ transmission revenue requirements or the transmission rate design under the PJM [OATT].”

⁵⁹⁹ PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(i) (Transmission Enhancement Charges) (5.0.0).

⁶⁰⁰ PJM Transmission Owners October 11 Filing, Docket No. ER13-90-000, at 7-8; PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(ii) (Transmission Enhancement Charges) (5.0.0).

⁶⁰¹ PJM Transmission Owners October 11 Filing, Docket No. ER13-90-000, at 12.

347. PJM Transmission Owners' proposal states that the costs of Regional Facilities and Necessary Lower Voltage Facilities will be allocated using a hybrid method. One-half of each project's cost will be allocated on a postage-stamp basis to all zones based on load ratio share and to merchant transmission facilities based on awarded Firm Transmission Withdrawal Rights. The other half will be allocated to specifically identified beneficiaries using different methods depending on the project's classification, as explained below.⁶⁰²

348. For Reliability Projects that are Regional Facilities or Necessary Lower Voltage Facilities, PJM Transmission Owners' proposal states that one-half of the project's cost will be allocated using a DFAX analysis that differs from the current DFAX method. According to PJM Transmission Owners, the existing Violation-Based DFAX method calculates the contribution of load in each zone and merchant transmission facilities to flows on the facility that creates the need for a Required Transmission Enhancement. Under the proposed "Solution-Based DFAX" method, PJM will calculate the relative use of a new facility from load in each zone and withdrawals by merchant transmission facilities. PJM Transmission Owners state that this analysis will account for uses of the new facility in both directions, and will be updated annually to account for changes in use due to modifications of the grid.⁶⁰³ For DC projects, PJM Transmission Owners explain that PJM will remove the DC facility from the DFAX model and perform an analysis in which the facility is replaced with a proxy AC facility.⁶⁰⁴

349. For Economic Projects that are Regional Facilities or Necessary Lower Voltage Facilities, PJM Transmission Owners' proposal states that one-half of the project's cost will be allocated based on each zone's and each merchant transmission facility's share of zonal decreases in load energy payments that result from the new facility over the first fifteen years of the project's operation.⁶⁰⁵ PJM Transmission Owners note that this method is currently used by PJM to allocate the costs of Economic Projects that are Lower Voltage Facilities. However, as is the case currently under Schedule 12 for Lower

⁶⁰²*Id.* at 8-9.

⁶⁰³ *Id.* at 9.

⁶⁰⁴ *Id.* at 13.

⁶⁰⁵ PJM OA, Schedule 6, § 1.5.7(d) defines the change in load energy payments for a zone as the annual amount paid by the zone without an upgrade, less the annual amount paid by the zone with the upgrade, less the change in the value of transmission rights for each zone. For the purposes of cost allocation, the cost of Economic Projects are allocated proportionally among zones with a change in load energy payments that is positive (i.e. the zone pays less for energy with the upgrade in service).

Voltage Facilities, if PJM modifies a Reliability Project to address an economic constraint, one half of the project's cost will be allocated according to the Solution-Based DFAX method used for Reliability Projects.⁶⁰⁶

350. PJM Transmission Owners' proposal states that the entire cost of any Lower Voltage Facility that is not a Regional Facility or Necessary Lower Voltage Facility will be allocated to specifically identified beneficiaries using the same method that would be applied to a Regional Facility (i.e., Solutions-Based DFAX for Reliability Projects and load payment reduction for Economic Projects). PJM Transmission Owners state that their proposed method is consistent with the current cost allocation method for such Lower Voltage Facilities.⁶⁰⁷

351. PJM Transmission Owners propose to allocate the cost of any Required Transmission Enhancement that is less than \$5 million to the zone in which the project is located. PJM Transmission Owners state that this is an expansion of the current \$5 million threshold, which applied only to Reliability Projects below 500 kV.⁶⁰⁸

352. With regard to projects that address public policy requirements, PJM Transmission Owners state that public policy requirements are considered along with other factors (e.g., load growth and generation retirements), and if a Reliability or Economic Project is needed, PJM Transmission Owners propose to use the corresponding cost allocation method as described above.⁶⁰⁹ PJM Transmission Owners note that any upgrade not identified by PJM as necessary for reliability or economic reasons may be proposed as a Supplemental Project. The costs of such projects are allocated to the proponent of the project.⁶¹⁰ In addition, if one or more states identify a transmission enhancement or expansion that PJM has not found to be necessary for economic or reliability reasons, but which the state or states have determined to be necessary to address public policy requirements, PJM has provided a "State Agreement" approach for such projects. Under this approach, the states sponsoring the project voluntarily agree to be responsible for its costs, and if the project is not pursued as a Supplemental Project, the costs will be allocated only to customers in the states sponsoring the project, under a cost allocation

⁶⁰⁶ PJM Transmission Owners October 11 Filing, Docket No. ER13-90-000, at 9-10.

⁶⁰⁷ *Id.* at 11-12.

⁶⁰⁸ *Id.* at 13.

⁶⁰⁹ *Id.* at 18.

⁶¹⁰ *Id.* at 19.

method submitted by the Transmission Provider to the Transmission Owners Agreement-Administrative Committee (TOA-AC)⁶¹¹ for consideration and filing under section 205.⁶¹² If the TOA-AC declines to file the cost allocation under section 205, the sponsoring states or PJM may file it under section 206.⁶¹³

353. PJM Transmission Owners clarify that interconnection related projects and upgrades (i.e., Attachment Facilities, Network Upgrades, Local Upgrades, and Merchant Network Upgrades) required to accommodate the interconnection of generation and merchant transmission facilities will be allocated to the interconnection customer in accordance with a “but for” test.

354. PJM Transmission Owners’ proposal further addresses the treatment of replacement facilities (i.e., new facilities required to replace existing facilities that have reached the end of their operating life). Under the proposal, the cost of such facilities shall be allocated to the entities responsible for the costs of the facility being replaced, unless the new facility is identified as a Required Transmission Enhancement in the RTEP and allocated according to the method for the applicable project category.⁶¹⁴

355. In addition, PJM Transmission Owners October 11 Filing clarifies how PJM will associate transformers, spare parts, replacement equipment, and circuit breakers with Regional Facilities or Lower Voltage Facilities for the purpose of cost allocation. PJM Transmission Owners explain that transformers connected to Lower Voltage Facilities are not considered Regional Facilities unless they are an integral part of a Regional Facility. The costs of spare parts and circuit breakers that are part of the design specifications of a facility are allocated in the same manner as the costs of the facility. If the owner of a spare part is not a Transmission Owner with a zone, or required to share costs with such a Transmission Owner, the costs shall be allocated pro rata to the zones that bear cost responsibility for the owner’s Required Transmission Enhancement. Replacement equipment that is part of the design specifications of a facility is allocated in the same

⁶¹¹ The TOA-AC is a group of representatives for the transmission owners established by Article 8 of the TOA to propose policies and recommendations to PJM on matters regarding the transmission owners’ transmission facilities; to establish committees or other bodies it deems necessary; and to carry out any functions delegated to the TOA-AC by the TOA. *See* CTOA Article 8, § 8.1.

⁶¹² PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(xii) (5.0.0).

⁶¹³ PJM Transmission Owners October 11 Filing, Docket No. ER13-90-000, at 19 (citing to Schedule 12, § (b)(xii)(B) (5.0.0)).

⁶¹⁴ *Id.* at 14.

manner as the facility; other replacement equipment is allocated in the same manner as the equipment it is replacing.⁶¹⁵

356. PJM Transmission Owners state that the proposed cost allocation methods fully comply with the six principles of Order No. 1000.

357. First, PJM Transmission Owners argue that the hybrid approach to cost allocation for Regional Facilities is consistent with Regional Cost Allocation Principle No. 1, because it allocates costs in a manner that is at least roughly commensurate with estimated benefits. PJM Transmission Owners explain that the hybrid approach combines an analysis that identifies specific beneficiaries of a new transmission facility with a postage-stamp rate that accounts for benefits that are more difficult to quantify. In addition, PJM Transmission Owners claim that the Solution-Based DFAX method is updated annually to recognize changes in the distribution of benefits over time, while the change in load energy payments analysis is based on the net present value of projected energy costs over the first fifteen years of a project's operation.⁶¹⁶

358. Second, PJM Transmission Owners state that the proposal is consistent with Regional Cost Allocation Principle No. 2, because it does not allocate any costs to customers that receive no benefits from the transmission facilities, either at present or in a likely future scenario. PJM Transmission Owners assert that costs of Lower Voltage Facilities are allocated entirely to specifically identified beneficiaries using the methods described above, while the costs of Regional Facilities are allocated partially to specifically identified beneficiaries and partially to other customers in the region that receive some benefits from the regional nature of the facilities.⁶¹⁷

359. Third, PJM Transmission Owners state that Regional Cost Allocation Principle No. 3 is not at issue, because the proposal does not use a cost-benefit threshold for cost allocation. PJM Transmission Owners state that while PJM uses a cost-benefit threshold in planning to determine which projects should qualify as Economic Projects, PJM

⁶¹⁵ *Id.* at 13.

⁶¹⁶ *Id.* at 16; *see also id.* at 10 (“The hybrid methodology reasonably allocates costs both to specifically identified beneficiaries of the projects . . . as well as to users that receive more difficult-to-quantify benefits and users who might benefit in the future as usage of the projects changes over time.”).

⁶¹⁷ *Id.* at 16.

Transmission Owners note that this threshold is 1.25:1, which is consistent with Order No. 1000.⁶¹⁸

360. Fourth, PJM Transmission Owners argue that the proposal is consistent with Regional Cost Allocation Principle No. 4, because it allocates costs solely within PJM's transmission planning region, and therefore cannot involuntarily allocate costs to entities outside the region.

361. Fifth, PJM Transmission Owners assert that the cost allocation methods described in Schedule 12 are consistent with Regional Cost Allocation Principle No. 5, because they are transparent. PJM Transmission Owners state that where PJM is required to conduct an analysis to implement the method, Schedule 12 specifies the manner in which PJM is to perform the analysis and the assumptions it is to use. PJM Transmission Owners state that the Solution-Based DFAX method is based on the existing Violation-Based DFAX method PJM uses, the current Schedule 12 description of which was accepted by the Commission as being sufficiently detailed. PJM Transmission Owners attest that the proposed revisions use the existing, approved Schedule 12 language, modified to describe the proposed changes to the method. PJM Transmission Owners further note that the cost allocation method for identifying changes in load energy payments used in the allocation of Economic Projects is unchanged.⁶¹⁹

362. Finally, PJM Transmission Owners state that proposed revisions to Schedule 12 use different cost allocation methods for new Required Transmission Facilities that address reliability violations and those that address economic constraints. The proposal distinguishes between Regional and Lower Voltage Facilities, recognizing the difficult to quantify benefits provided by Regional Facilities. Furthermore, PJM Transmission Owners claim the proposal is consistent with Regional Cost Allocation Principle No. 6 because the nature of transmission facilities within each category is set forth and explained in Schedule 6, and the proposal sets out each cost allocation method clearly and in detail. PJM Transmission Owners note that the OATT also addresses cost allocation for other categories of transmission upgrades which are not affected by this filing (e.g., interconnection network upgrades).⁶²⁰

363. PJM states in its October 25 Filing that it supports the PJM Transmission Owners October 11 Filing as fully compliant with the cost allocation requirements of Order No. 1000. Furthermore, PJM urges the Commission to consider a number of additional

⁶¹⁸ *Id.* at 16-17.

⁶¹⁹ *Id.* at 17.

⁶²⁰ *Id.* at 17-18.

benefits of the PJM Transmission Owners' proposal. Specifically, PJM asserts that the PJM Transmission Owners' proposal: (1) prospectively resolves an issue that has resulted in years of litigation, as well as the issues raised in *Illinois Commerce Commission*,⁶²¹ (2) represents a historic coming together of diverse interests across PJM's footprint; (3) recognizes that higher voltage facilities can provide benefits beyond a single zone; and (4) adopts an innovative Solutions-Based DFAX method that is far superior to the Violation-Based DFAX method currently in use.⁶²²

ii. Protests/Comments/Answer

(a) 50/50 Hybrid Cost Allocation Method

(1) Protests/Comments

364. Long Island Power Authority states that the 50/50 split seems arbitrarily chosen, and the PJM Transmission Owners have not demonstrated how it meets the "roughly commensurate" standard, since they rely solely on a single, factually unsupported statement that costs of Regional Facility Reliability Projects are allocated in a manner that is roughly commensurate with projected benefits.⁶²³ Long Island Power Authority states that this stands in contrast with the extensive record relied upon before the Commission issued its order on remand from *Illinois Commerce Commission*,⁶²⁴ including exhibits, testimony, and analysis.⁶²⁵

(2) Answer

365. In their December 26, 2012 answer, PJM Transmission Owners continue to support their proposed cost allocation method as an innovative and well balanced approach. PJM Transmission Owners assert that because they are making a new section 205 filing, they need not prove that the existing cost allocation method is unjust and unreasonable, that the fact that the Commission has previously approved other methods does not render the proposed method unjust and unreasonable, and that at least one

⁶²¹ *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 473-82 (7th Cir. 2009) (*Illinois Commerce Commission*).

⁶²² PJM October 25 Filing, Docket No. ER13-198-000, at 78-80.

⁶²³ Long Island Power Authority Protest, Docket No. ER13-90-000, at 9-10.

⁶²⁴ *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230 (2012) (Order on Remand).

⁶²⁵ Long Island Power Authority Protest, Docket No. ER13-90-000, at 7-9.

Commissioner has urged the adoption of a hybrid method similar to the one proposed here.⁶²⁶

366. PJM Transmission Owners further note that PJM's rate design has been the subject of extensive administrative and judicial proceedings, and that the PJM Transmission Owners relied on the findings and conclusions of previous Commission and judicial decisions.⁶²⁷ They also argue that, since some protestors argue that the regional cost allocation method should rely more on postage-stamp allocation, and others argue that it should rely more on the Solution-Based DFAX method, this demonstrates that PJM Transmission Owners have successfully achieved a just and reasonable balance of interests. They reiterate that the hybrid approach, under which "beneficiary pays" and "postage-stamp methodology" are blended, complies with the requirement to consider the full range of benefits of a transmission facility by allocating one-half of the costs of each upgrade to the customers who will specifically benefit from the new Regional Facility, and by also recognizing that the transmission facility will provide additional system-wide benefits to customers throughout the region. PJM Transmission Owners acknowledge that the additional benefits that Regional Projects provide may be difficult to quantify, but note that Order No. 1000 requires a "roughly commensurate" matching of costs and benefits, not an exact match.⁶²⁸

⁶²⁶ PJM Transmission Owners December 26, 2012 Answer, Docket No. ER13-90-000, at 8 n.12 (citing Order on Remand, 138 FERC ¶ 61,230 at P 49 n.70 (LaFleur, Comm'r, dissenting)).

⁶²⁷ PJM Transmission Owners December 26, 2012 Answer, Docket No. ER13-90-000, at 20 n.62 (citing *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 707-709 (D.C. Cir. 2000), *cert. granted* (00-568; 00-809) 531 U.S. 1189 (2001), *cert. denied* (00-800) 531 U.S. 1191 (2001) (finding that Order No. 888's treatment of stranded costs conforms to cost causation principles), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002); *Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1 (D.C. Cir. 2002) (granting petition challenging the New York Independent System Operator's use of locational based marginal pricing method for transmission rates); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (2004) (denying petition challenging the Midwest Independent Transmission System Operator, Inc's transmission rate design); *see also PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007), order on reh'g, Opinion No. 494-A, 122 FERC ¶ 61,082 (2008); *Illinois Commerce Commission*, 576 F.3d 470 (7th Cir. 2009).

⁶²⁸ PJM Transmission Owners December 26, 2012 Answer, Docket No. ER13-90-000, at 25-26.

