

147 FERC ¶ 61,128  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.	Docket Nos. ER13-198-001 ER13-198-002
Indicated PJM Transmission Owners	ER13-195-001
PJM Interconnection, L.L.C.	ER13-90-001
Public Service Electric and Gas Company	ER13-90-002

ORDER ON REHEARING AND COMPLIANCE

(Issued May 15, 2014)

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1. On March 22, 2013, the Commission accepted, subject to modifications,<sup>1</sup> compliance filings that PJM Interconnection, L.L.C. (PJM) and PJM Transmission

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013) (First Compliance Order).

Owners<sup>2</sup> made to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000.<sup>3</sup>

2. Timely requests for rehearing of the First Compliance Order were filed by the entities noted in the Appendix A to this order.

3. On July 22, 2013, PJM and PJM Transmission Owners (collectively, PJM Parties) separately submitted, pursuant to section 206 of the Federal Power Act (FPA),<sup>4</sup> in Docket Nos. ER13-198-002 (PJM July 22, 2013 Compliance Filing) and ER13-90-002 (PJM Transmission Owners July 22, 2013 Compliance Filing) respectively, revisions to Schedule 6 of the PJM Operating Agreement (Operating Agreement) (Schedule 6) and Schedule 12 of the PJM Open Access Transmission Tariff (OATT) (Schedule 12), as well as conforming revisions to the Operating Agreement and the OATT, to comply with the First Compliance Order. For the reasons discussed below, we deny rehearing and accept in part PJM Parties' respective proposed Operating Agreement and OATT revisions, subject to conditions, and direct PJM Parties to submit, within 60 days of the date of issuance of this order, a further compliance filing, as discussed below.<sup>5</sup>

## **I. Background**

4. In Order No. 1000, the Commission adopted a package of reforms addressing transmission planning and cost allocation that, taken together, are designed 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. In

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<sup>2</sup> The attached appendices provide full form of abbreviated names used in this order.

<sup>3</sup> *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).

<sup>4</sup> 16 U.S.C. § 824e (2012).

<sup>5</sup> We note that the same or similar issues are addressed in the following orders that have issued or are being issued contemporaneously with this order: *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,198 (2014); *PacifiCorp*, 147 FERC ¶ 61,057 (2014); *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,127; *South Carolina Electric & Gas Co.*, 147 FERC ¶ 61,126; and *Maine Public Service Co.*, 147 FERC ¶ 61,129

particular, regarding regional transmission planning, Order No. 1000 amended the transmission planning requirements of Order No. 890<sup>6</sup> to 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; and (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities.

5. The regional cost allocation reforms in Order No. 1000 also required each public utility transmission provider to set forth in its OATT a method, or set of methods, for allocating the costs of new regional transmission facilities selected in a regional transmission plan for purposes of cost allocation. Order No. 1000 also required that each cost allocation method adhere to six cost allocation principles.

6. On October 11, 2012, PJM Transmission Owners submitted, in Docket No. ER13-90-000, revisions to Schedule 12 of the PJM OATT (Schedule 12) to comply with the regional cost allocation requirements of Order No. 1000. On October 25, 2012, PJM submitted, in Docket No. ER13-198-000, revisions to Schedule 6, as well as conforming revisions to the OATT, to comply with the local and regional transmission planning requirements of Order No. 1000.

## **II. Request(s) for Rehearing or Clarification – Docket Nos. ER13-198-001, ER13-195-001, and ER13-90-001**

7. Timely requests for rehearing or clarification of the First Compliance Order were filed by Ohio Commission, Illinois Commission, Atlantic Grid, AWEA, Indiana Commission, Indicated PJM Transmission Owners, North Carolina Agencies, LS Power, PJM, and Sustainable FERC Project. On April 22, 2013, NARUC<sup>7</sup> filed a request for rehearing or clarification of the First Compliance Order.

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<sup>6</sup> *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).

<sup>7</sup> NARUC filed an out-of-time motion to intervene with its request for rehearing.

### **III. Compliance Filings – Docket Nos. ER13-198-002 and ER13-90-002**

8. In response to the First Compliance Order, PJM Parties have submitted further revisions to their local and regional transmission planning processes, including the general regional transmission planning process requirements, the requirement to consider transmission needs driven by public policy requirements, the nonincumbent transmission developer reforms, and the cost allocation reforms. PJM indicates that stakeholders were given multiple opportunities to provide input into the review and development of the compliance proposal and were encouraged to submit comments for consideration.<sup>8</sup> PJM Parties explain that the revisions proposed are to Schedule 6 and Schedule 12, as well as conforming revisions to the Operating Agreement and the OATT. PJM requests an effective date of January 1, 2014, for its proposed revisions to Schedule 6, as well as to its OATT.

9. Notice of the PJM Parties' compliance filings was published in the *Federal Register*, 78 Fed. Reg. 45,920 (2013), with interventions and protests due on or before August 21, 2013. Protests and comments were filed in response to the PJM Parties' compliance filings by the entities noted in Appendix B to this order and are addressed below.

10. Answers were filed in response to comments filed in the PJM Parties' compliance filings by the entities noted in Appendix C to this order and are addressed below.

### **IV. Discussion**

#### **A. Procedural Matters**

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. As an initial matter, we address NARUC's motion to intervene out-of-time and request for rehearing. NARUC states that the Commission should grant its out-of-time request for intervention, arguing that "[c]ompelling and unique circumstances" surround its request.<sup>9</sup> NARUC states that it has good cause for not timely filing its intervention

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<sup>8</sup> PJM, Compliance Filing, Docket No. ER13-198-002, at 54-55 (filed July 22, 2013) (PJM July 22, 2013 Compliance Filing).

<sup>9</sup> NARUC, Motion to Intervene and Petition for Rehearing, Docket Nos. ER13-198-001, ER13-195-001, ER13-90-001, at 3 (filed Apr. 22, 2013) (NARUC Petition).

given that it could not have foreseen the First Compliance Order's "potential profound and far reaching impacts to transmission siting policy."<sup>10</sup> NARUC avers that this late request could not have been avoided unless it filed interventions in every Order No. 1000 compliance filing docket. In addition, NARUC contends that it agrees to accept the record as it stands at the time of its intervention so that permitting NARUC's intervention will not disrupt the proceeding or prejudice any party. NARUC also states that the filing deadlines in the proceeding besides those for rehearing requests have passed. Finally, NARUC argues that, absent its intervention, its interests would not be adequately represented.<sup>11</sup>

13. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial.<sup>12</sup> We find no such prejudice here, and we grant NARUC's motion to intervene out of time.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

15. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2013), prohibits an answer to a request for rehearing. Accordingly, the Commission rejects the answer filed by LS Power.

16. We note that the tariff records PJM Parties submitted here in response to the First Compliance Order also include tariff provisions pending in tariff records that PJM Parties separately filed on July 10, 2013, to comply with the interregional transmission coordination and cost allocation requirements of Order No. 1000. The tariff records PJM

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<sup>10</sup> *Id.* at 3-4.

<sup>11</sup> *Id.*

<sup>12</sup> The Commission looks with disfavor on interventions filed at the rehearing stage of a proceeding. *Cent. Ill. Pub. Serv. Co.*, 59 FERC ¶ 61,219, at 61,753-54 (1992); *W. Res., Inc.*, 83 FERC ¶ 61,077, at 61,379 (1998); *PJM Interconnection, L.L.C.*, 88 FERC ¶ 61,039, at 61,091 (1999); *ISO New England, Inc.*, 90 FERC ¶ 61,053, at 61,224 (2000); *Am. Elec. Power Serv. Corp.*, 90 FERC ¶ 61,244, at 61,809 (2000); *Cal. Power Exch.*, 90 FERC ¶ 61,343, at 62,130-31 (2000); *Tenn. Power Co.*, 91 FERC ¶ 61,271, at 61,923-24 (2000); *S. Co. Servs., Inc.*, 92 FERC ¶ 61,167, at 61,565-66 (2000); *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).

Parties submitted in their interregional compliance filings are pending before the Commission and will be addressed in a separate order. Therefore, any acceptance of the tariff records in the instant filings that include tariff provisions submitted to comply with the interregional transmission coordination and cost allocation requirements of Order No. 1000 is made subject to the outcome of the Commission order(s) addressing the PJM Parties' interregional compliance filings in Docket Nos. ER13-1924-000, ER13-1926-000, ER13-1927-000, ER13-1936-000, ER13-1944-000, and ER13-1947-000.

**B. Substantive Matters**

17. As discussed below, we deny in part and grant in part the requests for rehearing and clarification.

18. We find that PJM Parties' respective compliance filings partially comply with the directives in the First Compliance Order. Accordingly, we accept PJM's and PJM Transmission Owners' compliance filings to be effective January 1, 2014, and February 1, 2013, respectively, subject to further compliance filings, as discussed below. We direct PJM Parties to submit the further compliance filings within 60 days of the date of issuance of this order.

**1. Regional Transmission Planning Requirements**

19. Order No. 1000 required each public utility transmission provider to participate in a regional transmission planning process that produces a regional transmission plan and that complies with the identified transmission planning principles of Order No. 890.<sup>13</sup> The regional transmission planning reforms required public utility transmission providers to consider and select, in consultation with stakeholders, transmission facilities that meet the region's reliability, economic, and Public Policy Requirements-related transmission needs more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes.<sup>14</sup>

**a. Transmission Planning Region**

20. Order No. 1000 required each public utility transmission provider to participate in a transmission planning region, which is a region in which public utility transmission providers, in consultation with stakeholders and affected states, agree to participate for

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<sup>13</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 6, 11, 146.

<sup>14</sup> *Id.* PP 11, 148.

purposes of regional transmission planning.<sup>15</sup> 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.<sup>16</sup> However, an individual public utility transmission provider cannot, by itself, satisfy Order No. 1000.<sup>17</sup>

21. In addition, Order No. 1000 required public utility transmission providers to explain how they will determine which transmission facilities are subject to the requirements of Order No. 1000.<sup>18</sup> Order No. 1000 also required public utility transmission providers in each transmission planning region to 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<sup>19</sup> and, thus, become eligible to be allocated costs under the regional cost allocation method.<sup>20</sup> Order No. 1000 also required that each public utility transmission provider include in its OATT a list of all the public utility and non-public utility transmission providers enrolled as transmission providers in the transmission planning region.<sup>21</sup>

**i. First Compliance Order**

22. In the First Compliance Order, the Commission found that the scope of the PJM transmission planning region, the PJM enrollment process, and the list of all public utility and non-public utility transmission providers that have enrolled as transmission owning members of PJM complied with the requirements of Order No. 1000.<sup>22</sup> The Commission also accepted PJM's explanation that its proposed Schedule 6, Operating Agreement, and OATT revisions apply to new transmission facilities within the PJM transmission

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<sup>15</sup> *Id.* P 160.

<sup>16</sup> *Id.* (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 527).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* PP 65, 162.

<sup>19</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 275.

<sup>20</sup> *Id.* PP 276-277.

<sup>21</sup> *Id.* P 275.

<sup>22</sup> First Compliance Order, 142 FERC ¶ 61, 214 at P 30.

planning region after the effective date of PJM's Order No. 1000 compliance filing.<sup>23</sup> However, the Commission directed PJM to submit, as part of a further compliance filing, an appropriate effective date that coincides with the beginning of the next 12-month and 24-month PJM regional transmission planning cycle or an alternative proposed effective date that coincides with a full 12-month and 24-month regional transmission planning cycle, and to support why such an alternative effective date is more appropriate.<sup>24</sup> In addition, the Commission required PJM to provide further information on compliance regarding PJM's transition to the revised regional transmission planning process, including an explanation of how it will evaluate transmission projects under consideration before the effective date of PJM's Order No. 1000 compliance filing.<sup>25</sup>

**ii. Summary of PJM Parties' Compliance Filings**

23. To comply with the Commission's directive to submit an appropriate effective date, PJM proposes that its revisions to Schedule 6, as well as conforming revisions to the OATT, be effective January 1, 2014. PJM explains that this date coincides with the beginning of the next 12-month and 24-month transmission planning cycle following the March 22, 2013 date of the First Compliance Order.<sup>26</sup>

24. PJM Transmission Owners propose to reflect an effective date of February 1, 2013, for their revisions to the cost allocation methods set forth in Schedule 12. This date is consistent with the effective date that the Commission accepted in its January 13, 2013 order in Docket ER13-90-000.<sup>27</sup>

25. Regarding its transition to the revised regional transmission planning process, PJM explains that solutions for reliability violations and economic constraints identified prior to January 1, 2014, will be evaluated under PJM's pre-Order No. 1000 regional

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<sup>23</sup> *Id.* P 31.

<sup>24</sup> *Id.* PP 32, 34.

<sup>25</sup> *Id.* P 34.

<sup>26</sup> PJM July 22, 2013 Compliance Filing at 2-3.

<sup>27</sup> *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,074, at P 1 (2013) (January 31, 2013 Order) ("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.").

transmission planning process. However, PJM states that it has begun implementing certain aspects of the revised regional transmission planning process, in particular the new proposal window process, “to the extent feasible and practicable” under the current rules.<sup>28</sup>

**iii. Protests/Comments**

26. Regarding PJM’s transition to the revised regional transmission planning process, Exelon asserts that, until PJM’s proposed revisions removing the right of first refusal for transmission projects other than economic projects become effective, PJM’s OATT and Agreements provide a right of first refusal for such projects and thus prohibit PJM from designating construction responsibility for any reliability or operational performance project to nonincumbent transmission developers.<sup>29</sup> Exelon therefore argues that PJM may not designate nonincumbent transmission developers to construct transmission projects other than economic projects prior to January 1, 2014, the date PJM proposes its revisions to comply with Order No. 1000 become effective.<sup>30</sup> Exelon requests that the Commission issue an order clarifying that PJM’s designation of any reliability or operational performance projects prior to January 1, 2014, is subject to the right of first refusal under PJM’s current tariff provisions.<sup>31</sup>

**iv. Answer**

27. PJM responds that Exelon’s challenge of whether PJM is implementing its transition process in violation of its tariff is beyond the scope of compliance with the First Compliance Order.<sup>32</sup> PJM explains that, during its transition to the revised regional transmission planning process and prior to the effective date of its revisions to comply with Order No. 1000, it is “merely . . . conducting a pilot proposal window process” and “has not yet selected a project or designated an incumbent transmission owner or

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<sup>28</sup> PJM July 22, 2013 Compliance Filing at 3-4.

<sup>29</sup> Exelon, Comments, Docket No. ER13-198-002, at 3 (filed Aug. 21, 2013) (Exelon Comments).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 6.

<sup>32</sup> PJM, Answer, Docket No. ER13-198-002, at 22 (filed Sept. 5, 2013) (PJM Answer).

nonincumbent developer to construct, own and/or finance a project.”<sup>33</sup> PJM adds that any decisions to select and include a proposed transmission project in the Regional Transmission Expansion Plan (Regional Plan) for purposes of cost allocation “will be fully vetted in the context of [the PJM] stakeholder process and approved by the PJM Board [of Managers] (PJM Board).”<sup>34</sup> Thus, PJM asserts that Exelon’s protest is premature at this time and should be dismissed as outside the scope of the July 22 Filing.<sup>35</sup>

28. In support of PJM’s response to Exelon, Atlantic Grid asserts that Exelon is legally incorrect in its contention that the tariff currently forbids PJM from designating a nonincumbent transmission developer to construct non-economic projects prior to January 1, 2014.<sup>36</sup> Atlantic Grid states that Exelon’s assertion is unreasonable because the First Compliance Order did nothing more than find that certain provisions of the PJM tariff are “ambiguous” and “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.”<sup>37</sup> Atlantic Grid further states that Exelon makes no attempt to explain how “ambiguous” tariff language can be construed to confer an unambiguous right of first refusal to construct reliability projects until PJM’s Order No. 1000 compliance tariff takes effect.<sup>38</sup> Finally, Atlantic Grid argues that Exelon’s assertion conflicts with a line of unambiguous Commission rulings.<sup>39</sup>

**v. Commission Determination**

29. We affirm the Commission’s finding in its January 16, 2014 order that PJM’s proposed January 1, 2014, effective date for its compliance with Order No. 1000,

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<sup>33</sup> *Id.* at 22-23.