(b) **Postage-Stamp Component of the 50/50 Hybrid Cost Allocation Method**

(1) **Protests/Comments**

367. Illinois Commerce Commission, Atlantic Grid, and LS Power object to the PJM Transmission Owners' proposed cost allocation method for regional Economic Projects.⁶²⁹ These parties question why any postage-stamp cost allocation for Economic Projects is necessary, since the beneficiaries of Economic Projects are able to be clearly determined through the reduction in load energy payment method. Illinois Commerce Commission claims that cost causation is the primary consideration in cost allocation, and the "causers" of Economic Projects are the entities that benefit from the development and operation of projects that result in reductions in load energy payments. Accordingly, Illinois Commerce Commission recommends that all costs of such transmission facilities be allocated using the reduction in load energy payment method.⁶³⁰ LS Power states that because the economic benefit test in PJM is able to clearly establish beneficiaries, there is no reason that costs for Economic Projects should be borne by customers that do not benefit economically from such a line.⁶³¹

368. Atlantic Grid and LS Power also note that the proposed cost allocation method for regional Economic Projects differs substantially from how PJM defines benefits for such transmission projects under its Market Efficiency Test (as to which Atlantic Grid explains, PJM performs a benefit-to-cost calculation that sums an Energy Market Benefit and a Reliability Pricing Benefit, and defines an Energy Market Benefit as the sum of 70 percent of the change in total energy production costs and 30 percent of the change in load energy payments).⁶³² Atlantic Grid asserts that the proposed cost allocation method fails to meet Order No. 1000's cost allocation goals, as it violates Commission policy that rates be properly synchronized between costs and the billing determinants assigned to pay

⁶²⁹ LS Power notes that to date, there has never been a 345 kV or above Economic Project in PJM, so discussion of such projects is entirely academic.

⁶³⁰ Illinois Commerce Commission Comments, Docket No. ER13-90-000, at 28-29.

⁶³¹ LS Power Protest, Docket No. ER13-90-000, at 9-10.

⁶³² LS Power also notes that PJM intends to reform Schedule 6 related to Economic Projects in order to address the benefit formulas for Economic Projects that have a load ratio cost allocation component. LS Power is concerned that this reform will lead to a further skewing in reviewing the pure economic benefits of Economic Projects.

them.⁶³³ LS Power asserts that a load ratio cost allocation for Economic Projects (i.e., the postage-stamp component) could make state siting, which must often reflect a “need” for the line in question, more difficult, especially if the transmission project covers multiple states with different standards for determining the benefits of a transmission project. Thus, LS Power states that this provision ignores the practical difficulties of siting Economic Projects, including that a state which believes it is paying too much for a line will be reluctant to permit siting of that transmission project. PUC of Ohio asserts that any cost allocation based on a postage-stamp method should be rejected as inequitable since postage-stamp pricing does not account for increased locational marginal prices and capacity prices that will be paid by customers in western PJM due to reductions in congestion caused by high capacity economic upgrades. Thus, PUC of Ohio contends that this method effectively asks customers not negatively impacted by a constraint to pay twice: once for the transmission facilities to relieve the constraint, and again through increased prices afterward.

369. By contrast, Maryland PSC argues that the PJM Transmission Owners have not demonstrated any flaw in the existing postage-stamp method for high-voltage transmission facilities, which the Commission found to be just and reasonable in its Order on Remand, nor have the PJM Transmission Owners shown that reducing the load ratio share allocation from 100 percent to 50 percent for Regional Facilities and Necessary Lower Voltage Facilities is just and reasonable.⁶³⁴ Maryland PSC points out that the Commission previously determined that PJM’s existing method would not justly and reasonably allocate the costs of high-capacity regional transmission projects because it does not accurately reflect the distributed network benefits from upgraded high-voltage transmission facilities that can resolve multiple problems in multiple areas.⁶³⁵

370. Multiple parties also assert that the postage-stamp portion of the cost allocation proposal is inconsistent with the Regional Cost Allocation Principles set out in Order No. 1000. PUC of Ohio and Illinois Commerce Commission assert that postage-stamp cost allocation is inconsistent with Regional Cost Allocation Principle 1, which requires that the costs of transmission facilities be allocated in a manner that is at least roughly commensurate with estimated benefits. PUC of Ohio argues that postage-stamp cost allocation in any form is equivalent to cost socialization and is contrary to the directive in

⁶³³ Atlantic Grid Comments, Docket Nos. ER13-198-000 and ER13-90-000, at 28-30.

⁶³⁴ Maryland PSC Protest, Docket No. ER13-90-000, at 2-4.

⁶³⁵ *Id.* at 2-4.

Illinois Commerce Commission to align costs more closely with cost causation.⁶³⁶ Illinois Commerce Commission states that the PJM Transmission Owners have not demonstrated that allocated costs will be commensurate with benefits as stated in Orders No 1000 and 1000-A, and urges that the Commission require the provision of benefits data and identification of beneficiaries in a transparent way to address this concern. Illinois Commerce Commission asks the Commission to accept a postage-stamp component for regional reliability project cost allocation only on an interim basis while other metrics are being developed, and asks the Commission to revisit the issue in five years.⁶³⁷

371. PUC of Ohio and Illinois Commerce Commission also state that the PJM Transmission Owners' proposed postage-stamp cost allocation violates Regional Cost Allocation Principle 2 by ensuring that customers who only see trivial benefits are nonetheless burdened with transmission expenses.⁶³⁸ Illinois Commerce Commission asserts that while the PJM Transmission Owners claim that postage-stamp cost allocation will not allocate costs to entities that do not benefit, they do not support this claim by identifying specific beneficiaries.⁶³⁹ PUC of Ohio further asserts that the postage-stamp cost allocation renders useless Regional Cost Allocation Principle 3, since it over-generalizes the quantification and definition of benefits, and provides no numerical value for these benefits. Thus, PUC of Ohio states that PJM and the PJM Transmission Owners must develop a method that quantifies more specific benefits by RTO sub-region or state.⁶⁴⁰ PUC of Ohio and Illinois Commerce Commission also argue that the PJM Transmission Owners' proposed postage-stamp cost allocation method violates Regional Cost Allocation Principle 5 because it provides no transparency, and PJM must develop a mechanism that demonstrates how customers in each state benefit from a new

⁶³⁶ PUC of Ohio Comments, Docket No. ER13-198-000, at 13; PUC of Ohio Comments, Docket No. ER13-90-00, at 13-15.

⁶³⁷ Illinois Commerce Commission Comments, Docket No. ER13-90-000, at 4-5, 9-13.

⁶³⁸ PUC of Ohio Comments, Docket No. ER13-198-000, at 14; PUC of Ohio Comments, Docket No. ER13-90-000, at 15-16.

⁶³⁹ Illinois Commerce Commission Comments, Docket No. ER13-90-000, at 10 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 586).

⁶⁴⁰ PUC of Ohio Comments, Docket No. ER13-198-000, at 14-15; PUC of Ohio Comments, Docket No. ER13-90-000, at 16-17.

transmission project compared to its cost.⁶⁴¹ Illinois Commerce Commission argues that, while the PJM Transmission Owners state that the 50 percent postage-stamp cost component accounts for system-wide benefits or benefits that are difficult to quantify, the PJM Transmission Owners have not even identified benefits or beneficiaries of reliability projects that correspond to such benefits.⁶⁴²

372. As part of their arguments in support of multi-driver cost allocation, as discussed below, Atlantic Grid states that, to comply with Regional Cost Allocation Principle 6, PJM or the PJM Transmission Owners should have proposed a regional cost allocation plan for public policy enhancements that would ensure that the costs of transmission solutions chosen to meet regional transmission needs are allocated fairly to those who receive benefits from them.⁶⁴³ Atlantic Grid and Maryland PSC state that PJM's current and proposed transmission planning process inefficiently allocates costs on the basis of single transmission drivers, thus ignoring the additional benefits that transmission facilities can provide that can justify broader cost allocations.

(2) Answer

373. In response to Illinois Commerce Commission's protest, PJM Transmission Owners state in their December 26, 2012 answer that neither the Commission nor the courts have required cost causation to be the primary focus of a cost allocation method; rather, Regional Cost Allocation Principle 1 requires that costs be allocated to those within the transmission planning region that benefit from those transmission facilities, in a manner that is roughly commensurate with those estimated benefits, but does not define "benefits" or "beneficiaries." PJM Transmission Owners state that they used this flexibility to identify the beneficiaries of reliability projects using the Solution-Based DFAX method. PJM Transmission Owners state that it is appropriate to satisfy the just and reasonable standard by allocating costs in proportion to benefits customers realize when they use a new transmission facility, rather than their contribution to the need for the new transmission facility. Further, PJM Transmission Owners state that this method

⁶⁴¹ PUC of Ohio Comments, Docket No. ER13-198-000, at 16; PUC of Ohio Comments, Docket No. ER13-90-000, at 17-18.

⁶⁴² Illinois Commerce Commission Comments, Docket No. ER13-90-000, at 11 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 669).

⁶⁴³ Additional comments submitted by Atlantic Grid and other parties regarding the cost allocation method for public policy projects are addressed below.

can identify beneficiaries of a transmission facility based on their use of the facility over time and is simpler to implement than the Violation-Based DFAX method.⁶⁴⁴

(c) **Use of Solution-Based versus Violation-Based DFAX Cost Allocation Method**

(1) **Protests/Comments**

374. PUC of Ohio strongly supports the going-forward use of the new Solution-Based DFAX method, stating that it negates the Commission's previous argument that regional cost allocation is necessary, and recommends that the Solution-Based DFAX method be used for all transmission upgrades, rather than just the transmission facilities or portion of facilities identified by the PJM Transmission Owners.⁶⁴⁵ PUC of Ohio notes that the Solution-Based DFAX method would enable costs to be spread on a region-wide basis if it could be shown that all customers in the region benefit from a transmission solution to the same relative degree.⁶⁴⁶

375. Illinois Commerce Commission believes the Solution-Based DFAX method may address some of the deficiencies identified with the Violation-Based DFAX method, but asserts that the Solution-Based DFAX method does not satisfy the transparency requirements for determining benefits and identifying beneficiaries in Order No. 1000 Regional Cost Allocation Principles 1, 2, and 5. Illinois Commerce Commission recommends that the Commission require explanations of the Solution-Based DFAX concept, along with examples, and provide revised tariff language that clearly describes how the Solution-Based DFAX method will be calculated and applied. To more closely align transmission planning and transmission cost allocation, Illinois Commerce Commission also asks the Commission to direct the PJM Transmission Owners to explain the pros and cons of taking system transmission facility outage contingencies into account in the Solution-Based DFAX method and why they chose not to do so.⁶⁴⁷

⁶⁴⁴ PJM Transmission Owners December 26, 2012 Answer, Docket No. ER13-90-000, at 17-18.

⁶⁴⁵ PUC of Ohio Comments, Docket No. ER13-198-000, at 10-11; PUC of Ohio Comments, Docket No. ER13-90-000, at 8-9.

⁶⁴⁶ PUC of Ohio Comments, Docket No. ER13-198-000, at 9-10; PUC of Ohio Comments, Docket No. ER13-90-000, at 7-8.

⁶⁴⁷ Illinois Commerce Commission Comments, Docket No. ER13-90-000, at 5-6, 19-23.

376. Maryland PSC states that the Solution-Based DFAX method has not been proven and the PJM Transmission Owners have not quantified the benefits of recalculations against the administrative burdens imposed on PJM or how the method would address the other deficiencies the Commission found with the Violation-Based DFAX method. Maryland PSC and Long Island Power Authority also argue that the Solution-Based DFAX method may not allocate costs to all beneficiaries or in a manner roughly commensurate with benefits. Long Island Power Authority also states that the PJM Transmission Owners have not shown how the implementation of the Solution-Based DFAX method will be different than the Violation-Based DFAX method found unjust and unreasonable in the Order on Remand, and notes that no calculations have been provided to support Mr. Herling's analyses.⁶⁴⁸ Long Island Power Authority states that the methods and analysis described in the testimony do not correspond to or are unsupported by the proposed tariff revisions (e.g., no mention of production cost analysis or types of planning models used for power flows). Additionally, Long Island Power Authority states that proposed tariff section (b)(iii)(I) of Schedule 12 provides PJM with broad discretion to use a substitute proxy in yet unnamed capacities, and Long Island Power Authority questions whether the PJM Transmission Owners intended to limit this provision to the use of an AC facility proxy to model DC projects in the DFAX calculation, or whether this potential use of a proxy has broader application to any DFAX calculation undertaken by PJM. Long Island Power Authority believes the Solution-Based DFAX method should be further developed through the PJM stakeholder process.⁶⁴⁹

377. Illinois Commerce Commission states that there has been no dispute regarding the use of the Violation-Based DFAX method for lower voltage transmission projects and that the PJM Transmission Owners have not demonstrated the advantages of the Solution-Based DFAX method and ignore potential advantages to the Violation-Based DFAX method. Illinois Commerce Commission notes that reliability projects are placed into the RTEP based upon their ability to relieve specific violations of North American Electric Reliability Corporation (NERC) or regional entity reliability criteria, making the Violation-Based DFAX method a strong measure of cost causation for such transmission projects. Illinois Commerce Commission points to Court precedent⁶⁵⁰ explaining that while beneficiary identification is important, cost causation remains the primary consideration in cost allocation. Thus, Illinois Commerce Commission states that any

⁶⁴⁸ Maryland PSC Protest, Docket No. ER13-90-000, at 4-5; Long Island Power Authority Protest, Docket No. ER13-90-000, at 10.

⁶⁴⁹ Long Island Power Authority Protest, Docket No. ER13-90-000, at 13-17.

⁶⁵⁰ Illinois Commerce Commission Comments, Docket No. ER13-90-000, at 26 (citing *Illinois Commerce Commission*, 576 F.3d at 476).

hybrid cost allocation method for regional reliability projects should contain some percentage of the Violation-Based DFAX method metric, and suggests 25 percent. Therefore, Illinois Commerce Commission also states that because the Commission found that constraints for lower voltage transmission facilities are often locally relieved, the use of the Violation-Based DFAX method could be just and reasonable for those types of transmission facilities.

(2) **Answer**

378. PJM Transmission Owners respond to Long Island Power Authority's and Maryland PSC's assertions that the PJM Transmission Owners have not provided enough information to support their proposed cost allocation method by pointing to the testimony supporting the PJM Transmission Owners October 11 Filing, including testimony of PJM transmission planning officer Steven Herling. PJM Transmission Owners argue that this testimony fully explains all aspects of the proposed revisions to Schedule 12 and how they are expected to operate.⁶⁵¹

379. PJM Transmission Owners argue that, despite the arguments of Illinois Commerce Commission, they did in fact demonstrate why the Solution-Based DFAX method is superior to the Violation-Based DFAX method. They point to testimony by Mr. Herling stating that, while the Violation-Based DFAX method is a static or "snapshot" method, the Solution-Based DFAX method may be updated annually to capture changes in the distribution of the benefits of the new transmission facility. Mr. Herling also testifies that the Solution-Based DFAX method would be easier to implement. Further, PJM Transmission Owners argue that because the Solution-Based DFAX method is forward-looking, it will allocate costs based on customers' use of a new transmission facility, even if those customers did not use the constrained elements of the system that are captured under the Violation-Based DFAX method. PJM Transmission Owners state that Mr. Herling's testimony provides a specific description of how the Solution-Based DFAX method is implemented, and there is a detailed explanation of the Solution-Based DFAX method in Schedule 12. With regard to Illinois Commerce Commission's argument that using the Solution-Based DFAX method for cost allocation creates a disconnect between cost allocation and transmission planning, PJM Transmission Owners assert that Illinois Commerce Commission is looking at different discussions of how contingencies affect cost allocation. In Mr. Herling's testimony, he discussed how contingencies affect the Violation-Based DFAX method, whereas the testimony of PJM witnesses Ms. Henry and

⁶⁵¹ PJM Transmission Owners December 26, 2012 Answer, Docket No. ER13-90-000, at 20.