<sup>34</sup> *Id.* at 23.

<sup>35</sup> *Id.*

<sup>36</sup> Atlantic Grid, Answer, Docket No. ER13-198-002 at 1 (filed Sept. 30, 2013) (Atlantic Grid Answer, Docket No. ER13-198-002).

<sup>37</sup> *Id.* at 3 (citing First Compliance Order, 142 FERC ¶ 61,214 at P 222).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 3-5.

complies with the Commission's directive in the First Compliance Order.<sup>40</sup> In addition, we accept PJM Transmission Owners' revisions to Schedule 12<sup>41</sup> and Appendix A to Schedule 12<sup>42</sup> to reflect an effective date of February 1, 2013, as consistent with the Commission's findings in the January 31, 2013 Order,<sup>43</sup> and the First Compliance Order.<sup>44</sup>

30. We further find that PJM's explanation of how it will transition to the revised regional transmission planning process complies with the Commission's directive in the First Compliance Order.

31. With regard to Exelon's request for clarification concerning the designation of certain transmission projects prior to January 1, 2014, we find that this request is beyond the scope of PJM's Order No. 1000 compliance, which has an effective date of January 1, 2014.

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<sup>40</sup> *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,030, at P 5 (2014) (January 16, 2014 Order) ("The Commission finds that PJM's proposed effective date of January 1, 2014 complies with the Commission's directive in the First Compliance Order.").

<sup>41</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (a)(v) (Effective Date) (5.1.0).

<sup>42</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 12 - Appendix A (Required Transmission Enhancements Approved By The PJM Board On Or After February 1, 2013, Responsible Customers And Associated Transmission Owner Revenue Requirements) (0.1.0).

<sup>43</sup> January 31, 2013 Order, 142 FERC ¶ 61,074 at P 1 ("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.").

<sup>44</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 1 ("We will conditionally accept the PJM Transmission Owners October 11[, 2012 Compliance] Filing, effective February 1, 2013, as requested, subject to further compliance filings, as discussed below.").

**b. Order No. 890 and Other Regional Transmission Planning Process General Requirements**

32. Order No. 1000 required that the regional transmission planning process result in a regional transmission plan<sup>45</sup> and satisfy the Order No. 890 transmission planning principles of: (1) coordination, (2) openness, (3) transparency, (4) information exchange, (5) comparability, (6) dispute resolution, and (7) economic planning.<sup>46</sup>

**i. First Compliance Order**

33. The Commission found that the revisions to PJM's regional transmission planning process complied in part with Order No. 1000's general regional transmission planning requirements.<sup>47</sup> The Commission noted its prior finding that PJM's regional transmission planning process satisfied the requirements of Order No. 890, explaining that the Commission's focus in the First Compliance Order was 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."<sup>48</sup> However, the Commission noted that PJM proposed to remove certain provisions from Schedule 6<sup>49</sup> that the Commission previously relied on to find that PJM complied with Order No.

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<sup>45</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 147.

<sup>46</sup> *Id.* PP 146, 151. These transmission planning principles are explained more fully in Order No. 890.

<sup>47</sup> First Compliance Order, 142 FERC ¶ 61, 214 at P 52.

<sup>48</sup> *Id.*

<sup>49</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.6(m), (n), (o) & (p) (3.0.0). Certain provisions within sections 1.5.6(m), (n), (o), and (p) relate to PJM's procedures for stakeholders and PJM to propose, and for PJM to review and adopt, alternative transmission solutions.

890's comparability principle.<sup>50</sup> The Commission directed PJM to explain how, absent these provisions, it continues to comply with the comparability principle.<sup>51</sup>

**ii. Summary of PJM Parties' Compliance Filings**

34. PJM asserts that its regional transmission planning process continues to comply with the comparability principle, notwithstanding PJM's proposal to delete sections 1.5.6(m) through 1.5.6(p) of Schedule 6.<sup>52</sup> PJM explains that non-transmission alternatives have several opportunities to compete with transmission solutions on a comparable basis through specific market structures and at various stages of the regional transmission planning process. For example, PJM indicates that, through its capacity market (the Reliability Pricing Model (RPM)), both generation and demand response may compete to produce firm commitments to meet PJM's capacity needs.<sup>53</sup> PJM states that the availability of these capacity resources on a forward basis is factored into future regional transmission planning analyses at the assumptions stage of the regional transmission planning process.<sup>54</sup>

35. In addition, PJM explains that, at the assumptions stage of the regional transmission planning process, PJM and stakeholders consider non-transmission alternatives when determining the range of assumptions PJM will use in its transmission planning studies, specifically, the studies and scenario analyses PJM conducts prior to identifying the violations, system conditions, economic constraints, and public policy requirements for which transmission solutions are needed.<sup>55</sup> Thus, PJM states, at the study stage of the regional transmission planning process it utilizes sensitivity studies, modeling assumption variations, and scenario analyses that:

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<sup>50</sup> First Compliance Order, 142 FERC ¶ 61, 214 at P 53 (citing *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163 (2008) (2008 PJM Order No. 890 Compliance Order), *order on compliance*, 127 FERC ¶ 61,166, at P 17 (2009) (2009 PJM Order No. 890 Compliance Order), *order on reh'g*, 129 FERC ¶ 61,177 (2009)).

<sup>51</sup> *Id.*

<sup>52</sup> PJM July 22, 2013 Compliance Filing at 4-5.

<sup>53</sup> *Id.* at 5.

<sup>54</sup> *Id.* at 6.

<sup>55</sup> *Id.* at 8.

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.<sup>56]</sup>

36. Further, PJM states that it considers the sensitivity studies, modeling assumption variations, and scenario analyses when determining which proposed projects are more efficient or cost-effective solutions.<sup>57</sup> PJM reiterates that such sensitivity studies, modeling assumption variations, and scenario analyses include the impact of demand response and generation.<sup>58</sup>

37. PJM clarifies that it proposed to delete some of the provisions the Commission previously relied on regarding the Order No. 890 comparability principle because the provisions are now unnecessary and are inconsistent with PJM's new transmission project proposal process. PJM explains that the provisions were initially included in Schedule 6 to allow participants to propose transmission solutions as alternatives to the enhancements and expansions that PJM itself developed for selection in the regional transmission plan. PJM asserts that the provisions are no longer necessary because, under its new transmission proposal process, entities will have the opportunity to propose solutions in the first instance.<sup>59</sup> Furthermore, PJM asserts that retaining these provisions would have allowed entities submitting proposals outside of the new proposal window process to have an unfair or undue advantage over entities that submitted timely proposals because the entities submitting proposals outside of the proposal window would have additional information (including information on proposals submitted during a proposal window) that entities submitting proposals during the proposal window would

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<sup>56</sup> *Id.* at 6 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.3 (emphasis in original)).

<sup>57</sup> *Id.* at 8.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 9.

not have.<sup>60</sup> PJM explains that it proposed to delete the provisions from Schedule 6 to avoid such potentially unfair practices.<sup>61</sup>

### iii. Commission Determination

38. We agree with PJM that, given the changes it has made to its regional transmission planning process to comply with Order No. 1000, it is appropriate to delete some of the provisions in its tariff that the Commission previously relied upon for compliance with the comparability principle.<sup>62</sup> Based on PJM's additional explanation, we find that, even with the deletion of these provisions, PJM's regional transmission planning process continues to comply with the comparability principle.

39. PJM's transmission planning process indicates where and when proponents of transmission, generation, and demand resources have an opportunity to provide their input into the development of base-line assumptions and the identification and evaluation of potential solutions to identified needs. As PJM explains, it will consider non-transmission alternatives at the assumption and study stages of the regional transmission planning process via the sensitivity studies and scenario analyses.<sup>63</sup> Schedule 6 provides interested parties, including proponents of non-transmission alternatives, opportunities to provide input and offer suggestions at various points in that process.<sup>64</sup> For example,

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<sup>60</sup> *Id.* at 8.

<sup>61</sup> *Id.* at 8-9.

<sup>62</sup> PJM proposes to delete sections 1.5.6(m), (n), (o), and (p) from Schedule 6 of its Operating Agreement. These sections were formerly numbered as sections 1.5.6(h), (h.01), (i), and (j). *See* 2009 PJM Order No. 890 Compliance Order, 127 FERC ¶ 61,166 at P 16 & n.13.

<sup>63</sup> PJM July 22, 2013 Compliance Filing at 10.

<sup>64</sup> For example, Schedule 6 of the Operating Agreement outlines opportunities for members of the Transmission Expansion Advisory Committee and other interested parties to provide input on: (1) which modeling assumptions, sensitivity studies, and scenario analyses will be used in the planning process (§ 1.5.6(b)); (2) the information required by or anticipated to be useful in preparation of potential sensitivity studies, modeling assumption variations, and scenario analyses (§ 1.5.4(c)); (3) the impact that sensitivities, assumptions, and scenario analysis may have on the need for potential transmission solutions to regional needs (§ 1.5.3); and (4) results of the studies that identify potential regional needs (§ 1.5.6(c)).

interested parties can provide and comment on information regarding demand response resources, energy efficiency programs, price responsive demand, and generating additions.<sup>65</sup> Based on PJM's analysis and stakeholder input, and after PJM has considered non-transmission alternatives, PJM will post the regional transmission needs for which it will solicit requests for transmission projects.<sup>66</sup> PJM also explains that resources that clear PJM's capacity market can be generation or demand response and produce firm commitments to meet PJM's capacity needs. PJM states that it considers the availability of these non-transmission resources in the transmission planning process on a going-forward basis and factors such resources into future regional transmission planning analyses at the assumptions stage.<sup>67</sup>

**c. Consideration of Transmission Needs Driven by Public Policy Requirements**

40. Order No. 1000 required public utility transmission providers to amend their OATTs to include procedures for the consideration of transmission needs driven by Public Policy Requirements in both the local and regional transmission planning processes.<sup>68</sup> 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

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<sup>65</sup> Operating Agreement, Schedule 6, § 1.5.6(b)(iii) (Development of the Recommended Regional Transmission Expansion Plan) (3.1.0).

<sup>66</sup> Operating Agreement, Schedule 6, § 1.5.8(b) (Posting of Transmission System Needs) (3.1.0).

<sup>67</sup> PJM July 22, 2013 Compliance Filing at 5-6. This is consistent with PJM's previous explanation that it revisits its Regional Plan at least annually to examine any need to revise, defer or cancel approved transmission enhancements and expansion due to revised load forecasts, changes in availability of demand-side response and energy efficiency resources and changing generation fleet portfolio. PJM stated that this process takes into account changes to system conditions brought about by load fluctuations and the advent of non-transmission alternative capacity resources such as demand side response and energy efficiency resources to displace transmission once otherwise deemed needed on a specific near-term date. *See* PJM, Compliance Filing, Docket No. ER13-198-000, at 11-12 (filed Oct. 25, 2012) (PJM October 25, 2012 Compliance Filing).

<sup>68</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 203.

the executive and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level).<sup>69</sup>

41. The Commission in Order No. 1000 explained that, to consider transmission needs driven by Public Policy Requirements, public utility transmission providers must adopt procedures to: (1) identify transmission needs driven by Public Policy Requirements and (2) evaluate potential solutions to meet those identified needs.<sup>70</sup> More specifically, public utility transmission providers must adopt procedures in their local and regional transmission planning processes for identifying transmission needs driven by Public Policy Requirements that give all stakeholders a meaningful opportunity to provide input and to offer proposals regarding what they believe are transmission needs driven by Public Policy Requirements.<sup>71</sup> Each public utility transmission provider must explain how it will determine at both the local and regional level, the transmission needs driven by Public Policy Requirements for which solutions will be evaluated<sup>72</sup> and must post on its website an explanation of: (1) those transmission needs driven by Public Policy Requirements that were identified for evaluation for potential solutions in the local and regional transmission planning processes and (2) why other proposed transmission needs driven by Public Policy Requirements were not selected for further evaluation.<sup>73</sup>

42. Order No. 1000 also required public utility transmission providers, in consultation with stakeholders, to evaluate at the local and regional level potential solutions to identified transmission needs driven by Public Policy Requirements, including transmission facilities proposed by stakeholders.<sup>74</sup> The evaluation procedures must give stakeholders the opportunity to provide input and enable the Commission and stakeholders to review the record created by the process.<sup>75</sup>

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<sup>69</sup> *Id.* 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.

<sup>70</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 205.

<sup>71</sup> *Id.* PP 206-209; Order No. 1000-A, 139 FERC ¶ 61,132 at P 335.

<sup>72</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 208-209.

<sup>73</sup> *Id.* P 209; *see also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 325.

<sup>74</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 211 & n.191.

<sup>75</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at PP 320-321.

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

(a) **First Compliance Order**

43. In the First Compliance Order, the Commission found that PJM partially complied with the provisions of Order No. 1000 incorporating the consideration of transmission needs driven by public policy requirements in the regional transmission planning process.<sup>76</sup>

44. The Commission found that PJM's proposal complies with Order No. 1000's requirement to consider transmission needs driven by public policy requirements in the regional transmission planning process by affirmatively considering the effect that public policy requirements may have on regional transmission needs.<sup>77</sup> The Commission explained that, by considering public policy requirements<sup>78</sup> and public policy objectives<sup>79</sup> at the assumptions stage of the Regional Plan process and identifying, through scenario analysis, needed transmission system enhancements and expansions, PJM's regional transmission planning process is "'consistent with or superior to' Order No. 1000's requirements regarding consideration of transmission needs driven by public policy

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<sup>76</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 109.

<sup>77</sup> *Id.* P 112.

<sup>78</sup> Public policy requirements, as defined in the PJM Operating Agreement and OATT, 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 Environmental Protection Agency regulations. *See* PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (O-P), § 1.38B (Public Policy Requirements) (4.0.0); *see also* PJM, Intra-PJM Tariffs, OATT, Definitions (O-P-Q), § 1.36A.05 (Public Policy Requirements) (6.0.0).

<sup>79</sup> Public policy objectives, as defined in the PJM Operating Agreement and OATT, 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, Operating Agreement, Definitions (O-P), § 1.38A (Public Policy Objectives) (4.0.0); PJM, Intra-PJM Tariffs, OATT, Definitions (O-P-Q), § 1.36A.04 (Public Policy Objectives) (6.0.0).

requirements.”<sup>80</sup> The Commission explained that PJM’s process also includes procedures through which it will identify, with stakeholder input, public policy requirements and public policy objectives for PJM to consider in its transmission system studies and analyses, thereby giving all stakeholders a meaningful opportunity to provide input and to offer proposals regarding what they believe are transmission needs driven by public policy requirements. In particular, the Commission noted that PJM facilitates an assumptions meeting during which various stakeholders may contribute to the development of the assumptions that PJM will use to evaluate and analyze potential enhancements and expansions to the transmission system.<sup>81</sup>

45. Additionally, the Commission found that PJM’s proposal complied with Order No. 1000’s requirement to evaluate at the regional level potential transmission solutions to identified transmission needs driven by public policy requirements. This finding was based on the fact that 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 PJM performs its studies.<sup>82</sup>

46. The Commission found that PJM’s proposal to consider public policy objectives and public policy requirements is consistent with or superior to Order No. 1000’s requirement to consider transmission needs driven by public policy requirements.<sup>83</sup>

47. The Commission found that other aspects of the proposal partially complied with the requirements of Order No. 1000 concerning consideration of transmission needs driven by public policy requirements in the regional transmission planning process. In particular, the Commission found that PJM’s proposed definition of public policy requirements partially complied with the provisions of Order No. 1000 because the definition did not refer to “duly enacted laws or regulations passed by a local governmental entity, such as a municipal or country government.”<sup>84</sup> The Commission

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<sup>80</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 112 (citing 18 C.F.R. § 35.28(c)(4)(ii)).