Mr. Richardson was addressing non-contingency flows in the analysis of the Solution-Based DFAX method.⁶⁵²

(d) **Interaction with Orders on Remand from Illinois Commerce Commission**

(1) **Protests/Comments**

380. Long Island Power Authority and PUC of Ohio state that, at the time the PJM Transmission Owners October 11 Filing was submitted, the Commission had not yet issued a merit decision on requests for rehearing of the Order on Remand from *Illinois Commerce Commission*.⁶⁵³ They argue that it would be improper for the Commission to proceed with other decisions without moving forward with the rehearing, as it has not been determined whether the postage-stamp cost allocation method is proper,⁶⁵⁴ and PJM Transmission Owners offer no explanation why new or changed circumstances require a change to the Order on Remand that will cause two different cost allocation methods for high-voltage RTEP projects.⁶⁵⁵

(2) **Answer**

381. PJM Transmission Owners state in their December 26, 2012 answer that, contrary to PUC of Ohio's argument, it is not necessary for the Commission to issue its ruling on rehearing of its Order on Remand to approve the PJM Transmission Owner's October 11 Filing, since the PJM Transmission Owners' October 11 Filing will apply solely prospectively.⁶⁵⁶

⁶⁵² *Id.* at 38-42.

⁶⁵³ Order on Remand, 138 FERC ¶ 61,230.

⁶⁵⁴ Long Island Power Authority Protest, Docket No. ER13-90-000, at 11 (citing *Alamito Co.*, 41 FERC ¶ 61,312, at 61,829 (1987), which cites *Cent. Kan. Power Co.*, 5 FERC ¶ 61,291, at 61,621 (1978)).

⁶⁵⁵ *Id.* at 11-13.

⁶⁵⁶ PJM Transmission Owners December 26, 2012 Answer, Docket No. ER13-90-000, at 8-10.

(e) **Voltage and Other Requirements for Regional Cost Allocation**

(1) **Protests/Comments**

382. Long Island Power Authority and Illinois Commerce Commission object to the PJM Transmission Owners' proposed voltage thresholds for regional cost allocation. Long Island Power Authority states that the PJM Transmission Owners have provided no evidence to support changing the threshold for high-voltage transmission facilities from 500 kV to double-circuit 345 kV for cost allocation purposes.⁶⁵⁷ Additionally, Maryland PSC states that the PJM Transmission Owners have not demonstrated that double-circuit 345 kV transmission facilities provide regional benefits that should be allocated throughout the PJM region in the same manner as 500 kV transmission facilities. Maryland PSC requests that the Commission reject the PJM Transmission Owners October 11 Filing and set the matter for evidentiary hearing to deal with issues of material fact regarding the cost allocation proposal.⁶⁵⁸ In contrast, PUC of Ohio supports the requirement that DC transmission facilities must meet or exceed 345 kV to be classified as extra-high capacity transmission facilities, as well as the requirement that generation interconnection facility costs be the responsibility of generator interconnection customers.⁶⁵⁹

383. Illinois Commerce Commission recommends that all new single and double-circuit 345 kV transmission facilities, not just certain double-circuit 345 kV transmission facilities, be included in the definition of Regional Facilities. Illinois Commerce Commission argues that the proposal disproportionately impacts customers in western PJM, and contends that it discriminates against double-circuit 345 kV transmission facilities that are created by adding a new circuit to an older single-circuit 345 kV transmission facility by excluding them from regional cost allocation. Illinois Commerce Commission suggests that PJM and stakeholders evaluate and develop methods for assessing regionally functioning single-circuit 345 kV transmission facilities, and propose such method to the Commission for implementation within one year.⁶⁶⁰

⁶⁵⁷ Long Island Power Authority Protest, Docket No. ER13-90-000, at 10-11.

⁶⁵⁸ Maryland PSC Protest, Docket No. ER13-90-000, at 2-4.

⁶⁵⁹ PUC of Ohio Comments, Docket No. ER13-90-000, at 9-11.

⁶⁶⁰ Illinois Commerce Commission Comments, Docket No. ER13-90-000, at 5, 13-17.

384. Atlantic Grid argues that the PJM Transmission Owners' proposed description of "Regional Facility" unduly discriminates against DC transmission facilities. Atlantic Grid asserts that the proposal places certain regionally beneficial DC technology and applications at a competitive disadvantage, and asks the Commission to modify the definition of Regional Facilities to reflect regionally beneficial configurations, rather than assume certain voltage levels are regionally beneficial. In particular, Atlantic Grid recommends that the definition apply to voltage-sourced converter (VSC)-based DC transmission facilities that interconnect: (1) at least two Transmission Zones as defined in the OATT; or (2) at least three Points of Interconnection (also as defined in the OATT).⁶⁶¹ Atlantic Grid states that these proposed modifications meet the Commission's test for regional cost allocations set forth in the Order on Remand,⁶⁶² and cites to the Commission's finding that "we need only show that some customer zone in the PJM grid other than those zones currently flowing power over the existing transmission facilities in need of upgrades will make use of and benefit from the new high-voltage facilities."⁶⁶³

385. Clean Line asserts that even if a transmission project is in multiple regions a method must exist for that project to be cost allocated solely at the regional level, because Order No. 1000 requires that "an interregional transmission facility must be selected in both of the relevant regional transmission plans for the purposes of cost allocation in order to be eligible for interregional cost allocation"⁶⁶⁴ Clean Line therefore wishes to ensure that the PJM Transmission Owners' filing does not preclude cost allocation of an interregional transmission project solely at the regional level if sufficient benefits are identified, and notes that, absent such a regional cost allocation method, such a transmission project would fail the Commission's requirement that "a public utility

⁶⁶¹ Atlantic Grid Limited Protest, Docket Nos. ER13-198-000 and ER13-90-000, at 31-33.

⁶⁶² Atlantic Grid Limited Protest, Docket Nos. ER13-198-000, and ER13-90-000, at 33 n.110 (citing *Illinois Commerce Commission*). Atlantic Grid also cites to the Order on Remand, 138 FERC ¶ 61,230 at P 59 ("The Commission and reviewing courts have consistently held that there is a presumption that transmission system enhancements benefit all members of an integrated transmission system." (citation omitted)).

⁶⁶³ Atlantic Grid Limited Protest, Docket Nos. ER13-198-000, and ER13-90-000, at 33 n.112 (citing the Order on Remand, 138 FERC ¶ 61,230 at P 53).

⁶⁶⁴ Clean Line Protest, Docket No. ER13-90-000, at 9 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 400).

transmission provider must have a regional cost allocation method for any transmission facility selected in a regional transmission plan for purposes of cost allocation.”⁶⁶⁵

(2) **Answer**

386. Regarding their proposal to classify new double-circuit 345 kV transmission facilities as Regional Facilities, PJM Transmission Owners state in their December 26, 2012 Answer that the PJM Transmission Owners October 11 Filing included expert testimony that double-circuit 345 kV transmission facilities serve a purpose in western PJM that is comparable to the purpose served by 500 kV transmission facilities in eastern PJM. They point to testimony showing that 500 kV and double-circuit 345 kV transmission facilities have comparable thermal capability and capability for delivering power across the transmission system. PJM Transmission Owners state that in *Illinois Commerce Commission*, the court pointed to double-circuit 345 kV transmission facilities in western PJM as being used for the highest capacity transmission facilities, similarly to 500 kV transmission facilities in eastern PJM, and also noted that regional allocation of only 500 kV transmission facilities creates an asymmetry between western and eastern PJM. PJM Transmission Owners further argue, however, that Illinois Commerce Commission’s proposal to make additional 345 kV transmission facilities eligible for treatment as regional transmission facilities is unwarranted, in that only new double-circuit 345 kV transmission facilities that have been approved in an RTEP (meaning that PJM has determined that both circuits are necessary) should be eligible for allocation as Regional Facilities. PJM Transmission Owners state that Illinois Commerce Commission has not shown how single-circuit 345 kV transmission facilities that provide regional benefits may be distinguished from those that do not.⁶⁶⁶

387. PJM Transmission Owners also state that they have provided for comparable classification of AC and DC transmission facilities, and that Atlantic Grid has not supported its claim that the proposed criteria are discriminatory or inconsistent with Order No. 1000’s requirements. They further state that Atlantic Grid has not demonstrated that a DC transmission project employing VSC technology and operating at a voltage between 345 and 300 kV, such as Atlantic Grid’s proposed transmission project, would provide significant reliability benefits extending throughout the PJM region. PJM Transmission Owners also argue that Atlantic Grid has not demonstrated why its proposed transmission project (a transmission facility to interconnect future off-shore wind generators to the PJM system) would provide reliability benefits, and why it

⁶⁶⁵ *Id.* at 9 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 600).

⁶⁶⁶ PJM Transmission Owners December 26, 2012 Answer, Docket No. ER13-90-000, at 30-32.

would qualify as a Regional Facility, since Order No. 1000 excludes cost recovery for interconnection facilities.⁶⁶⁷

(f) **Cost Allocation for Public Policy Projects/Multi-Driver Approach**

(1) **Protests/Comments**

388. Multiple parties argue that PJM's and the PJM Transmission Owners' proposals are inconsistent with Order No. 1000 since, other than through the State Agreement Approach, they do not provide a regional cost allocation method for public policy projects. AWEA, PJM Generators, Clean Line and Public Interest Organizations state that the PJM Transmission Owners have failed to establish a defined regional cost allocation method for transmission projects that advance public policy requirements, but are not otherwise needed for reliability or economic efficiency.⁶⁶⁸ Clean Line notes that a transmission project designed principally to address public policy requirements, but that may not provide enough reliability or economic benefits to be deemed "necessary" by PJM, may be included as a Supplemental Project (which is not eligible for regional cost allocation) or a transmission project developed through the State Agreement Approach (whereby a state or group of states voluntarily agrees to assume responsibility for all costs), but neither of these two options provide for cost allocation.⁶⁶⁹

389. To address these concerns, several parties request that the Commission require the PJM Transmission Owners to work with PJM and stakeholders to develop a multi-driver approach, which would consider reliability, economic, and public policy benefits in assigning costs. AWEA notes that Schedule 6 requires the evaluation of Public Policy Requirements as part of examining the transmission needs of the region in a single plan, but the PJM Transmission Owners only propose to allocate costs associated with transmission solutions that support public policy requirements through various forms of participant funding. AWEA states that developing selection criteria and a cost allocation method for transmission projects that result in multiple classes of benefits, including public policy benefits, would be a more equitable and transparent way of ensuring that transmission projects that advance public policy requirements will be selected in the

⁶⁶⁷ *Id.* at 33-35, 36 n.103 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 760).

⁶⁶⁸ AWEA Protest, Docket No. ER13-90-000, at 1-3; PJM Generators Comments, Docket No. ER13-90-000, at 2; Public Interest Organizations Comments, Docket No. ER13-198-000, at 29-30.

⁶⁶⁹ Clean Line Protest, Docket No. ER13-90-000, at 5-7.

RTEP for purposes of cost allocation, and seeks such PJM reforms at the stakeholder level.⁶⁷⁰ Likewise, Delaware PSC asserts that the PJM Transmission Owners October 11 Filing does not comply with Order No. 1000's requirements, because it fails to demonstrate how the costs of transmission projects addressing both public policy and a reliability or market efficiency driver are allocated commensurate with the benefits of such projects.⁶⁷¹

390. Atlantic Grid notes that, during the stakeholder process, a proposal was made to require the sponsoring state(s) to be responsible for all costs of public policy projects, except to the extent that any portion of a public policy project would have been included in the RTEP for allocation to non-sponsoring states or provides an RTEP-recognized reliability or market efficiency benefit to non-sponsoring states.⁶⁷² Atlantic Grid and Maryland PSC state that this approach would allow public policy projects to proceed on the basis of state commitments to fund them, while ensuring that beneficiaries in other states that receive benefits also bear their fair share of the costs, and absent this approach the Commission risks perpetuating free ridership.⁶⁷³ Atlantic Grid states that this multi-driver approach would identify regional benefits in addition to violation-based reliability criteria and energy cost savings, as allowed in Regional Cost Allocation Principle 1 which allows the regional transmission planning process to consider a range of benefits. Atlantic Grid states that such benefits could include "operational performance" benefits that can enhance system reliability even when not alleviating a violation-based reliability criterion, and that its voltage-sourced converter technology is a type of transmission facility that can enhance "operational performance" in identifiable ways (Atlantic Grid states that its transmission facility will have multiple interconnection points with the AC power grid, will be bi-directional and controllable, and will not be susceptible to cascading outages when AC systems fail). Atlantic Grid states, however, that these operational benefits provided by Atlantic Grid's and other innovative transmission projects will not be fairly considered absent the multi-driver approach.⁶⁷⁴ Maryland PSC

⁶⁷⁰ AWEA Protest, Docket No. ER13-90-000, at 14.

⁶⁷¹ Delaware PSC Comments, Docket Nos. ER13-198-000 and ER13-90-000, at 3-4.

⁶⁷² Atlantic Grid Limited Protest, Docket Nos. ER13-198-000, and ER13-90-000, at 20 n.68.

⁶⁷³ Atlantic Grid Limited Protest, Docket Nos. ER13-198-000, and ER13-90-000, at 21 n.70 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 562); Maryland PSC Protest, Docket No. ER13-198-000, at 10-12.

⁶⁷⁴ Atlantic Grid Comments, Docket Nos. ER13-198-000 and ER13-90-000, at 23-24.

further notes that, contrary to opponents' claims, a multi-function approach to cost allocation would neither constitute an inappropriate subsidy nor mandate the construction of public policy projects.⁶⁷⁵

391. Clean Line also supports the ability of regions to engage in partial cost allocation, so that if a transmission project is proposed as a merchant line with plans to sell capacity directly to customers, but is also found by a region or regions to satisfy some public policy or reliability need or to provide economic benefits, some of its cost should be considered for allocation commensurate with the regional benefit it provides. Clean Line states that allowing partial cost allocation would follow the Commission's directive in Order No. 1000 requiring "the comparable evaluation of all potential transmission solutions ... to ensure that the more efficient or cost-effective solutions are in the regional transmission plan," and would also fulfill Order No. 1000's directive that "[i]f a regional transmission plan determines that a transmission facility serves several functions ... the regional cost allocation method must take the benefits of these functions of the transmission facility into account in allocating costs roughly commensurate with benefits."⁶⁷⁶ Clean Line therefore asks the Commission to require the PJM Transmission Owners to allow for partial cost allocation of transmission facilities. Clean Line further asks the Commission to allow merchant transmission projects to be eligible for cost allocation for the economic and public policy benefits, so that if a merchant transmission project is submitted for inclusion in the RTEP as a Supplemental or other non-cost allocated project, the project sponsor should be allowed to propose that the transmission project be studied as a transmission solution to identified transmission needs, to enable some portion of the transmission project cost to be eligible for regional cost allocation.⁶⁷⁷

392. Delaware PSC suggests that the final multi-driver approach should be transparent, consistent with the intention of the State Agreement Approach, and agreed to by all participating stakeholders. Delaware PSC believes Commission guidance could provide a framework for a more efficient stakeholder process to make sure costs are allocated in a manner roughly commensurate with the benefits received. Delaware PSC suggests such Commission guidance might also include stakeholder direction for the multi-driver approach to include all costs related to the implementation of public policy requirements, so that when a state enacts laws, promulgates regulations, or implements other actions that increase the costs for a transmission project above the cost-effective level proposed

⁶⁷⁵ Maryland PSC Protest, Docket No. ER13-198-000, at 10-12.