<sup>81</sup> *Id.* PP 110-111.

<sup>82</sup> *Id.* P 117.

<sup>83</sup> *Id.* P 114.

<sup>84</sup> *Id.* P 113; *see also* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2; Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

required changes to the definition of public policy requirements to make it consistent with the definition adopted in Order No. 1000.<sup>85</sup>

48. The Commission also found that PJM's proposal partially complied with the requirement to post on its website an explanation of those transmission needs driven by public policy requirements that have been identified for evaluation for potential transmission solutions in the regional transmission planning process and why other suggested transmission needs driven by public policy requirements will not be evaluated.<sup>86</sup> The Commission explained that, because PJM proposes to integrate consideration of transmission needs driven by public policy requirements at the assumptions stage of the regional transmission planning process, PJM must revise its OATT to describe its procedures for posting an explanation of which public policy requirements PJM adopts at the assumptions stage of the Regional Plan process and why other public policy requirements proposed by stakeholders are not adopted, and to clarify when in the Regional Plan process PJM will make such posting(s).<sup>87</sup>

49. Finally, the Commission found that PJM did 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. The Commission explained that it was unclear whether PJM will incorporate into its transmission enhancement and expansion studies all public policy requirements identified by stakeholders at the assumptions stage of the Regional Plan process, or if it will instead select some subset of all proposed public policy requirements to incorporate.<sup>88</sup> Because PJM incorporates identified public policy requirements into its transmission enhancement and expansion studies, thereby determining whether resulting transmission needs will be identified and evaluated for solutions, the Commission directed PJM to provide on compliance additional tariff revisions describing a just and reasonable and not unduly discriminatory process through which PJM will determine which public policy

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<sup>85</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 113; *see also* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2; Order No. 1000-A, 139 FERC ¶ 61,132 at P 319.

<sup>86</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 113.

<sup>87</sup> *Id.* P 116.

<sup>88</sup> *Id.* P 115.

requirements identified by stakeholders at the assumptions stage will be incorporated into PJM's transmission enhancement and expansion studies.<sup>89</sup>

(b) **Requests for Rehearing or Clarification**

(1) **Summary of Requests for Rehearing or Clarification**

50. Atlantic Grid and AWEA assert that PJM failed to demonstrate that its compliance proposal is just and reasonable and not unduly discriminatory, and that the Commission erred in finding in the First Compliance Order that PJM's proposal complies with Order No. 1000's requirement to consider transmission needs driven by public policy requirements.<sup>90</sup> Atlantic Grid and AWEA also argue that the Commission should clarify how PJM's regional transmission planning process can comply with Order No. 1000 without implementation of the multi-driver approach.<sup>91</sup> In particular, Atlantic Grid asserts that it is insufficient for PJM "simply to consider [p]ublic [p]olicy [r]equirements in the abstract" and PJM must recommend concrete transmission enhancements and expansions driven by public policy requirements for further scenario analyses.<sup>92</sup> Absent criteria for including in the Regional Plan transmission projects proposed to meet public policy requirements, Atlantic Grid argues that it is unclear how the Commission could

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<sup>89</sup> *Id.*

<sup>90</sup> Atlantic Grid, Request for Clarification or Rehearing, Docket Nos. ER13-198-001, ER13-195-001, ER13-90-001, at 16-17 (filed Apr. 22, 2013) (Atlantic Grid Request); AWEA, Request for Clarification or Rehearing, Docket Nos. ER13-198-001, ER13-195-001, ER13-90-001, at 7 (filed Apr. 22, 2013) (AWEA Request for Rehearing).

<sup>91</sup> The term "multi-driver approach" is not defined in any of the proceedings at issue in this order. However, PJM has explained that parties have discussed the concept of a "multi-driver approach" in the PJM stakeholder process. While PJM's proposal in its October 25 Filing did not include a "multi-driver approach," PJM stated that a multi-driver approach is an ongoing reform and "[i]nclusion of a multi-driver approach in the [Regional Plan] 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 beneficiary of each component." *See* PJM October 25, 2012 Compliance Filing at 80-81.

<sup>92</sup> Atlantic Grid Request at 7-8 (citing First Compliance Order, 142 FERC ¶ 61,214 at P 112).

conclude that PJM does not need the multi-driver approach to evaluate such projects in its regional transmission planning process or could find that PJM's plan is "consistent with or superior to" Order No. 1000, or will achieve "optimal" transmission planning goals.<sup>93</sup> Thus, Atlantic Grid argues, the Commission must require PJM to provide this additional detail in the form of a fair and transparent selection process.

51. Sustainable FERC Project requests that the Commission clarify how PJM's proposal to consider public policy requirements complies with Order No. 1000's requirement that public utility transmission providers have a clear and transparent process to determine, from the larger set of needs identified, the transmission needs driven by public policy requirements for which transmission solutions will be evaluated.<sup>94</sup> Sustainable FERC Project acknowledges that the Commission required PJM to provide further details about whether all or some subset of public policy requirements identified by stakeholders will be incorporated as inputs into PJM's transmission enhancement and expansion studies. However, Sustainable FERC Project contends that PJM's explanation of why a particular public policy requirement will or will not be included as an assumption or input into a sensitivity study or scenario analysis does not satisfy the obligation to explain whether PJM will evaluate transmission solutions for an identified transmission need driven by a public policy requirement.<sup>95</sup> Sustainable FERC Project asserts that, while Schedule 6 provides for the inclusion of some subset of proposed public policy requirements in the assumptions stage of the Regional Plan process, PJM's OATT does not ensure that PJM will evaluate resulting transmission needs for solutions or explain why some needs will be evaluated for solutions while some will not.<sup>96</sup> Accordingly, Sustainable FERC Project requests clarification that, after the scenario planning phase is complete, PJM must select projects that have been identified as solutions to transmission needs driven by public policy requirements and explain which needs were or were not selected for evaluation for solutions. To the extent the Commission denies clarification, Sustainable FERC Project requests rehearing of this issue.<sup>97</sup>

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<sup>93</sup> *Id.* at 9-10.

<sup>94</sup> Sustainable FERC Project, Motion for Clarification and Request for Rehearing, Docket No. ER13-198-001, at 3-5 (filed Apr. 22, 2013) (Sustainable FERC Project Request).

<sup>95</sup> *Id.* at 4-5.

<sup>96</sup> *Id.* at 4.

<sup>97</sup> *Id.* at 4-5.

**(2) Commission Determination**

52. We affirm the determination in the First Compliance Order that PJM's OATT revisions, as initially proposed, partially complied with Order No. 1000's requirement regarding consideration of transmission needs driven by public policy requirements in the regional transmission planning process. Order No. 1000 requires public utility transmission providers to have processes to identify transmission needs driven by public policy requirements and evaluate potential solutions to those identified needs.<sup>98</sup> With respect to the identification of transmission needs driven by public policy requirements, the process must give stakeholders an opportunity to provide input and offer proposals regarding the transmission needs they believe should be identified.<sup>99</sup> Through its regional transmission planning process, PJM identifies transmission needs driven by public policy requirements by considering the effect public policy requirements may have on regional transmission needs and evaluates potential enhancements or expansions to address those transmission needs, with the opportunity for stakeholder input and review.

53. As the Commission explained in the First Compliance Order, by incorporating public policy requirements and initiatives into the assumptions stage of the Regional Plan process, PJM affirmatively considers, with stakeholder input, the effect that public policy requirements may have on regional transmission needs.<sup>100</sup> In particular, PJM identifies potential transmission system enhancements and expansions based on its transmission planning analyses, which incorporate public policy requirements, alternative sensitivity studies, modeling assumptions, and scenario analyses proposed by stakeholders through the Transmission Expansion Advisory Committee and Subregional RTEP Committees. By considering public policy requirements, including those proposed by stakeholders, in the transmission planning analyses, PJM identifies transmission needs driven by factors including public policy requirements.

54. We also affirm the determination that PJM's process as initially proposed, and subject to the first compliance directives in the First Compliance Order, is "consistent with or superior to"<sup>101</sup> Order No. 1000's requirements regarding consideration of

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<sup>98</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 68 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 205).

<sup>99</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 207; Order No. 1000-A, 139 FERC ¶ 61,132 at P 320.

<sup>100</sup> First Compliance Order, 142 FERC ¶ 61,214 at PP 111-112.

<sup>101</sup> *Id.* P 112 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 149; 18 C.F.R. § 35.28(c)(4)(ii)).

transmission needs driven by public policy requirements. While Order No. 1000 requires public utility transmission providers to consider transmission needs driven by public policy requirements rather than public policy requirements themselves, it does not preclude public utility transmission providers from also directly considering the latter.<sup>102</sup> In adopting the transmission planning reforms of Order No. 1000, the Commission was concerned that “[u]nder the existing requirements of Order No. 890, there is no affirmative obligation placed on public utility transmission providers to consider in the transmission planning process the effect that Public Policy Requirements may have on local and regional transmission needs.”<sup>103</sup> The Commission explained that, without procedures to consider transmission needs driven by public policy requirements, “the needs of wholesale customers may not be accurately identified.”<sup>104</sup> PJM’s approach addresses this concern, because it results in the consideration of public policy requirements and whether such public policy requirements contribute to specific transmission system needs. Through the regional transmission planning process, PJM identifies, with stakeholder input, enhancements or expansions to the transmission system that may be driven by public policy requirements, and, out of this larger set of transmission needs, those needs for which solutions will be evaluated. In addition, PJM evaluates, with stakeholder input, potential solutions to identified transmission system needs, which may include enhancements or expansions driven by public policy requirements. PJM’s approach is, thus, consistent with or superior to the requirements of Order No. 1000.

55. In addition, as explained in the First Compliance Order, Order No. 1000 requires neither a distinct planning process for public policy transmission projects nor a multi-driver approach to transmission planning.<sup>105</sup> Rather, Order No. 1000 permits the public utility transmission provider to decide whether it would consider transmission needs driven by public policy requirements separately from needs driven by reliability requirements or economic conditions, or whether it would consider all transmission needs together.<sup>106</sup> One of our concerns is that stakeholders have the opportunity to submit input in a process that is open and transparent, satisfies all of the transmission planning principles set out in Order Nos. 890 and 1000, and that results in a record for the

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<sup>102</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 326.

<sup>103</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 204.

<sup>104</sup> *Id.*

<sup>105</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 119.

<sup>106</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 220.

Commission and stakeholders to review to help “ensure that the identification and evaluation decisions are open and fair, and not unduly discriminatory or preferential.”<sup>107</sup> As explained above, PJM complies with this requirement, in part, by incorporating consideration of public policy requirements at the assumptions stage of the Regional Plan process.

56. We disagree with Sustainable FERC Project’s assertion that “PJM’s explanation of why a particular [public policy requirement] will or will not be included as an assumption or input into a sensitivity or scenario does not satisfy the obligation to explain whether an identified grid *need* driven by a particular [public policy requirement] *will* be evaluated for a solution via the expansion and enhancement process.”<sup>108</sup> As previously discussed, PJM provides stakeholders the opportunity to propose public policy requirements for PJM’s consideration in its transmission planning analyses at Transmission Expansion Advisory Committee and Subregional RTEP Committee meetings during the assumptions stage of the Regional Plan process, which is “consistent with or superior to” Order No. 1000’s requirements regarding consideration of transmission needs drive by public policy requirements.<sup>109</sup>

57. Moreover, the First Compliance Order directed PJM to explain “why some public policy requirements proposed to be incorporated as assumptions and/or scenarios are adopted and others are not adopted.”<sup>110</sup> We affirm that finding here. Because PJM considers public policy requirements at the assumptions stage of the regional transmission planning process, and identifies potential transmission system enhancements and expansions driven in part by public policy requirements as part of the transmission planning analyses, requiring PJM to post such an explanation before the transmission planning analyses are complete ensures that PJM “provide[s] the Commission and interested parties with information as to how the identification procedures are implemented.”<sup>111</sup> We continue to believe this will provide adequate transparency to stakeholders within the structure of PJM’s regional transmission planning process.

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<sup>107</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 321.

<sup>108</sup> Sustainable FERC Project Request at 4-5 (emphasis in original).

<sup>109</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.6(b) (Development of Recommended Regional Transmission Expansion Plan) (3.0.0).

<sup>110</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 116.

<sup>111</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 209.

(c) **Compliance**

(1) **Summary of PJM Parties' Compliance Filing**

58. To comply with the Commission's directive to make the definition consistent with Order No. 1000, PJM proposes to revise its definition of the term "public policy requirements" to include policies pursued by "local governmental entities such as a municipal or county government, where such policies are reflected in duly enacted law or regulations passed by the local governmental entity."<sup>112</sup>

59. With regard to the Commission's finding that PJM must revise its OATT to describe the process through which PJM will determine which public policy requirements identified by stakeholders at the assumptions stage will be incorporated into its transmission studies,<sup>113</sup> PJM clarifies that, at the assumptions stage of the Regional Plan process, the states can provide input through the Independent State Agencies Committee<sup>114</sup> regarding which public policy requirements the states have identified for consideration in PJM's transmission planning analysis.<sup>115</sup> In addition, at both Transmission Expansion Advisory Committee and Subregional RTEP Committee meetings, stakeholders may provide input concerning which public policy objectives they would like PJM to consider.<sup>116</sup> Accordingly, PJM proposes to revise Schedule 6 to clarify that, prior to the initial assumptions meeting,<sup>117</sup> stakeholders will have the

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<sup>112</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (O-P), § 1.38B (5.0.0); PJM, Intra-PJM Tariffs, OATT, Definitions (O-P-Q), § 1.36A.05 (Public Policy Requirements) (6.1.0).

<sup>113</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 115.

<sup>114</sup> The Independent State Agencies Committee is a committee within the stakeholder process that is comprised of interested state agencies in the PJM region. *See* First Compliance Order, 142 FERC ¶ 61,214 at P 16 n.58.

<sup>115</sup> PJM July 22, 2013 Compliance Filing at 13.

<sup>116</sup> *Id.*; *see* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.6(b) (Development of Recommended Regional Transmission Expansion Plan) (3.1.0).

<sup>117</sup> Pursuant to revised Schedule 6 of PJM's Operating Agreement, the Transmission Expansion Advisory Committee, and the Subregional RTEP Committees will each facilitate at least one initial assumptions meeting at the beginning of the Regional Plan process, providing an open forum to discuss the following: (1) the

(continued...)

opportunity to provide input on, among other things, the public policy requirements that the states identify for consideration in PJM's transmission planning analyses, the public policy objectives that stakeholders identify for consideration in PJM's transmission planning analyses, and the assumptions to be used in performing the evaluation and analysis of potential transmission enhancements and expansions.<sup>118</sup>

60. Following the assumptions meetings, PJM will determine the range of assumptions to be used in its studies and scenario analyses based on: (1) the advice and recommendations of the Transmission Expansion Advisory Committee and the Subregional RTEP Committees, and (2) the validation of public policy requirements and an assessment and prioritization of public policy objectives by the states through the Independent State Agencies Committee.<sup>119</sup>

61. In addition, PJM proposes to revise Schedule 6 to provide that it will document and publicly post its determination of the assumptions it will use in its studies and scenario analyses, including an explanation of the public policy requirements and public policy objectives that it adopted at the assumptions stage, as well as an explanation of why other public policy requirements and public policy objectives introduced by stakeholders were not adopted.<sup>120</sup> Once the assumptions are established, PJM states that it will conduct its studies and scenarios analyses based on input from the Transmission

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assumptions to be used in performing the evaluation and analysis of potential transmission enhancements and expansions; (2) public policy requirements that the states identify for consideration in PJM's transmission planning analyses; (3) public policy objectives that stakeholders identify for consideration in PJM's transmission planning analyses; (4) the impacts of regulatory actions, projected changes in load growth, demand response resources, energy efficiency programs, price responsive demand, generating additions and retirements, market efficiency, and other trends; and (5) alternative sensitivity studies, modeling assumptions and scenario analyses proposed by stakeholders. *See* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.6(b) (Development of Recommended Regional Transmission Expansion Plan) (3.1.0).