⁶⁷⁶ Clean Line Protest, Docket No. ER13-90-000, at 8 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 255, 601)

⁶⁷⁷*Id.* at 8.

by the transmission entity, those costs should be identified as providing a corresponding increase in benefits for reliability, market efficiency, or public policy requirements.⁶⁷⁸

393. Regarding the proposed State Agreement Approach, Organization of PJM States supports the proposal to allocate costs to only the states sponsoring a transmission project, so that the costs of such a transmission project remain wholly with its proponents who have acknowledged benefits. Organization of PJM States argues that this approach will eliminate concerns about free ridership, as well as allow more cost-effective transmission planning by focusing planning efforts on transmission project development, feasibility, and system impacts rather than on policy debates.⁶⁷⁹ Likewise, PSEG Companies claim that the State Agreement Approach follows Commission guidance on the role of state regulators, particularly in aligning transmission planning related to public policy and associated cost allocation.⁶⁸⁰ Similarly, Delaware PSC states that, although it supports a multi-driver approach, it recognizes that such an approach should not alter the primary goal of the State Agreement Approach of allocating costs for transmission needs driven by public policy requirements only to states agreeing to pay such costs.⁶⁸¹ Delaware PSC further suggests clarifying statements to Schedule 6, sections 1.5.8(d) and (e) so that only transmission projects identified as providing public policy benefits and approved by states for cost responsibility through the State Agreement Approach are included in the RTEP for purposes of cost allocation.⁶⁸²

394. On the other hand, Maryland PSC and Atlantic Grid argue that the proposed State Agreement Approach violates Order No. 1000's prohibition against voluntary participant funding as the cost allocation method for regional or interregional transmission projects that are selected in a regional transmission plan for purposes of cost allocation.⁶⁸³

⁶⁷⁸ Delaware PSC Comments, Docket Nos. ER13-198-000 and ER13-90-000, at 6-7.

⁶⁷⁹ Organization of PJM States Comments, Docket No. ER13-198-000, at 6.

⁶⁸⁰ PSEG Companies Limited Protest and Comments, Docket No. ER13-198-000, at 9-10 (citing Order 1000, FERC Stats. & Regs. ¶ 31,323 at P 688).

⁶⁸¹ Delaware PSC Comments, Docket Nos. ER13-198-000 and ER13-90-000, at 5-6.

⁶⁸² *Id.* at 9.

⁶⁸³ Maryland PSC Protest, Docket No. ER13-198-000, at 8-10, and Atlantic Grid Limited Protest, Docket Nos. ER13-198-000 and ER13-90-000, at 18 n.61 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 725).

Atlantic Grid states that under participant funding, the costs of a transmission facility are allocated only to those entities that volunteer to bear those costs, and PJM has used precisely this method by including public policy projects in its transmission plan only if state sponsors agree voluntarily to be responsible for all of the transmission project's costs.⁶⁸⁴ Maryland PSC, Atlantic Grid, Public Interest Organizations, and AWEA contend that the State Agreement Approach further violates Order No. 1000 by requiring the cost allocation method for public policy projects to be determined on a project-by-project basis, rather than determining the method in advance, as required by Order No. 1000.⁶⁸⁵

395. PUC of Ohio states that all costs resulting from a state public policy mandate, such as a renewable portfolio standard, should be assigned to the state whose mandate necessitated such costs.⁶⁸⁶ However, PUC of Ohio states that the PJM October 25 Filing provides no mechanism to account for instances where a state refuses to acknowledge cost responsibility for upgrades necessitated by that state's public policy requirements, and PUC of Ohio therefore seeks to make PJM responsible for quantifying benefits associated with proposed public policy projects using the Solution-Based DFAX method.⁶⁸⁷ PUC of Ohio further states that costs associated with federal public policy mandates must be assigned to actual beneficiaries based on specific, tangible, and quantifiable assessments of benefits rather than broad societal benefits.⁶⁸⁸

396. Delaware PSC asserts that the PJM Transmission Owners October 11 Filing creates uncertainty over how states can obtain Commission approval of cost recovery for public policy projects under the State Agreement Approach; specifically, whether the PJM Transmission Owners will make a filing with the Commission pursuant to section 205 or whether the states must pursue a section 206 filing.⁶⁸⁹ Delaware PSC requests the

⁶⁸⁴ Atlantic Grid Limited Protest, Docket Nos. ER13-198-000 and ER13-90-000, at 18-19.

⁶⁸⁵ See Public Interest Organizations Comments, Docket No. ER13-198-000, at 29-30; Atlantic Grid Limited Protest, Docket Nos. ER13-198-000 and ER13-90-000, at 21 n.70 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 562).

⁶⁸⁶ PUC of Ohio Comments, Docket No. ER13-90-000, at 11.

⁶⁸⁷ PUC of Ohio Comments, Docket No. ER13-198-000, at 8.

⁶⁸⁸ *Id.*; PUC of Ohio Comments, Docket No. ER13-90-000, at 11-12.

⁶⁸⁹ Delaware PSC Comments, Docket Nos. ER13-198-000 and ER13-90-000, at 11-12.

PJM Transmission Owners submit tariff revisions addressing this concern.⁶⁹⁰ Illinois Commerce Commission is concerned that the tariff language proposed in subsection (b)(xii)(B) of Schedule 12 gives the TOA-AC the authority to block the submission of a section 205 cost allocation filing even if the affected state(s), the affected transmission owner(s), and PJM agree on and support the agreed-upon cost allocation. Illinois Commerce Commission recommends that the Commission delete the second sentence in subsection (b)(xii)(B) and replace it with a mechanism that would allow a section 205 cost allocation filing for a State Agreement public policy project if the affected state(s) that will bear the costs are in agreement.⁶⁹¹

(2) **Answers**

397. In its December 26, 2012 response to arguments that the multi-driver approach would cause consumers in one state to pay more than otherwise required to meet existing reliability or market efficiency transmission needs, Atlantic Grid states that non-reliability or non-market efficiency related costs would be borne solely by state sponsors under the State Agreement Approach. Atlantic Grid argues that the multi-driver approach would simply allocate the costs of reliability or market efficiency benefits provided by a public policy project to beneficiaries, in a manner consistent with the costs of required transmission facilities displaced or modified by the public policy project. Atlantic Grid asserts that this represents planning efficiencies promoted by the Commission, and utilized to significant benefit in other RTOs such as MISO, and the multi-driver approach is necessary to provide up front certainty regarding cost allocation.⁶⁹²

398. With regard to the argument that PJM Transmission Owners have not satisfied the requirements of Order No. 1000 because they have not proposed a cost allocation method for transmission projects designed to address public policy needs, PJM Transmission Owners state in their December 26, 2012 answer that PJM's transmission planning process does not currently provide for inclusion of transmission projects intended solely to address public policy needs in the RTEP, but rather considers public policy requirements through its integrated market design and in conducting its scenario analyses as part of its planning process. Accordingly, PJM Transmission Owners have not developed a cost allocation method for transmission projects needed solely to address

⁶⁹⁰ *Id.* at 11-12.

⁶⁹¹ Illinois Commerce Commission Comments, Docket No. ER13-90-000, at 8-9, 28-30.

⁶⁹² Atlantic Grid December 26, 2012 Answer, Docket Nos. ER13-198-000 and ER13-90-000, at 5-8.

public policy requirements, since PJM does not currently include such transmission projects in the RTEP. If PJM changes its transmission planning process, PJM Transmission Owners will consider at that time any corresponding changes to cost allocation method and will submit necessary filings to the Commission. They state that they have followed this practice with regard to State Agreement Approach projects, and have developed a method to allocate costs to customers designated by the states sponsoring the transmission project.⁶⁹³

399. PJM Transmission Owners state that, while some parties claim that PJM cannot rely on the State Agreement Approach to accommodate public policy-driven projects because this would be a form of participant funding, which Order No. 1000 prohibits as the sole approach to allocating the costs of such transmission projects, this argument is irrelevant to PJM Transmission Owners' obligations. They state that PJM has adopted the State Agreement Approach, and therefore, PJM Transmission Owners have provided a cost allocation mechanism for transmission projects built under that approach. PJM Transmission Owners also state that, contrary to the Delaware PSC's arguments, their proposed changes to Schedule 12 will not allow PJM Transmission Owners to block or veto the states' proposed allocation of costs for State Agreement projects. PJM Transmission Owners state that they have sole authority to submit section 205 filings to establish the allocation of costs for transmission projects that are not allocated solely to the zone of the transmission owner constructing the transmission project. Thus, if the costs of a State Agreement Approach project would not be allocated within one transmission zone, the OATT requires a new filing to allocate the costs of the transmission facility. And, while filing that proposed allocation under section 205 of the FPA requires a majority vote of the PJM Transmission Owners under the CTOA, if that majority cannot be reached, other parties (such as the state or PJM) may file that method under section 206.⁶⁹⁴

400. In response to Clean Line's argument that the sponsor of a merchant transmission facility or other participant-funded transmission project should be allowed to propose that PJM study its transmission project as a solution to identified transmission needs, leading to the allocation of a portion of its costs, PJM Transmission Owners state that this argument involves a planning issue and should be raised in response to the PJM October 25 Filing or in a future stakeholder process. PJM Transmission Owners further state that Clean Line's assertion that the PJM Transmission Owners October 11 Filing is deficient because it does not include a cost allocation method for interregional

⁶⁹³ PJM Transmission Owners December 26, 2012 Answer, Docket No. ER13-90-000, at 43-46.

⁶⁹⁴ *Id.* at 47-48.

transmission projects is premature, since separate filings for interregional cost allocation methods are not due until April 2013.⁶⁹⁵

401. PJM asserts that the State Agreement Approach cannot be defined as participant funding according to the Commission's final policy statement on priority rights to new participant-funded transmission. PJM explains that under the State Agreement Approach, states will exercise their sovereign authority to determine beneficiaries of public policies and allocate costs to entities within their states; this could result in costs being allocated to entities within a state that oppose a transmission project and have not volunteered to pay for it, which is inconsistent with a participant funding approach.⁶⁹⁶

402. In its January 14, 2013 answer to the PJM Transmission Owners December 26, 2012 answer, Atlantic Grid asserts that the PJM Transmission Owners rely on three contradictions to defend their proposed eligibility criteria for region-wide cost allocation.⁶⁹⁷ Atlantic Grid states that the PJM Transmission Owners: (1) seek to decide which transmission facilities are eligible for region-wide cost allocation while conceding that only PJM can decide which transmission facilities to include in the RTEP; (2) claim that the amendment Atlantic Grid offered to salvage the PJM Transmission Owners' eligibility criteria must be supported by evidence that Atlantic Grid's transmission project will provide region-wide benefits, even though the filing parties failed to make that showing for double-circuit 345 kV lines; and (3) argue that consumers should pay for new transmission lines that benefit them, unless the lines connect renewable generation, in which case consumers need not pay for the benefits they receive from those lines.⁶⁹⁸

⁶⁹⁵ *Id.* at 49-50. Order No. 1000 requires all public utility transmission providers to submit their Order No. 1000 compliance filings with respect to interregional transmission coordination procedures and an interregional cost allocation method or methods by April 11, 2013. *See* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 792. However, on February 26, 2013, the Commission granted an extension of time to and including July 10, 2013 for all public utility transmission providers to submit their Order No. 1000 compliance filings with respect to interregional transmission coordination procedures and an interregional cost allocation method or methods.

⁶⁹⁶ PJM Answer, Docket No. ER13-198-000, at 34-36 (citing *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects*, 142 FERC ¶ 61,038, at P 6 (2013)).

⁶⁹⁷ Atlantic Grid January 14, 2013 Answer, Docket Nos. ER13-198-000 and ER13-90-000, at 7.

⁶⁹⁸ *Id.* On January 22, 2013, the PJM Transmission Owners submitted an answer, arguing that Atlantic Grid's January 14, 2013 Answer should be rejected as it: (1) is
(continued...)

403. Atlantic Grid states that the PJM Transmission Owners would curtail PJM's authority to decide which transmission facilities to include in the RTEP by allowing the PJM Transmission Owners to define the eligibility criteria for a transmission project to be included in the RTEP for the purposes of cost allocation. Atlantic Grid asserts that the PJM Operating Agreement expressly confers on PJM the right to determine which transmission facilities should be included in the RTEP for the purposes of regional cost allocation, and neither the PJM Transmission Owners' answer nor the CTOA offers evidence on their authority to make such assessments.⁶⁹⁹ Atlantic Grid recognizes that the CTOA confers on the PJM Transmission Owners the right to file "revenue requirement" and "rate design" changes, but states that cost allocation and rate design are not one and the same.⁷⁰⁰ Finally, Atlantic Grid argues that the PJM Transmission Owners' claimed section 205 rights in their answer are irrelevant to PJM's Order No. 1000 compliance obligation, because that obligation arises from section 206 of the FPA.⁷⁰¹

404. Atlantic Grid further states that the PJM Transmission Owners' December 26, 2012 answer demonstrates that their proposed criteria for Regional Facilities are unduly discriminatory. Atlantic Grid asserts that the PJM Transmission Owners ask the Commission to expand the criteria for Regional Facilities to include double-circuit 345 kV lines based solely on rough thermal equivalency to 500 kV lines, without showing that these 345 kV circuits provide benefits.⁷⁰² Atlantic Grid states that simultaneously, the PJM Transmission Owners seek to make it more difficult for Atlantic Grid's

untimely; (2) is riddled with misstatement and inaccuracies; and (3) presents no new information or arguments. On January 28, 2013, Atlantic Grid responded that their answer should be accepted, since it corrects factual errors presented by the PJM Transmission Owners in their December 26, 2012 answer.

⁶⁹⁹ *Id.* at 8-11.

⁷⁰⁰ *Id.* at 9 n.25 (citing *Cities of Arma v. FERC*, 890 F.2d 478, 479 (D.C. Cir. 1989), which cites *Kan. Gas & Elec. Co. v. FERC*, 758 F.2d 713, 714 (D.C. Cir. 1985)); see *Columbia Gas Transmission Corp. v. FERC*, 628 F.2d 578, 583 n.12 (D.C. Cir. 1979) (recognizing that the allocation of costs among rate zones and the design of rates to recover those costs are two separate and distinct matters that sometimes turn on conceptually different considerations); *Tenn. Gas Pipeline Co. v. FERC*, 871 F.2d 1099, 1112 (D.C. Cir. 1989) ("Rate design may or may not use the same classification method used for allocation").

⁷⁰¹ *Id.* at 10.

⁷⁰² *Id.* at 13.

transmission project to qualify as a Regional Facility, by making the factually incorrect comparison of voltages between AC and DC transmission facilities, and defend their proposal against the charge that it is unduly discriminatory by arguing that “they apply to D.C. projects the same 345 kV minimum voltage threshold that they apply to double-circuit A.C. projects.”⁷⁰³ Atlantic Grid asserts that these voltages are not comparable, and provides testimony in support of that assertion.⁷⁰⁴

405. Atlantic Grid states that the PJM Transmission Owners propose a definition of Regional Facilities that would categorically exclude certain transmission projects from region-wide cost allocation even if PJM independently finds that they are needed to meet transmission system needs (i.e., PJM includes them in the RTEP and finds that they provide region-wide benefits). Atlantic Grid asserts that this proposal results in a definition that is unjust, unreasonable, unduly discriminatory, and conflicts with the PJM Transmission Owners’ own proposal to allocate the costs of market efficiency projects.⁷⁰⁵ Therefore, Atlantic Grid avers that the Commission should: (1) reject the PJM Transmission Owner’s definition of Regional Facilities,⁷⁰⁶ or at a minimum modify the definition as proposed in Atlantic Grid’s protest; (2) rule that PJM is responsible for determining region-wide cost allocation eligibility; and (3) direct PJM to file the multi-driver approach and an accompanying cost allocation plan within 60 days.

406. PJM counters commenters’ assertions that the State Agreement Approach is a form of participant funding. PJM argues that the State Agreement Approach is a clear governmental function, rather than the voluntary agreement by a developer to assume project costs as the only way to have the project built.⁷⁰⁷

⁷⁰³ *Id.* at 16 (citing PJM Transmission Owners December 26, 2013 Answer, Docket No. ER13-90-000, at 33).