<sup>118</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §1.5.6(b) (Development of Recommended Regional Transmission Expansion Plan) (3.1.0).

<sup>119</sup> *Id.*

<sup>120</sup> PJM July 22, 2013 Compliance Filing at 14; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.6(b) (Development of Recommended Regional Transmission Expansion Plan) (3.1.0).

Expansion Advisory Committee, the Subregional RTEP Committees, the Independent State Agencies Committee, and its own assessment of its available resources.<sup>121</sup>

(2) **Protests/Comments**

62. Maryland Commission is concerned that PJM's proposal to revise Schedule 6, which provides that PJM will determine the range of assumptions it will use in its studies and scenario analyses based in part on the validation of public policy requirements and assessment and prioritization of public policy objectives by the states through the Independent State Agencies Committee, could be interpreted to impose an obligation on the Independent State Agencies Committee to "'validate' and 'assess and prioritize'" the public policies adopted by individual states. Maryland Commission claims that neither state law nor the Independent State Agencies Committee Charter authorizes such an obligation, and asserts that state entities participating in the Independent State Agencies Committee have not performed the analyses or collected the information to permit them individually or collectively to assess the validity of or to prioritize the public policies or needs of other states.<sup>122</sup> Maryland Commission adds that participation by "limited and non-energy jurisdictional State Agencies" in the Independent State Agencies Committee raises further questions about the appropriateness of obligating the Independent State Agencies Committee to assess and prioritize public policies of member states.<sup>123</sup>

63. To alleviate the concerns expressed by state entities participating in the Independent State Agencies Committee, Maryland Commission proposes that PJM revise Schedule 6 to provide:

Following the assumptions meeting and prior to performing the evaluation and analyses, the Office of the Interconnection shall determine the range of assumptions to be used in the studies and scenario analyses, based on the advice and recommendations of the Transmission Expansion Advisory Committee and Subregional RTEP Committees and the statement validation of Public Policy Requirements provided individually by the states and any State Member assessment ~~and~~ or prioritization of Public

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<sup>121</sup> PJM July 22, 2013 Compliance Filing at 14.

<sup>122</sup> Maryland Commission, Comments, Docket No. ER13-198-002, at 2-3 (filed Aug. 21, 2013) (Maryland Commission Comments).

<sup>123</sup> *Id.* at 3 n.5.

Policy Objectives ~~by the states through~~ proposed by other Stakeholders during meetings of the Independent State Agencies Committee.<sup>124]</sup>

64. Maryland Commission states that, while the proposed revisions are still under discussion among the member states of the Independent State Agencies Committee and with PJM, the state commissions have discussed their concerns with PJM and are satisfied that PJM does not intend to apply the language in a manner that would impose an obligation on the Independent State Agencies Committee to assess the validity of, or to prioritize, the public policies or needs of other states. Furthermore, Maryland Commission claims that PJM supports making changes to the language in question to fully alleviate these concerns. Thus, Maryland Commission requests that the Commission direct PJM to work with the state commissions and other state agencies to develop revised language that does not obligate state commissions and agencies to validate or prioritize the public policies of other states.<sup>125</sup>

(3) Answer

65. In response to Maryland Commission's concern, PJM proposes to revise Schedule 6 as follows:

Following the assumptions meeting and prior to performing the evaluation and analyses, the Office of the Interconnection shall determine the range of assumptions to be used in the studies and scenario analyses, based on the advice and recommendations of the Transmission Expansion Advisory Committee and Subregional RTEP Committees and through the Independent Stage Agencies Committee the ~~statement validation~~ of Public Policy Requirements provided individually by the states and any state member's assessment ~~and~~ or prioritization of Public Policy Objectives ~~by the states through~~ proposed by other stakeholders ~~during meetings of the Independent State Agencies Committee.~~<sup>126</sup>

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<sup>124</sup> *Id.* at 3.

<sup>125</sup> *Id.* at 3-4.

<sup>126</sup> PJM Answer at 20-21.

**(4) Commission Determination**

66. We find that PJM’s proposed revisions to the regional transmission planning process, subject to an additional compliance requirement, comply with the directives in the First Compliance Order concerning the consideration of transmission needs driven by public policy requirements.

67. In the First Compliance Order, the Commission directed PJM to modify its definition of public policy requirements to reference policies pursued by local governmental entities such as a municipal or county government.<sup>127</sup> PJM’s proposed changes to its definition of public policy requirements satisfy this compliance requirement.

68. The Commission also directed PJM to describe a just and reasonable and not unduly discriminatory process through which it will determine which public policy requirements that stakeholders identified at the assumptions stage will be incorporated into PJM’s transmission enhancement and expansion studies.<sup>128</sup> The proposed changes to PJM’s OATT clarify this process, specifying that stakeholders will have opportunities, through both the Transmission Expansion Advisory Committee and Subregional RTEP Committees, to provide input on the assumptions to be used in PJM’s transmission analyses, including public policy requirements and public policy objectives that stakeholders identified. The revisions to Schedule 6 also specify that PJM will determine the “range of assumptions to be used in its studies and scenario analyses” based on input from the Transmission Expansion Advisory Committee, the Subregional RTEP Committees, and from states via the Independent State Agencies Committee.<sup>129</sup>

69. We find that these revisions to Schedule 6 describe a process that offers multiple opportunities for stakeholders to provide input on the assumptions, including public policy requirements, to be used in PJM’s transmission planning analyses. The proposed revisions also state that PJM will determine the “range of assumptions” to be used in its studies, which clarifies that PJM may select a subset of public policy requirements proposed by stakeholders to incorporate into its assumptions. Furthermore, the proposed revisions adequately describe the basis upon which PJM will determine the range of assumptions it will use in its studies. Therefore, we find that these revisions to Schedule

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<sup>127</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 113.

<sup>128</sup> *Id.* P 115.

<sup>129</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.6(b) (Development of Recommended Regional Transmission Expansion Plan) (3.1.0).

6 satisfy the compliance requirement that PJM describe a just and reasonable and not unduly discriminatory process for determining which public policy requirements identified by stakeholders at the assumptions stage will be incorporated into its transmission studies, and which describes whether PJM will, out of a larger set of requirements identified by stakeholders, select a subset of public policy requirements to incorporate.

70. We note Maryland Commission's protest that proposed changes to PJM's OATT could be interpreted to inappropriately impose an obligation on the Independent State Agencies Committee to "'validate' and 'assess and prioritize'" the public policies that individual states adopted. We also note that, in its answer, PJM accepts, with minor revisions, Maryland Commission's proposed solution to alleviate the concerns expressed by state entities participating in Independent State Agencies Committee. We find that the proposed OATT language, as revised by PJM, complies with the Commission's directives in the First Compliance Order. Therefore, we direct PJM to submit, within 60 days of the date of issuance of this order, a further compliance filing to make these revisions to Schedule 6 as proposed in its answer.<sup>130</sup>

71. We further find that PJM's proposed changes to its OATT comply with the requirement to post on its website an explanation of which public policy requirements it adopted at the assumptions stage of the Regional Plan process and why other public policy requirements and public policy objectives that stakeholders proposed were not adopted.