⁷⁰⁴ *Id.* at 16, Ex. AWC-1 (Affidavit of Dr. Mohamed M. El-Gasseir).

⁷⁰⁵ *Id.* at 16-17.

⁷⁰⁶ In its January 14, 2013 Answer, Atlantic Grid also suggests that the Commission could reject the PJM Transmission Owners October 11 Filing and require PJM to make a “proper compliance filing” (Atlantic Grid January 24, 2013 Answer, Docket Nos. ER13-198-000 and ER13-90-000, at 7), noting that the PJM Transmission Owners’ proposal raises genuine issues of material fact but lacks necessary evidentiary support for the Commission to accept the proposal without an evidentiary hearing (*Id.* at 19).

⁷⁰⁷ PJM Answer, Docket No. ER13-198-000, at 35-36.

(g) **Section 205 Filing Rights**

407. PSEG Companies states that it supports PJM's incorporation of the PJM Transmission Owners October 11 Filing, as only the PJM Transmission Owners are authorized to exercise section 205 filing rights regarding PJM rate design.⁷⁰⁸ LS Power, however, takes issue with the PJM Transmission Owners' assertion that the OATT gives them the exclusive authority to submit filings under section 205 relating to transmission rate design. LS Power states that the incumbent transmission owners are seeking exclusive authority to determine a cost allocation method for future regional transmission projects, even though PJM may select the transmission projects of nonincumbent transmission developers in the RTEP. Thus, LS Power argues, the PJM Transmission Owners are truncating the rights of nonincumbent transmission owners to make filings under the FPA. LS Power further asserts that, to the extent that the PJM Transmission Owners claim that this is a contractual provision protected by the *Mobile-Sierra* doctrine, such provision is contrary to the public interest.⁷⁰⁹

408. While LS Power states that each PJM Transmission Owner unquestionably has the exclusive right under section 205 to "file rates and terms for services rendered with its assets,"⁷¹⁰ the proposed revisions to the OATT do not address the PJM Transmission Owners' existing assets, nor is this an issue of the rates and terms of service for their future individual local transmission projects or upgrades to existing equipment. LS Power asserts that it is concerned with the determination of future rates and terms of service for transmission providers yet to be determined who seek to build regional transmission projects anywhere in the PJM footprint. LS Power points out that, since 1996, the PJM footprint has expanded significantly, and while initially the majority of new transmission in PJM was built and owned by incumbent transmission owners, today many nonincumbent developers are preparing to build and own future transmission projects. Thus, LS Power argues that PJM should determine the regional cost allocation method for future transmission projects determined under the RTEP through its stakeholder process. LS Power states that this position will not require incumbent transmission owners to cede any rights that they now have under section 205 of the FPA, since no developer (incumbent or nonincumbent) is required to submit a transmission project for regional cost allocation, but chooses to do so voluntarily.⁷¹¹

⁷⁰⁸ PSEG Companies Limited Protest and Comments, Docket No. ER13-198-000, at 10.

⁷⁰⁹ LS Power Protest, Docket No. ER13-90-000, at 3-4.

⁷¹⁰ *Id.* at 4 (citing *Atlantic City*, 295 F.3d at 10).

⁷¹¹ *Id.* at 5-6.

409. In their December 26, 2012 answer, PJM Transmission Owners argue that, contrary to LS Power's argument, the PJM Transmission Owners have the right to determine the cost allocation method for future transmission projects, because that right is clearly established by statute and set forth in the OATT and CTOA.⁷¹² PJM Transmission Owners state that the Commission has found that the requirement for collective action by all transmission owners to change regional rates and rate design reflects the integrated nature of the PJM system, and prevents a transmission owner from both joining PJM and retaining its own independent rate design. PJM Transmission Owners note that any entity that chooses to build transmission that is integrated into PJM's system, such as LS Power, would join the CTOA and vote on regional rate proposals. PJM Transmission Owners further state that these provisions are consistent with Regional Cost Allocation Principle 6 of Order No. 1000 and the requirement that there be only one cost allocation method for each type of transmission facility; PJM Transmission Owners consider LS Power's proposal to permit, instead, a new developer the ability to dictate a separate regional cost allocation method for its transmission project to be discriminatory. PJM Transmission Owners state that LS Power's argument that PJM should determine the regional cost allocation method for RTEP transmission projects is inconsistent with the *Atlantic City Electric* decision, in which the court upheld PJM Transmission Owners' right to make unilateral rate filings under section 205.⁷¹³

(h) Effective Date

410. Long Island Power Authority contends that the Commission should reject the PJM Transmission Owners October 11 Filing and require the PJM Transmission Owners to re-file their proposal after developing additional support and engaging further with PJM stakeholders. Long Island Power Authority argues that the PJM Transmission Owners October 11 Filing lacks information regarding the mechanics or likely results of the proposed 50/50 hybrid method, a comparative analysis explaining how the hybrid method

⁷¹² PJM Transmission Owners December 26, 2012 Answer, Docket No. ER13-90-000, at 11-12 (citing PJM, Intra-PJM Tariffs, OATT, § 9.1) ("Transmission Owners shall have the exclusive and unilateral rights to file pursuant to Section 205 of the FPA . . . for any changes in or relating to the establishment and recovery of the Transmission Owners' transmission revenue requirements or the transmission rate design under the PJM [OATT]") and Article 7 of the CTOA, which gives each party to the CTOA the exclusive right to file unilaterally to change rates and charges for transmission service for delivery within its Zone based solely on its own costs (Article 7, § 7.1.3) and requires collective action of the parties to the CTOA to file Joint Transmission Rates (Article 7, § 7.2.1)). See PJM, Intra-PJM Tariffs, OATT, § 9.1 (Rights of Transmission Owners) (1.0.0).

⁷¹³ PJM Transmission Owners December 26, 2012 Answer, Docket No. ER13-90-000, at 10-15 (citing *Atlantic City*, 295 F.3d at 11).

meets Regional Cost Allocation Principle 1, an explanation supporting the roughly commensurate benefits from a Solution-Based DFAX method, and examples of how the hybrid method would be applied to an RTEP project.⁷¹⁴ Long Island Power Authority states that, once a complete application has been filed, the Commission should not accept the proposed effective date, but instead suspend the filing for the full five months permitted by statute. Long Island Power Authority argues that a February 1, 2013 effective date is unreasonable because PJM approves its RTEP reports in late February, and it would be premature to apply the proposed method to transmission projects approved in the next RTEP.⁷¹⁵

iii. Commission Determination

411. The Commission conditionally accepts the PJM Transmission Owners' proposed cost allocation methods, subject to the compliance requirements explained below.

(a) 50/50 Hybrid Cost Allocation Method

412. We find that the PJM Transmission Owners' proposal to allocate one-half of a Regional or Necessary Lower Voltage Facility's costs based on the postage-stamp method, and one-half based on the Solution-Based DFAX method or changes in load energy payments analysis (i.e., the hybrid method), with certain modifications required below, meets the requirements of Order No. 1000.

413. With regard to Regional Facilities and Necessary Lower Voltage Facilities,⁷¹⁶ as discussed below we find that high-voltage transmission facilities have significant regional benefits that accrue to all members of the PJM transmission system. The postage-stamp method recognizes these widespread, although difficult to quantify benefits, by allocating costs to all parties within PJM's integrated network. Additionally, the Solution-Based DFAX method used for Reliability Projects, and the change in load energy payments analysis used for Economic Projects, each recognize that more specific benefits of projects can be identified over time. We find that a method that blends recognition of broad, regional benefits with specifically identifiable benefits over time satisfies Regional Cost Allocation Principle 1 (i.e., that costs be allocated in a manner that is roughly

⁷¹⁴ Long Island Power Authority Protest, Docket No. ER13-90-000, at 5-7; PUC of Ohio Comments, Docket Nos. ER13-198-000 and ER13-90-000, at 3-6.

⁷¹⁵ Long Island Power Authority Protest, Docket No. ER13-90-000, at 15-16.

⁷¹⁶ Necessary Lower Voltage Facilities must be constructed or strengthened to support new Regional Facilities and are granted the same cost allocation treatment as Regional Facilities.

commensurate with benefits received) and Regional Cost Allocation Principle 2 (i.e., that costs are not allocated to entities with little to no benefits).

414. With respect to the postage-stamp component of the hybrid cost allocation method, we disagree that any cost allocation based on a postage-stamp method amounts to improper cost “socialization” as the PUC of Ohio contends, by allocating costs to customers that do not directly or meaningfully benefit from a transmission project. To the contrary, the Commission and reviewing courts have consistently held that there is a presumption that transmission system enhancements benefit all members of an integrated transmission system.⁷¹⁷ In supporting the postage-stamp component, the PJM Transmission Owners state, and we agree, that an advantage of this method is that it captures the full spectrum of benefits associated with high-voltage facilities, including difficult to quantify regional benefits, such as improved reliability, reduced congestion, reduced power losses, greater carrying capacity, reduced operating reserve requirements, and improved access to generation. The PJM Transmission Owners also note, and we also agree, that this postage stamp method accounts for changes in system use over the lifetime of a high-voltage facility.⁷¹⁸ Because all customers in the region will share these broad regional benefits, a postage-stamp component of cost allocation is a reasonable way to allocate costs to consumers that are roughly commensurate with such benefits.

415. We disagree that the postage-stamp component of PJM’s cost allocation method will result in customers in western PJM being overcharged for a new transmission facility. It is true that new high-voltage transmission facilities may allow locational marginal prices (LMPs) to converge across the entire PJM region. However, the Commission has previously found that “converging prices signal that the grid is reliable and robust enough to support energy flows in any direction and that the benefits will

⁷¹⁷ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, Opinion No. 453, 97 FERC ¶ 61,033, at 61,169 (2001) (as amended), *aff’d sub nom. Midwest ISO v. FERC*, 373 F.3d 1361, 1369 (2004) (“upgrades designed to preserve the grid’s reliability constitute system enhancements that are presumed to benefit the entire system”); *Entergy Servs., Inc. v. FERC*, 319 F.3d 536, 534-44 (D.C. Cir. 2003) (*Entergy*) (system upgrades that prevent degradation of reliability benefit all system users; “benefits” are not limited to increases in capacity or to enhancements other than maintained stability in an expanded system); *W. Mass. Elec. Co. v. FERC*, 165 F.3d 922, 927 (1999) (“When a system is integrated, any system enhancements are presumed to benefit the entire system”).

⁷¹⁸ See PJM Transmission Owners October 11 Filing, Docket No. ER13-90-000, Ex. PTO-2, at 13 (Joint Testimony of Michelle Henry and Frank Richardson).

accrue to the market as a whole.”⁷¹⁹ Even though, at a particular point in time, LMPs in one zone may be higher than they would be without access to this reliable and robust grid, we cannot find that access to the grid is a disadvantage to such parties. Accordingly, we find that the postage-stamp component can ensure that customers are allocated a share of the cost of new transmission facilities that is roughly commensurate with the above-mentioned numerous regional benefits in addition to any potential constraint relief benefits.

416. With respect to the Solution-Based DFAX method and the changes in load energy payments components of the hybrid method, we find that such methods are able to identify over time certain specific benefits and beneficiaries of high-voltage facilities. The Solution-Based DFAX method evaluates the projected relative use of a new Reliability Project by load in each zone and withdrawals by merchant transmission facilities, and through this power flow analysis, identifies projected benefits for individual entities in relation to power flows. The changes in load energy payments analysis identifies customers whose load energy payments, as projected by the model, will be reduced as a result of a new Economic Project. The customers with projected reductions in payments are deemed to benefit from the new transmission facility.⁷²⁰ Accordingly, we find that these methods have merit, as they forecast a specific quantification of certain benefits. However, for high-voltage facilities, we note that such methods do not capture all of the broad regional benefits identified above.

417. While several parties advocate a cost allocation method that relies on a single method, rather than the hybrid method proposed by the PJM Transmission Owners, we agree with the PJM Transmission Owners that a hybrid method is reasonable. A hybrid cost allocation method that incorporates both the postage-stamp method and the Solution-Based DFAX method or the changes in load energy payments analysis represents a reasonable balance of broad regional benefits and specifically identifiable benefits over time. In particular, we disagree with PUC of Ohio that applying only the Solution-Based DFAX method would be a more equitable method for allocating the costs of Regional Facilities. While the Solution-Based DFAX method is able to identify the subset of customers that benefit from a facility simply through electrical proximity to the facility, as discussed above, it does not recognize the broader regional benefits that go beyond a customer’s use of a particular transmission facility. We therefore also disagree with Illinois Commerce Commission and LS Power that the postage-stamp component of

⁷¹⁹ Order on Remand, 138 FERC ¶ 61,230 at P 96 (citing *Gainesville Utils. Dep’t v. Fla. Power Corp.*, 402 U.S. 515, 527 (1971)).

⁷²⁰ PJM Transmission Owners October 11 Filing, Docket No. ER13-90-000, at 9-10.

PJM's cost allocation method should be eliminated for certain Economic Projects,⁷²¹ as sole reliance on a load energy payments analysis would fail to recognize the significant regional benefits beyond reduced load payments.

418. Similarly, while we continue to find that the postage-stamp method can be used to allocate costs roughly commensurate with benefits as part of the 50/50 hybrid cost allocation method, we will not, as requested by Maryland PSC, require that only the postage-stamp method be used to allocate the costs of Regional Facilities. In response to all of these arguments, we note that the PJM Transmission Owners need only show that the instant proposal is just and reasonable and otherwise complies with the requirements of Order No. 1000. The proposal is not required to be superior to the previous cost allocation method or other suggested approaches offered by protestors.⁷²²

419. We also disagree with Illinois Commerce Commission and Long Island Power Authority that the PJM Transmission Owners have not shown that a 50/50 split between the postage-stamp method and Solution-Based DFAX or the change in load energy payments method is just and reasonable for Regional Facilities. While the Commission has found that high-voltage facilities provide significant broad regional benefits, no party disputes that such benefits cannot be calculated with complete precision. Further, the benefits of any given transmission project vary over the life of the project (e.g., as demand changes for geographical or economic reasons).

⁷²¹ Illinois Commerce Commission Comments, Docket No. ER13-90-000, at 28-29; LS Power Protest, Docket No. ER13-90-000, at 9-10.

⁷²² See *Wisc. Pub. Power, Inc. v. FERC*, 493 F.3d 239, 266 (D.C. Cir. 2007) (merely because petitioners can conceive of a refund allocation method that they believe would be superior to the one FERC approved does not mean that FERC erred in concluding the latter was just and reasonable); *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945, 955 (D.C. Cir. 2007) (“we need not decide whether the Commission has adopted the best possible policy as long as the agency has acted within the scope of its discretion and reasonably explained its actions”); *United Distribution Cos. 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”); *New England Power Co.*, 52 FERC ¶ 61,090 at 61,336 (1990), *reh’g denied*, 54 FERC ¶ 61,055 (1991), *aff’d*, *Town of Norwood v. FERC*, 962 F.2d 20 (D.C. Cir. 1992) (Commission approved a filed rate design noting that even though there may be more desirable alternatives to use in estimating particular components, the final rate design proposal does not need to be “perfect” or even the most desirable, it only needs to be reasonable).

420. The PJM Transmission Owners state that the proposed hybrid cost allocation methodology represents a reasonable compromise between the approaches advocated by different PJM stakeholders that many stakeholders can accept, even though some would prefer a different approach. They further state that the hybrid methodology reasonably allocates costs both to specifically identified beneficiaries of the projects – through the portion of the allocation based on Solution-Based DFAX or a load energy payment analysis – as well as to users that receive more difficult-to-quantify benefits and users who might benefit in the future as usage of the projects changes over time – through the portion based on the postage-stamp methodology.⁷²³ PJM Transmission Owners also point out that “a balanced hybrid of load ratio share cost allocation and a reformed and improved [DFAX] analysis” was “prompted” by the Commission’s findings and separate statements in the Order on Remand,⁷²⁴ and results in a cost allocation method that is “fair, balanced, and transparent and responsive to the changing needs of transmission customers.”⁷²⁵ We note that “[r]atemaking is not an exact science,”⁷²⁶ and the Commission “must be free, within the limitations imposed by pertinent constitutional and statutory commands, to devise methods of regulation capable of equitably reconciling diverse and conflicting interests.”⁷²⁷ This includes the flexibility to take into account all relevant public interests, both existing and foreseeable, in determining the just and reasonable rate.⁷²⁸ We find that evenly apportioning the costs of Regional Facilities reasonably recognizes the meaningful and significant benefits provided to both the overall PJM region and to specific users of Regional Facilities, and will result in costs being allocated in a manner that is at least roughly commensurate with benefits. We find that this hybrid method resolves the “intensely practical difficulties”⁷²⁹ inherent in “reduc[ing] the abstract concept of reasonableness to concrete dollars and cents.”⁷³⁰

⁷²³ PJM Transmission Owners October 11 Filing, Docket No. ER13-90-000, at 10.

⁷²⁴ PJM Transmission Owners December 26, 2012 Answer, Docket No. ER13-90-000, at 3 & n.4 (citing the Order on Remand).

⁷²⁵ *Id.* at 8.

⁷²⁶ *Fed. Power Comm’n v. Conway Corp.*, 426 U.S. 271, 278 (1976).

⁷²⁷ *In re Permian Basin Area Rate Cases*, 390 U.S. 747 (1968) (*Permian Basin*).

⁷²⁸ *PJM Interconnection, L.L.C.*, 121 FERC ¶ 61,173 at P 20 (2007).

⁷²⁹ *Farmers Union Cent. Exch. v. FERC*, 734 F.2d 1486, 1501 (D.C. Cir. 1984) (*Farmers Union*) (citing *Permian Basin*, 390 U.S. at 767).

⁷³⁰ *Montana-Dakota*, 341 U.S. at 251.

421. Continuing with the remaining regional cost allocation principles, we also find that the proposed hybrid cost allocation method is consistent with Regional Cost Allocation Principle 3 (i.e., a benefit to cost threshold should not exceed 1.25 to 1). PJM does not propose to use a benefit to cost threshold for Reliability Projects; for Economic Projects, PJM will use such a threshold and it is set at 1.25.

422. With respect to Regional Cost Allocation Principle 4, the PJM Transmission Owners state that their proposal allocates costs solely within PJM's transmission planning region. However, Regional Cost Allocation Principle 4 also requires that the regional transmission planning process must identify consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation, on other transmission planning regions, such as upgrades that may be required in another region.⁷³¹ The PJM Transmission Owners do not address whether PJM will identify the consequences of such a facility for other transmission planning regions, as required by Order No. 1000.⁷³² The PJM Transmission Owners also do not address whether the PJM region has agreed to bear the costs associated with any required upgrades in another transmission planning region or, if so, how such costs will be allocated within the PJM planning region. Accordingly, we require PJM and the PJM Transmission Owners to file, within 120 days of the issuance date of this order, a further compliance filing that revises the PJM OATT to provide for identification of the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation. PJM and the PJM Transmission Owners must also address in the further compliance filing whether the PJM region has agreed to bear the costs associated with any required upgrades in another transmission planning region and, if so, how such costs will be allocated under the PJM regional cost allocation methods.

423. With respect to Regional Cost Allocation Principle 5 (i.e., the cost allocation method must be transparent), we find that the OATT contains sufficient detail to allow a stakeholder to reproduce the results of the postage-stamp method or change in load

⁷³¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 657.

⁷³² *Id.* (“Regional Cost Allocation Principle 4: The allocation method for the cost of a transmission facility selected in a regional transmission plan must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. However, *the transmission planning process in the original region must identify consequences for other transmission planning regions, such as upgrades that may be required in another region and, if there is an agreement for the original region to bear costs associated with such upgrades, then the original region's cost allocation method or methods must include provisions for allocating the costs of the upgrades among the entities in the original region.*”) (emphasis added).

energy payments analysis. With additional modifications to the description of the Solution-Based DFAX analysis in the OATT, as discussed below, we find that this component of the proposed hybrid method will also satisfy Order No. 1000's transparency requirements.

424. Finally, we find that the PJM Transmission Owners' proposal satisfies Regional Cost Allocation Principle 6 (i.e., a different cost allocation method may be used for different types of transmission facilities), noting that it is appropriate that the cost allocation method distinguish between Regional Facilities and Lower Voltage Facilities, as well as between Reliability Projects and Economic Projects.

425. We will not require PJM to formally revisit its hybrid cost allocation method at some point in the future, as requested by Illinois Commerce Commission. While we encourage PJM and its stakeholders to continue to explore options to improve its regional transmission planning and cost allocation processes, we find PJM's use of a postage-stamp component in its hybrid cost allocation method, with the further explanation PJM is required to provide regarding Regional Cost Allocation Principle 4, to be reasonable on its own merits. And if Illinois Commerce Commission believes that changing circumstances have rendered the Commission-approved cost allocation method no longer just and reasonable at some point in the future, it may file a complaint under section 206.

426. Accordingly, we find that the proposal does not fully comply with Regional Cost Allocation Principle 4, and will require PJM and the PJM Transmission Owners to submit a further compliance filing within 120 days of the issuance date of this order providing for identification of the consequences for other transmission planning regions of a transmission facility selected in the regional transmission plan for purposes of cost allocation; addressing whether the PJM region has agreed to bear costs associated with necessary upgrades in other regions; and providing a cost allocation methodology for such costs the PJM region has agreed to bear.

(b) Use of Solution-Based versus Violation-Based DFAX Cost Allocation Method

427. We conditionally accept the PJM Transmission Owners' proposed Solution-Based DFAX method. We note that the Solution-Based DFAX method is an improvement over the Violation-Based DFAX method, particularly when it is applied to high-voltage transmission facilities. In the Order on Remand, the Commission explained that the Violation-Based DFAX method cannot identify the causes of multiple constraints, does not account for multiple constraints in multiple areas, and cannot account for changes in usage and flow direction over time.⁷³³ Because the Solution-Based DFAX method

⁷³³ Order on Remand, 138 FERC ¶ 61,230 at P 37.

considers usage of the new transmission facility rather than impact on a constraint, it may reasonably be applied to a facility that resolves multiple violations. Furthermore, it may be conducted iteratively to account for changes in system topology.

428. We agree with arguments raised by Long Island Power Authority, Illinois Commerce Commission, and Maryland PSC that as proposed PJM's Schedule 12 lacks sufficient explanation regarding how DFAX will be implemented. While PJM has adequately shown how the DFAX values and usage of transmission facilities will be calculated, there is no detail regarding how these values will be utilized to calculate assignments of cost responsibility. We disagree with the PJM Transmission Owners that the testimony provided in the October 11 Filing is sufficient. The version of Schedule 12 superseded by the PJM Transmission Owners October 11 Filing contained a section (b)(iii)(4), which detailed how a zone's or merchant transmission facilities' usage was used to derive cost assignments under the Violation-Based DFAX method. We find that the proposed Schedule 12 must contain a similar provision pertaining to the Solution-Based DFAX method in order to be just and reasonable. We therefore direct PJM and the PJM Transmission Owners to submit a compliance filing containing revised tariff provisions explaining how the Solution-Based DFAX method is used to calculate assignments of cost responsibility, within 120 days of the date of this order.

429. However, we deny Illinois Commerce Commission's request to require the PJM Transmission Owners to explain why system facility outage contingencies are not taken into account in the Solution-Based DFAX method calculation. Use of system facility outage contingencies is relevant for the Violation-Based DFAX method because it calculates the impact of a zone or merchant transmission facility on the constraint caused by the outage. The Solution-Based DFAX method calculation is intended to calculate the impact of a zone or merchant transmission facility on the new transmission facility, and need not consider constraints or outages. We find it reasonable to use a model of the non-contingency system to calculate a zone's or merchant transmission facility's use of the new transmission facility under normal operating conditions.

430. We also note Long Island Power Authority's contention that, although PJM Transmission Owners state that PJM may remove a DC transmission facility from its DFAX analysis and perform an analysis in which the facility is replaced with a proxy AC transmission facility,⁷³⁴ Schedule 12, section (b)(iii)(I) also provides PJM with broad discretion to use a substitute proxy in yet unnamed capacities and that PJM Transmission Owners October 11 Filing is generally unclear on how the use of a "proxy" applies to other provisions. However, Schedule 12, section (b)(iii)(I) also requires that PJM issue a report if it uses a proxy that is not in the OATT. This report shall detail why the DFAX analysis could not be performed or is objectively unreasonable; why the substitute proxy

⁷³⁴ PJM Transmission Owners October 11 Filing, Docket No. ER13-90-000, at 13.

is objectively reasonable; and any recommendations for changes to consider. We find these reporting requirements sufficient to address Long Island Power Authority's concerns.

431. We reject Illinois Commerce Commission's recommendation that PJM should retain the Violation-Based DFAX method for some portion of the hybrid cost allocation method. The Commission has already stated in its Order on Remand why the Violation-Based DFAX method is not, in fact, an adequate measure of cost causation for a high-voltage project. As noted in the Order on Remand, and as discussed above, the Violation-Based DFAX method cannot identify the causes of multiple constraints, and cannot account for a project that resolves multiple constraints in multiple areas. Therefore, we find it just and reasonable to continue to exclude the use of the Violation-Based DFAX method for high-voltage projects. With regard to the proposed use of the Solution-Based DFAX method for lower voltage transmission facilities, we note that changing methods is unlikely to have a major impact on cost assignments for transmission facilities that address only local violations, and therefore any differences between the two DFAX methods are not significant enough to offset the administrative benefits of using one method, the Solution-Based DFAX method.⁷³⁵ In the case that the violations from lower voltage transmission projects are not local, then the Commission-described negative aspects of the Violation-Based DFAX method would apply. In any event, we find that the Solution-Based DFAX method will result in cost allocation for lower voltage projects that is roughly commensurate with the benefit derived through use of the new facility, and is therefore just and reasonable. As noted above, the PJM Transmission Owners need only show that the instant proposal is just and reasonable and otherwise complies with the requirements of Order No. 1000. The proposal is not required to be superior to the previous cost allocation method.⁷³⁶

⁷³⁵ PJM's analysis of the Chichester-Linwood 230 kV facility demonstrates a minimal shift in cost allocation between Violation-Based DFAX and Solution-Based DFAX for facilities that address local reliability issues. PJM, PJM Attachment H Transmission Owners Working Group Proposed Regional Cost Allocation Principles for Order No. 1000, at 35 (July 18, 2012), <http://pjm.com/~media/committees-groups/committees/toa-ac/20120718/20120718-to-cost-allocation-stakeholder-presentation.ashx>.

⁷³⁶ See *Wisc. Pub. Power, Inc. v. FERC*, 493 F.3d 239, 266 (D.C. Cir. 2007) (merely because petitioners can conceive of a refund allocation method that they believe would be superior to the one FERC approved does not mean that FERC erred in concluding the latter was just and reasonable); *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945, 955 (D.C. Cir. 2007) ("we need not decide whether the Commission has adopted the best possible policy as long as the agency has acted within the scope of its discretion and (continued...)")

(c) **Interaction with Orders on Remand from Illinois Commerce Commission**

432. We reject arguments that the Commission should not permit PJM to change to a different cost allocation method now that the Commission has decided in the Order on Remand that a 100 percent postage-stamp method is just and reasonable. Parties making such arguments fail to recognize that, in the Order on Remand, the Commission expressly anticipated that PJM might implement a different cost allocation method as part of its Order No. 1000 compliance process. The Commission stated:

This order is being issued as PJM and its stakeholders are considering how the region will comply with Order No. 1000. While it is necessary that we issue this order at this time to respond to the court's remand, our determination here should not be construed as preventing PJM and its stakeholders from developing other cost allocation methodologies in response to Order No. 1000 or other relevant stakeholder processes. . . . PJM and its stakeholders are not precluded from considering [a hybrid method], which combine the attributes of flow-based modeling and the realization that 500 kV and above facilities in PJM provide broad regional benefits . . . , in development of the Order No. 1000 compliance filing or other relevant stakeholder processes.⁷³⁷

433. Thus, contrary to Long Island Power Authority's assertion, there has been no "final determination" of the cost allocation method. Rather, all parties have been on notice that as part of the Order No. 1000 compliance process, PJM and the PJM Transmission Owners might propose, and the Commission may accept, a different cost allocation method than that accepted in the Order on Remand. Moreover, any

reasonably explained its actions"); *United Distribution Cos. 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"); *New England Power Co.*, 52 FERC at 61,336, *reh'g denied*, 54 FERC ¶ 61,055, *aff'd*, *Town of Norwood v. FERC*, 962 F.2d 20 (D.C. Cir. 1992) (Commission approved a filed rate design noting that even though there may be more desirable alternatives to use in estimating particular components, the final rate design proposal does not need to be "perfect" or even the most desirable, it only needs to be reasonable).

⁷³⁷ Order on Remand, 138 FERC ¶ 61,230 at P 2.

administrative complications created by implementing the hybrid method should be limited, since this method will apply on a prospective basis only.

434. As to PUC of Ohio's assertion that, because rehearing of the Commission's determination that any postage-stamp allocation is just and reasonable is pending, the Commission cannot accept a cost allocation method that relies on postage-stamp allocation, this argument is inaccurate. The Commission has previously stated that the fact that rehearing of an order is pending does not prevent the Commission from relying on that order, since such reluctance would "frustrate the implementation of Commission orders and create regulatory uncertainty," and "[t]he Commission may rely on contested orders even though they are pending on rehearing because the Commission's decisions are final and effective unless they have been stayed."⁷³⁸

(d) Voltage and Other Requirements for Regional Cost Allocation

435. With respect to the proposed threshold for Regional Facilities, we disagree with Long Island Power Authority and Maryland PSC that there is insufficient evidence to justify qualification of double circuit 345 kV transmission facilities as Regional Facilities. There is substantial evidence, both here and in previous filings, demonstrating the comparable capabilities and purposes of double circuit 345 kV transmission facilities and 500 kV transmission facilities. Witnesses Henry and Richardson explain that double-circuit 345 kV and 500 kV lines are used in similar circumstances where maximum transfer capability is required. Witnesses Henry and Richardson also note the testimony of Bernard Pasternak in EL05-121-000 demonstrating comparable transfer capabilities of double-circuit 345 kV and 500 kV lines.⁷³⁹ We find this evidence sufficient to justify comparable treatment of such transmission facilities for the purpose of cost allocation.

436. On the other hand, we will not require the inclusion of single-circuit 345 kV transmission facilities as Regional Facilities as Illinois Commerce Commission requests. As noted by the PJM Transmission Owners, there is significant evidence distinguishing double-circuit and single-circuit 345 kV transmission facilities; no evidence similar to

⁷³⁸ *S. Co. Servs., Inc.*, 123 FERC ¶ 61,204, at P 30 (2008) (citing *ExxonMobil Corp. v. Entergy Serv., Inc.*, 118 FERC ¶ 61,032, at P 13 (2007); *Northwest Pipeline Corp.*, 88 FERC ¶ 61,298, at 61,911 (1999), *pet. for review denied sub nom. Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289 (D.C. Cir. 2001)).

⁷³⁹ See PJM Transmission Owners October 11 Filing, Docket No. ER13-90-000, Ex. PTO-2, at 18-19 (Joint Testimony of Michelle Henry and Frank Richardson) (citing *American Electric Power Service Corporation*, Testimony and Exhibits of Bernard Pasternak, Docket No. EL05-121-000, Ex. AEP-300, at 13 (filed Sept. 30, 2005)).

that demonstrating the comparable capabilities and purposes of double circuit 345 kV transmission facilities and 500 kV transmission facilities has been presented with respect to the capabilities and purposes of single-circuit 345 kV transmission facilities.⁷⁴⁰ With regard to Illinois Commerce Commission's assertion that PJM Transmission Owners' proposal discriminates against double circuit 345 kV transmission facilities that are created by adding a new circuit to an older single circuit 345 kV facility, we agree with the PJM Transmission Owners that it is appropriate to distinguish between existing 345 kV transmission facilities that were planned on a regional basis through the RTEP, and transmission facilities that were planned by individual utilities for their own purposes. We further note that, in the event of a theoretical similar situation involving 500 kV transmission facilities, no portion of the existing 500 kV facility would be eligible for regional cost allocation that was not already eligible before.⁷⁴¹

437. We find unconvincing LS Power's concern that the proposed cost allocation method for high-voltage Economic Projects may make state authorities less likely to permit siting. LS Power asserts that state siting processes require a "need" for the line in question. However, before a high-voltage Economic Project is selected for inclusion in the PJM RTEP, there must be a demonstration that the project in question relieves an economic constraint, as well as provides sufficient benefits relative to costs.⁷⁴² Further, to the extent LS Power is contending that the postage-stamp component of the hybrid method will not allocate costs to the states that are benefitting, as discussed above, all high-voltage facilities provide broad regional benefits, and these benefits cannot be captured solely by the change in load energy payments analysis. We also reject LS Power's argument that the cost allocation method must be modified due to PJM's stated intent to revisit the benefits formula for Economic Projects at a later date. We will not judge whether the PJM Transmission Owners October 11 Filing is just and reasonable based on the alleged content of a theoretical future filing. If LS Power believes PJM's intended revisions to the benefits formula will result in unjust and unreasonable rates, it may raise these issues when PJM makes such a filing.

438. With respect to Clean Line's assertions regarding a cost allocation method for transmission facilities located in two or more regions, we note that Order No. 1000 defines a regional facility as one that is "located solely within a single transmission planning region."⁷⁴³ Accordingly, Clean Line's arguments are directed at Order No.

⁷⁴⁰ *Id.*

⁷⁴¹ *See id.*

⁷⁴² PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.7.

⁷⁴³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63.

1000 and interregional cost allocation, rather than the regional cost allocation methods proposed here, and are outside the scope of this proceeding. Such concerns should be raised when PJM submits its compliance filing to comply with Order No. 1000's interregional requirements.

439. We find that the PJM Transmission Owners October 11 Filing may discriminate against DC transmission facilities for the purposes of qualification as Regional Facilities. In contrast to AC transmission facilities, the PJM Transmission Owners October 11 Filing determines whether a DC facility may qualify as a Regional Facility based largely on the transmission facilities that it connects to. A DC facility that is not connected to at least one substation or switching station also connected to either a 500 kV or above AC facility or a double-circuit 345 kV Required Transmission Enhancement cannot qualify as a Regional Facility regardless of the DC link voltage or power carrying capacity. However, a similarly situated AC facility would not be subject to the same limitations.⁷⁴⁴ These criteria do not ensure comparable treatment of AC and DC transmission facilities.⁷⁴⁵

440. Accordingly, we require PJM and the PJM Transmission Owners to submit a compliance filing within 120 days of the date of issuance of this order establishing criteria for qualification as a Regional Facility that consider a DC transmission facility and an AC transmission facility in a comparable manner. We will not, however, require PJM to consider criteria that are not comparable to similar criteria for AC transmission facilities, such as connecting two transmission zones as Atlantic Grid proposes. We will also not address PUC of Ohio's assertion that the Atlantic Wind Connection is a radial tie line for generator interconnection. This issue is outside the scope of this proceeding, and any such determinations are properly made by PJM through its regional transmission planning process.

⁷⁴⁴ For example, a new double-circuit 345 kV Required Transmission Enhancement connected at both ends to substations that are not connected to a different 345 kV Required Transmission Enhancement would still be considered a Regional Facility based on its voltage and configuration. A similarly situated DC facility would not qualify.

⁷⁴⁵ We note that Atlantic Grid identifies a meaningful distinction between how transmission voltages are measured for AC and DC transmission facilities. Atlantic Grid states that it would be inappropriate to directly compare the pole-to-ground voltage of a DC facility to the phase-to-phase voltage of an AC facility, and a 345 kV AC facility has an equivalent phase-to-ground voltage of approximately 200 kV. Atlantic Grid January 14, 2013 Answer, Attachment AWC-1, at 8-9.

(e) **Cost Allocation for Public Policy Projects/Multi-Driver Approach**

441. We accept the PJM Transmission Owners' proposal to apply the cost allocation methods proposed for Reliability and Economic Projects to transmission facilities that address public policy requirements in addition to reliability and economic transmission needs. We reject the arguments of AWEA and Public Interest Organizations that a separate cost allocation method is necessary for projects that advance public policy requirements but do not meet reliability or economic transmission needs. Order No. 1000 does not explicitly require a separate and unique cost allocation method for reliability, economic, and public policy projects.⁷⁴⁶ Because the Commission has found that PJM's proposal to include public policy requirements in its sensitivity analyses complies with Order No. 1000, and therefore addresses transmission needs driven by public policy requirements, there is no need for a separate cost allocation method associated with a non-existent project category. Specifically, PJM identifies reliability transmission needs and economic constraints that result from the incorporation of public policy requirements into PJM's sensitivity analyses, and then allocates the costs of the solutions to such transmission needs in accordance with the type of benefits they provide. Thus, we conclude that PJM does not need a separate regional cost allocation method for projects to address transmission needs driven by public policy requirements as the costs of such projects are appropriately allocated based on the type of transmission need that PJM's consideration of public policy requirements creates. While we encourage PJM and its stakeholders to explore future options to improve the regional transmission planning process, the potential for improvement does not prevent the current proposal from complying with Order No. 1000.

442. We also will not require any changes to ensure that states are not allocated any costs for federal public policy driven transmission projects they do not require, as suggested by PUC of Ohio. We find it reasonable for PJM to allocate, as part of a reliability or market efficiency project, the cost of a project that meets a federal public policy mandate as a secondary benefit, and will not require PJM to divide such a project based on purpose. For the same reason, we deny PUC of Ohio's request to ensure that states not be responsible for any costs associated with meeting another state's public policy requirements. We note that PJM's proposed regional transmission planning process only authorizes PJM to approve projects that provide solutions to reliability or market efficiency transmission needs of the Transmission System, which PJM has identified.

443. In response to Clean Line's request that the Commission allow partial cost allocation for merchant transmission projects found to meet economic or public policy

⁷⁴⁶ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 685 (Principle 6).

needs,⁷⁴⁷ we note that, while Order No. 1000 requires each public utility transmission provider to have in place a method, or set of methods, for allocating the costs of new transmission facilities selected in the regional transmission plan for purposes of cost allocation,⁷⁴⁸ it does not require a public utility transmission provider to establish a cost allocation method that would apply to any portion of the costs of a merchant transmission project not recovered through negotiated rates. Therefore, we deny Clean Line's request that the Commission require PJM to allow for partial allocation of the costs of a merchant transmission facility through the regional transmission cost allocation method as beyond the scope of Order No. 1000.

444. We also accept the PJM Transmission Owners' proposed cost allocation method for projects approved through the State Agreement Approach. We disagree with PUC of Ohio that PJM should be required to affirm the benefits of proposed public policy projects. The State Agreement Approach is a voluntary approach to project selection and cost allocation. If any state or group of states that support a transmission project under the State Agreement Approach believes that another state's public policies are being inappropriately subsidized as a result, they are under no affirmative obligation to continue pursuing the transmission project. PJM's October 25 Filing adequately plans for public policy requirements in its RTEP process and will include general public policy project benefits within the confines of the reliability or economic cost allocation method. Nevertheless, to the extent that PUC of Ohio believes that a transmission project would result in costs being allocated to a non-sponsoring state, we find that discussion in the Independent State Agencies Committee (ISAC) or at the Organization of PJM States, Inc. would be more appropriate avenues through which to address its concerns.

445. We disagree with the arguments of Maryland PSC, Atlantic Grid, AWEA and Public Interest Organizations that the PJM Transmission Owners' State Agreement Approach should be rejected because it utilizes participant funding; allocates the costs of such transmission projects on a project-specific basis; or includes a cost allocation method that is not determined in advance. As noted previously, the Commission finds that PJM's proposal to consider transmission needs driven by public policy requirements when it consolidates the transmission needs of the region into a single transmission plan is consistent with or superior to Order No. 1000's requirement to consider transmission needs driven by public policy requirements. PJM uses various scenarios to evaluate potential transmission solutions to identified transmission needs driven by public policy

⁷⁴⁷ Clean Line Protest, Docket No. ER13-90-000, at 8.

⁷⁴⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 558.

requirements, and, “to decide the most efficient or cost-effective transmission solutions available.”⁷⁴⁹

446. We reject requests by Illinois Commerce Commission and Delaware PSC to alter the process for submitting a cost allocation filing for State Agreement Approach transmission projects. Providing the TOA-AC with exclusive authority to submit section 205 filings for cost allocations across zones is consistent with the terms of the CTOA, as is the discretion to decide when or whether to submit such a filing. In the event that the TOA-AC decides not to make a section 205 filing, other parties may file under section 206. We do not find it necessary to impose additional criteria to define when a state may file under section 206 filing.

(f) Section 205 Filing Rights

447. We reject LS Power’s argument that parties who are not yet transmission owners in PJM should have the right to participate in the development of PJM’s cost allocation method. As LS Power notes, nonincumbent transmission developers are currently developing transmission projects and will be seeking to have their transmission projects selected in the RTEP for purposes of cost allocation. Once the transmission project is placed into service, the nonincumbent transmission developer will become a signatory to the CTOA. Until this occurs, however, a party that is currently a nonincumbent transmission developer should not participate in developing PJM’s rate design. If LS Power’s premise were accepted, an entity that is a nonincumbent transmission developer, but simply seeks to become a PJM Transmission Owner in the future, would be able to participate in decision-making that will limit the cost allocation methods available to existing PJM Transmission Owners (i.e., a group of which that entity is not yet a member, and may never become a member). We will therefore reject LS Power’s argument as to this issue.

⁷⁴⁹ PJM Answer, Docket No. ER13-198-000, at 10. PJM’s proposed Schedule 6 revisions make clear that that PJM’s determination as to which transmission projects will be selected in the regional plan for the purposes of cost allocation will be based on the determination of the “more efficient or cost-effective” transmission solution. *See, e.g.*, PJM, Intra-PJM Tariffs, OA, Schedule 6, § 1.5.8(e) (Criteria for Considering Inclusion of a Project in the Recommended Plan) (3.0.0) (“In determining whether a Short-term Project or Long-lead Project proposed pursuant to Section 1.5.8(c), individually or in combination with other Short-term Projects or Long-lead Projects, is the more efficient or cost-effective solution and therefore should be included in the recommended plan . . .”).

(g) **Effective Date**

448. We find Long Island Power Authority's assertion that the PJM Transmission Owners October 11 Filing is deficient, should be suspended for five months, and should not be accepted for the purposes of establishing an effective date is moot, since the Commission has accepted the PJM Transmission Owners October 11 Filing.⁷⁵⁰ However we note that PJM and the PJM Transmission Owners will still have to provide additional explanation regarding the proposed cost allocation methods, as discussed above.

The Commission orders:

(A) PJM Parties' compliance filings are hereby conditionally accepted, as modified, subject to a further compliance filing, as discussed in the body of this order.

(B) PJM and the PJM Transmission Owners are hereby directed to submit a further compliance filing, within 120 days of the date of issuance this order, as discussed in the body of this order.

By the Commission. Commissioners Moeller and Clark are dissenting with separate statements attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷⁵⁰ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,074.

Appendix A: Abbreviated Names of Intervenor(s)

The following tables contain the abbreviated names of intervenors that are used in this Order on Compliance Filings.

Intervenors

PJM October 25 Filing
Docket No. ER13-198-000

Abbreviation	Intervenor(s)
Acciona	Acciona Wind Energy USA LLC
AEP	American Electric Power Service Corporation
American Municipal Power, Inc.	American Municipal Power, Inc.
American Transmission Company LLC	American Transmission Company LLC
Atlantic Grid	Atlantic Grid Operations A LLC
AWEA	American Wind Energy Association and Mid-Atlantic Renewable Energy Coalition
Clean Line	Clean Line Energy Partners LLC
Delaware PSC	Delaware Public Service Commission
Dominion Resources	Dominion Resources, Inc.
Duke	Duke Energy Corporation
Duke-American Transmission Company, LLC	Duke-American Transmission Company, LLC
Duquesne Light Company	Duquesne Light Company
Duquesne Light Energy	Duquesne Light Energy
E.ON Climate & Renewables North	E.ON Climate & Renewables North

America	America LLC
Exelon	Exelon Corporation
FirstEnergy Companies	The Cleveland Electric Illuminating Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Ohio Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, The Toledo Edison Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, FirstEnergy Solutions Corp., American Transmission Systems, Incorporated and Trans-Allegheny Interstate Line Company
Iberdrola Renewables	Iberdrola Renewables, LLC
Illinois Commerce Commission	Illinois Commerce Commission
Indiana Commission	Indiana Utility Regulatory Commission
Infigen Asset Management LLC	Infigen Asset Management LLC
Invenergy	Invenergy Wind Development LLC and Invenergy Thermal Development LLC
Lincoln Renewable Energy, LLC	Lincoln Renewable Energy, LLC
LS Power	LSP Transmission and LS Power Transmission Holdings, LLC
Maryland PSC	Maryland Public Service Commission
National Rural Electric Coops*	National Rural Electric Cooperative Association
New Jersey Board*	New Jersey Board of Public Utilities
NextEra Energy Generators	FPL Energy Marcus Hook, L.P.; North Jersey Energy Associates, L.P.;

	Backbone Mountain Windpower LLC; Mill Run Windpower LLC; Somerset Windpower LLC; Meyersdale Windpower LLC; Waymart Wind Farm, LP; and Pennsylvania Windfarms, Inc.
North Carolina Agencies	North Carolina Utilities Commission and Public Staff of the North Carolina Utilities Commission
North Carolina Electric Membership Corporation	North Carolina Electric Membership Corporation
NRG Companies	NRG Companies
Old Dominion Electric Cooperative	Old Dominion Electric Cooperative
Organization of PJM States	Organization of PJM States, Inc.
Pennsylvania PUC	Pennsylvania Public Utility Commission
PHI Companies*	Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company
PJM IMM	Monitoring Analytics
PPL PJM Companies	PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Ironwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; Lower Mount Bethel Energy, LLC; PPL New Jersey Solar, LLC; PPL New Jersey Biogas, LLC; and PPL Renewable Energy, LLC
PSEG Companies	Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

Public Interest Organizations	Chesapeake Climate Action Network, Earthjustice, Energy Conservation Council of Pennsylvania, Environmental Defense Fund, National Audubon Society, National Wildlife Federation, Natural Resources Defense Council, Sierra Club, Sustainable FERC Project, and Union of Concerned Scientists
PUC of Ohio	Public Utilities Commission of Ohio
Rockland Electric Company	Rockland Electric Company
Transource Energy, LLC	Transource Energy, LLC
Virginia State Corporation Commission	Virginia State Corporation Commission
Wabash Valley Power Association, Inc.	Wabash Valley Power Association, Inc.

* late intervention

Indicated PJM Transmission Owners October 25 Filing
Docket No. ER13-195-000

Abbreviation	Intervenor(s)
Acciona	Acciona Wind Energy USA LLC
AEP	American Electric Power Service Corporation
American Municipal Power	American Municipal Power, Inc.
Dominion	Dominion Resources, Inc.
Duquesne Light Company	Duquesne Light Company
E.ON Climate & Renewables North America	E.ON Climate & Renewables North America, LLC

Exelon	Exelon Corporation
FirstEnergy Companies	Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, and American Transmission Systems, Incorporated
Iberdrola Renewables	Iberdrola Renewables, LLC
Illinois Commerce Commission	Illinois Commerce Commission
Indiana Commission*	Indiana Utility Regulatory Commission
LS Power	LSP Transmission and LS Power Transmission Holdings, LLC
National Rural Electric Coops*	National Rural Electric Cooperative Association
New Jersey Board*	New Jersey Board of Public Utilities
North Carolina Agencies	North Carolina Utilities Commission and Public Staff of the North Carolina Utilities Commission
North Carolina Electric Membership Corporation	North Carolina Electric Membership Corporation
NRG Companies	NRG Companies
Old Dominion	Old Dominion Electric Cooperative
PHI Companies	Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company
PJM*	PJM Interconnection, L.L.C.

PPL PJM Companies	PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Ironwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; Lower Mount Bethel Energy, LLC; PPL New Jersey Solar, LLC; PPL New Jersey Biogas, LLC; and PPL Renewable Energy, LLC
PSEG Companies	Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC
Rockland Electric Company	Rockland Electric Company
UGI Utilities, Inc. – Electric Division	UGI Utilities, Inc. – Electric Division
Wabash Valley Power Association, Inc.	Wabash Valley Power Association, Inc.

* late intervention

PJM Transmission Owners October 11 Filing
Docket No. ER13-90-000

Abbreviation	Intervenor(s)
Acciona*	Acciona Wind Energy USA LLC
AEP	American Electric Power Service Corporation
American Municipal Power, Inc.	American Municipal Power, Inc.
Atlantic Grid	Atlantic Grid Operations A, LLC
AWEA	American Wind Energy Association and Mid-Atlantic Renewable Energy Coalition
Buckeye Power, Inc.	Buckeye Power, Inc.

Clean Line	Clean Line Energy Partners LLC
Delaware PSC	Delaware Public Service Commission
Direct Energy	Direct Energy Services and Direct Energy Business, LLC
Dominion	Dominion Resources, Inc.
Duquesne Light Company	Duquesne Light Company
E.ON Climate & Renewables North America	E.ON Climate & Renewables North America LLC
East Kentucky Power Cooperative	East Kentucky Power Cooperative
Exelon	Exelon Corporation
First Energy Transmission Owners	Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, American Transmission Systems, Incorporated, and Trans-Allegheny Interstate Line Company
Iberdrola Renewables	Iberdrola Renewables, LLC
Illinois Commerce Commission	Illinois Commerce Commission
Indiana Commission	Indiana Utility Regulatory Commission
Invenergy	Invenergy Wind Development LLC and Invenergy Thermal Development LLC
Lincoln Renewable	Lincoln Renewable Energy, LLC
Long Island Power Authority	Long Island Power Authority and its operating subsidiary Long Island Lighting Company

LS Power	LSP Transmission Holdings, LLC and LS Power Transmission, LLC
Maryland PSC	Maryland Public Service Commission
Michigan PSC	Michigan Public Service Commission
New Jersey Board*	New Jersey Board of Public Utilities
North Carolina Commission	North Carolina Utilities Commission
North Carolina Electric Membership Corporation	North Carolina Electric Membership Corporation
Old Dominion Electric Cooperative	Old Dominion Electric Cooperative
Pennsylvania PUC	Pennsylvania Public Utility Commission
PHI Companies*	Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company
PJM	PJM Interconnection, L.L.C.
PPANJ	Boroughs of Butler, Lavallette, Madison, Milltown, Park Ridge, Pemberton, Seaside Heights, South River, the Vineland Municipal Electric Utility, and Sussex Rural Electric Cooperative, Inc.
PPL PJM Companies	PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Ironwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; Lower Mount Bethel Energy, LLC; PPL New Jersey Solar, LLC; PPL New Jersey Biogas, LLC; and PPL Renewable Energy, LLC

PSEG Companies

Public Service Electric and Gas
Company, PSEG Power LLC, and
PSEG Energy Resources & Trade LLC

PUC of Ohio

Public Utilities Commission of Ohio

Rockland Electric Company

Rockland Electric Company

* late intervention

Appendix B: Abbreviated Names of Initial Commenters

The following tables contain the abbreviated names of initial commenters that are used in this Order on Compliance Filings.

Initial Commenters

PJM October 25 Filing Docket No. ER13-198-000

Abbreviation	Commenter(s)
AEP	American Electric Power Service Corporation
Atlantic Grid + ¹	Atlantic Grid Operations A LCC
AWEA +	American Wind Energy Association and Mid-Atlantic Renewable Coalition
Clean Line +	Clean Line Energy Partners LLC
Delaware PSC	Delaware Public Service Commission
Duke	Duke Energy Corporation
Duquesne Light Company	Duquesne Light Company
Exelon	Exelon Corporation
Illinois Commerce Commission	Illinois Commerce Commission
LS Power + ²	LS Power Transmission, LLC and LSP Transmission Holdings, LLC
Maryland PSC +	Maryland Public Service Commission

¹ Atlantic Grid filed an amendment to its December 10, 2012 motion to intervene and limited protest on December 11, 2012.

² LS Power filed a notice of errata to its December 10, 2012 protest on December 11, 2012.

	and District of Columbia Public Service Commission
New Jersey Board*	New Jersey Board of Public Utilities
North Carolina Agencies	North Carolina Utilities Commission and Public Staff of the North Carolina Utilities Commission
Organization of PJM States	Organization of PJM States, Inc.
PJM Generators ³	Invenergy Wind Development LLC and Invenergy Thermal Development LLC (Invenergy); Lincoln Renewable Energy, LLC; Acciona Wind Energy USA LLC; and Infigen Asset Management LLC
PJM IMM*	Monitoring Analytics
PSEG Companies +	Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC
Public Interest Organizations	Chesapeake Climate Action Network, Earthjustice, Energy Conservation Council of Pennsylvania, Environmental Defense Fund, National Audubon Society, National Wildlife Federation, Natural Resources Defense Council, Sierra Club, Sustainable FERC Project, Union of Concerned Scientists, Pace Energy & Climate Center, and Southern Environmental Law Center
PUC of Ohio	Public Utilities Commission of Ohio
Virginia State Corporation Commission	Virginia State Corporation Commission

³ PJM Generators filed comments in support of the protest of AWEA.

- * late comments
- + protests

Indicated PJM Transmission Owners October 25 Filing
Docket No. ER13-195-000

Abbreviation	Commenter(s)
Illinois Commerce Commission	Illinois Commerce Commission
Indiana Commission* ⁴	Indiana Utility Regulatory Commission
LS Power + ⁵	LSP Transmission Holdings, LLC and LS Power Transmission, LLC
New Jersey Board*	New Jersey Board of Public Utilities
North Carolina Agencies ⁶	North Carolina Utilities Commission and Public Staff of the North Carolina Utilities Commission

- * late comments
- + protests

PJM Transmission Owners October 11 Filing
Docket No. ER13-90-000

Abbreviation	Commenter(s)
Atlantic Grid + ⁷	Atlantic Grid Operations A, LLC

⁴ Indiana Commission submitted comments out of time in support of the comments of Illinois Commerce Commission on December 21, 2012.

⁵ LS Power filed a supplemental protest On December 12, 2012.

⁶ North Carolina Agencies filed comments in support of the Indicated PJM Transmission Owners October 25 Filing.

⁷ Atlantic Grid filed an amendment to its December 10, 2012 motion to intervene
(continued...)

AWEA +	American Wind Energy Association and Mid-Atlantic Renewable Energy Coalition
Clean Line +	Clean Line Energy Partners, LLC
Delaware PSC +	Delaware Public Service Commission
Illinois Commerce Commission	Illinois Commerce Commission
Long Island Power Authority +	Long Island Power Authority and its operating subsidiary Long Island Lighting Company
LS Power + ⁸	LSP Transmission Holdings, LLC and LS Power Transmission, LLC
Maryland PSC +	Maryland Public Service Commission
New Jersey Board*	New Jersey Board of Public Utilities
PJM Generators ⁹	Invenergy Wind Development LLC and Invenergy Thermal Development LLC (Invenergy); Lincoln Renewable Energy, LLC; Acciona; and Infigen Asset Management LLC
PUC of Ohio	Public Utilities Commission of Ohio

* late comments

+ protest

and limited protest on December 11, 2012.

⁸ LS Power filed a notice of errata to its December 10, 2012 protest on December 11, 2012.

⁹ PJM Generators filed comments in support of the AWEA's protest.

Appendix C: Abbreviated Names of Reply Commenters

The following tables contain the abbreviated names of reply commenters that are used in this Order on Compliance Filings.

Reply Commenters

PJM October 25 Filing **Docket No. ER13-198-000**

Abbreviation	Commenter(s)
Atlantic Grid ¹	Atlantic Grid Operations A LCC
AWEA ²	American Wind Energy Association and Mid-Atlantic Renewable Energy Coalition
PJM ³	PJM Interconnection, LLC

Indicated PJM Transmission Owners October 25 Filing **Docket No. ER13-195-000**

Abbreviation	Commenter(s)
Indicated PJM Transmission Owners ⁴	Exelon Corporation; Jersey Central Power & Light Company, Metropolitan

¹ Atlantic Grid filed: a response and limited answer to protests on December 26, 2012; an answer to the PJM Transmission Owners December 26 answer (filed in Docket No. ER13-90-000) on January 14, 2013; a reply to the PJM Transmission Owners January 22, 2013 answer (filed in Docket No. ER13-90-000) on January 28, 2013, Atlantic Grid filed; a reply to the PJM January 29, 2013 answer on January 31, 2013.

² AWEA filed an answer on February 15, 2013.

³ PJM filed an answer on January 29, 2013.

⁴ Indicated PJM Transmission Owners filed an answer to protests on January 24, 2013.

Edison Company, Pennsylvania Electric Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, and American Transmission Systems, Incorporated (collectively, the FirstEnergy Companies); Pepco Holdings, Inc. on behalf of its affiliates Potomac Electric Power Company, Delmarva Power & Light Company and Atlantic City Electric Company (collectively, PHI Companies); PPL Electric Utilities Corporation; Public Service Electric and Gas Company; UGI Utilities, Inc. – Electric Division; and Virginia Electric and Power Company

PJM Transmission Owners October 11 Filing
Docket No. ER13-90-000

Abbreviation	Commenter(s)
Atlantic Grid ⁵	Atlantic Grid Operations A, LLC
PJM Transmission Owners ⁶	PJM Transmission Owners

⁵ Atlantic Grid filed: a response and limited answer to protests on December 26, 2012; an answer to the PJM Transmission Owners December 26 answer on January 14, 2013; a reply to the PJM Transmission Owners January 22, 2013 answer on January 28, 2013, a reply to the PJM January 29, 2013 answer on January 31, 2013.

⁶ PJM Transmission Owners filed: an answer to the protests on December 26, 2012; and an answer to Atlantic Grid's January 14, 2013 answer on January 22, 2013.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	Docket Nos. ER13-198-000
Indicated PJM Transmission Owners	ER13-195-000
PJM Interconnection, L.L.C Public Service Electric and Gas Company	ER13-90-000

(Issued March 22, 2013)

MOELLER, Commissioner, *dissenting*:

When Order No. 1000 was first proposed three years ago, I promised “to do my part to ensure that this Commission does not lose sight of the ultimate goal: a final rule that results in needed capital investment.”¹ This ultimate objective is critical, as, “the lack of adequate transmission investments often disproportionately raises consumer rates due to congestion, threatens the reliability of the nation’s bulk power system, and increases reliance on older and dirtier generating resources.”²

While this was a difficult decision for me, the orders as drafted are too unbalanced in favor of rulings that discourage the construction of needed transmission. As I observed in my partial dissent on Order No. 1000, “instead of encouraging more regional cooperation, the rule could ultimately discourage such cooperation by encouraging more local transmission projects.”³

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,660 (2010) (Moeller, Comm’r, concurring).

² *Id.*

³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011) (Moeller, Comm’r, dissenting in part), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

By building needed transmission, our nation can continue to maintain electric reliability at levels that are the envy of the world, while simultaneously improving consumer access to new sources of power generation.

Accordingly, I respectfully dissent.

Philip D. Moeller
Commissioner

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(Issued March 22, 2013)

CLARK, Commissioner, *dissenting*:

There is a good deal in these Order No. 1000¹ compliance filing orders that I could support. Unfortunately, I find myself today in the position of needing to dissent.

A primary goal of Order No. 1000 is to speed along the development of needed electric transmission projects in an efficient manner.² This is especially true for those projects that are required for matters of reliability. I fear that some of the logistical calls in today's order are at cross-purposes with that goal.

One major source of contention involves the nonincumbent transmission developer reforms that were approved in Order No. 1000. In today's final order, the Commission found that allowing the PJM Interconnection, L.L.C. (PJM) to acknowledge the reality of certain state and local laws in its planning process was a violation of these Order No. 1000 reforms. I disagree.

Effectively, the Commission asks PJM to ignore the very state and local laws that the Commission itself has acknowledged.³ As this is the case, PJM will be compelled to approve projects that may have no legal possibility of ever being built. The Commission would allow an "after-the-fact" examination if the selected facility ultimately is not successful. It is not until this autopsy report, that PJM can acknowledge the state and

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at 2.

³ Order No. 1000 stated that "[n]othing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities." *See* Order No. 1000, FERC Stats. & Regs ¶ 31,323 at P 253, n.231

local laws—only then will PJM be allowed to evaluate viable alternative transmission solutions.⁴

The Commission’s decision puts PJM on a collision course for litigation, as opposed to a pathway towards transmission development. Whether or not the Commission agrees with these state and local laws, requiring regions to make plans that do not factor them in is a waste of time and resources. This is especially troubling when the projects under consideration are reliability projects. Such a convoluted process fails to comport with Order 1000’s main goal of “more efficient and cost-effective regional transmission planning.”⁵

Beyond the logistical problems with this approach, it raises broader policy questions about where the Commission may be heading in terms of the philosophical underpinnings of Order No. 1000. One of the core stated principles of Order No. 1000 is to ensure regional transmission planners take into consideration the various state and local public policy requirements.⁶ Yet the Commission’s decision here seems to be arbitrary and capricious by directing transmission planners to take into consideration only those legal requirements favored by the Commission, such as transmission to meet state renewable portfolio mandates, but not those less favored such as state and local laws that may limit who is and who is not eligible to construct facilities within that state’s borders.

Such an implication is a slippery slope for a Commission whose authority in these matters stems only from the Federal Power Act.

As a related matter, these orders also present the first opportunity for me to weigh in on Order No. 1000’s revocation of a transmission provider’s federal right of first refusal. I concur with the assessment of my colleague, Commissioner Moeller, who has previously written about these matters.⁷

Order No. 1000 did maintain a federal right of first refusal for local projects where the incumbent does not seek to share the costs of those projects, upgrades to existing assets, and projects on existing rights of way. I would have also preserved a federal right of first refusal for projects selected for cost allocation in the Order No. 1000 planning process that are (1) determined by the regional planning coordinator as necessary to satisfy NERC reliability standards and (2) located entirely within the transmission provider’s franchised service territory.

⁴ 142 FERC ¶ 61,214 at P 233.

⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2.

⁶ *Id.* at PP 2, 205, and 214.

⁷ *Id.* (Moeller, Comm’r, dissenting in part).

The Commission should have maintained a federal right of first refusal for the reasons Commissioner Moeller mentioned—reinforcing the Commission’s commitment to reliability and avoiding the need for a blanket penalty waiver in the case that a competitor failed to build a necessary reliability project. Additionally, a federal right of first refusal for reliability projects would have recognized the need for speedy development of these reliability projects and greatly simplified the Order No. 1000 compliance process.

For these reasons, I respectfully dissent from this order.

Tony Clark
Commissioner