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

(a) **First Compliance Order**

72. In the First Compliance Order, the Commission found that PJM's proposed OATT revisions may not comply with the requirements of Order No. 1000 regarding the consideration of transmission needs driven by public policy requirements in the local transmission planning process. Specifically, the Commission determined that PJM did not address in its October 25, 2012 Compliance Filing how the transmission-owning members of PJM have incorporated these requirements into their local transmission planning processes. In addition, the Commission found that PJM's proposal did not adequately explain how a proposed transmission project addressing transmission needs driven by public policy requirements identified in the local transmission planning process

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<sup>130</sup> See *supra* P 65 (citing PJM Answer at 20-21).

could be selected in the regional transmission plan.<sup>131</sup> Therefore, the Commission directed PJM to describe in a further compliance filing how the local transmission planning process complies with Order No. 1000's requirement to consider transmission needs driven by public policy requirements in the local transmission planning process and how a proposed transmission project addressing transmission needs driven by public policy requirements identified in the local transmission planning process may be selected in the regional transmission plan.<sup>132</sup>

**(b) Summary of Parties' Compliance Filing(s)**

73. PJM asserts that regional and local transmission planning are fully integrated in its transmission planning processes and therefore are compliant with Order No. 1000.<sup>133</sup> PJM states that, as part of its existing transmission planning process, three Subregional RTEP Committees<sup>134</sup> facilitate the development and review of Subregional RTEP Projects<sup>135</sup> and Supplemental Projects<sup>136</sup> that the Transmission Owners identify within

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<sup>131</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 147.

<sup>132</sup> *Id.* P 123.

<sup>133</sup> PJM July 22, 2013 Compliance Filing at 15.

<sup>134</sup> The Subregional RTEP Committees are responsible for the initial review of Subregional RTEP Projects, and provide recommendations to the Transmission Expansion Advisory Committee about these projects. Subregional RTEP Committees are open to participation by: (1) all transmission customers and applicants for transmission service; (2) any other entity proposing to provide transmission facilities to be integrated into PJM; (3) all PJM Members; (4) the electric utility regulatory agencies with the PJM States, the Independent State Agencies Committee, and State Consumer Advocates; and (5) any other interested entities or persons. *See* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(c), (e) (Establishment of Committees) (2.1.0).

<sup>135</sup> A Subregional RTEP Project is a transmission expansion or enhancement rated below 230 kV that is required for compliance with PJM's criteria for system reliability, operational performance, or economic criteria, pursuant to a determination by the Office of the Interconnection. *See* PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (S-T), § 1.42A.01 (Subregional RTEP Project) (2.0.0).

<sup>136</sup> A Supplemental Project is a Regional RTEP Project(s) or Subregional RTEP Project(s) that is not required for compliance with PJM's criteria for system reliability, operational performance or economic criteria, pursuant to a determination by the Office

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their respective zones, and make recommendations to the Transmission Expansion Advisory Committee concerning these projects.<sup>137</sup> In addition, PJM notes that stakeholders, through participation in the Subregional RTEP Committees,<sup>138</sup> have the opportunity to review the criteria, assumptions, and models that Transmission Owners use to identify reliability criteria violations, economic constraints, or to consider public policy requirements and proposed solutions in their respective zones.<sup>139</sup> Stakeholders have a further opportunity to review and provide comments to Transmission Owners on proposed solutions to any identified transmission needs prior to Transmission Owners' finalizing their Local Plans, as well as on the Local Plans as integrated into the Regional Plan, prior to the Regional Plan itself being submitted for approval to PJM's Board.<sup>140</sup> The recommended Regional Plan will separately identify enhancements and expansions for the three PJM subregions, and will incorporate recommendations from participants in the Subregional RTEP Committees.<sup>141</sup> The Subregional RTEP Committees, or a designated Transmission Owner, may hold additional meetings to incorporate more

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of the Interconnection. *See* PJM, Intra-PJM Tariffs, Definitions (S-T), § 1.42A.02 (Supplemental Project) (2.0.0).

<sup>137</sup> PJM July 22, 2013 Compliance Filing at 15-16; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(c) (Establishment of Committees) (2.1.0).

<sup>138</sup> The Subregional RTEP Committees shall be open to participation by: (i) all Transmission Customers, as that term is defined in the PJM Tariff, and applicants for transmission service; (ii) any other entity proposing to provide transmission facilities to be integrated into the PJM Region; (iii) all Members; (iv) the electric utility regulatory agencies within the States in the PJM Region, the Independent State Agencies Committee, and the State Consumer Advocates; and (v) any other interested entities or persons. PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(e) (Establishment of Committees) (3.1.0).

<sup>139</sup> PJM July 22, 2013 Compliance Filing at 16; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d) (Establishment of Committees) (2.1.0).

<sup>140</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d), (f) (Establishment of Committees) (3.1.0).

<sup>141</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.6(f) (Development of the Recommended Regional Transmission Expansion Plan) (3.1.0).

localized areas in the subregional transmission planning process.<sup>142</sup> In addition, a Subregional RTEP Committee may, on its own or at the request of a committee participant, refer Subregional RTEP Projects to the Transmission Expansion Advisory Committee for further review, advice, and recommendations.<sup>143</sup> Finally, PJM notes that it will provide access, through the PJM website, to each Transmission Owners' Local Plan, including all criteria, assumptions and models used by the Transmission Owners to develop their respective plans.<sup>144</sup>

74. In response to the Commission's directive that PJM describe how the local transmission planning process complies with the requirements of Order No. 1000 addressing transmission needs driven by public policy requirements, PJM proposes to revise Schedule 6 of its Operating Agreement to explicitly state:

The Subregional RTEP Committees shall be responsible for the timely review of each Transmission Owner's Local Plan. This review shall include, but is not limited to, the review of criteria, assumptions and models used by the Transmission Owner to identify reliability criteria violations, economic constraints, or to consider Public Policy Requirements, ~~and~~ proposed solutions prior to finalizing the Local Plan, the coordination and integration of the Local Plans into the [Regional Plan], and addressing any stakeholder issues unresolved in the Local Plan process ....<sup>145</sup>

Each Subregional RTEP Committee shall schedule and facilitate a minimum of one Subregional RTEP Committee meeting to review the criteria, assumptions and models used by the Transmission Owner to identify reliability criteria

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<sup>142</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(f) (Establishment of Committees) (3.1.0).

<sup>143</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(c) (Establishment of Committees) (3.1.0).

<sup>144</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.4 (e) (Supply of Data) (3.1.0).

<sup>145</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d) (Establishment of Committees) (2.1.0).

violations, economic constraints, or to consider Public Policy Requirements.<sup>146]</sup>

75. PJM asserts that, as revised, Schedule 6 clearly describes the process through which its regional transmission planning process fully vets and takes into account local or subregional reliability criteria violations, economic constraints and public policy requirements. PJM further states that transmission projects that Transmission Owners identify as needed to address reliability criteria violations, economic constraints, or public policy requirements are vetted through PJM's regional transmission planning process forums, which allow for stakeholder review and comment.<sup>147</sup> PJM contends that its regional transmission planning process complies with Order No. 1000 because it merges local and regional transmission planning, stating that PJM evaluates both local and regional planning criteria.<sup>148</sup>

76. With regard to the Commission's directive in its First Compliance Order that PJM explain how proposed transmission solutions to local needs driven by public policy requirements could be selected in the regional transmission plan, PJM reiterates that Subregional RTEP Projects and Supplemental Projects (including those addressing public policy requirements) that Transmission Owners identify are merged into the Regional Plan through PJM's existing process.<sup>149</sup> PJM further notes that, although Supplemental Projects are not included in the Regional Plan for purposes of cost allocation and are thus not approved by the PJM Board, PJM evaluates such transmission projects to ensure that they do not adversely affect the transmission system and to identify any upgrades or requirements necessary to accommodate them.<sup>150</sup> PJM states that, in contrast, the PJM

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<sup>146</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(f) (Establishment of Committees) (2.1.0).

<sup>147</sup> PJM July 22, 2013 Compliance Filing at 16.

<sup>148</sup> *Id.* at 17 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.2(e) (Conformity with NERC *Reliability Standards* and Other Applicable Reliability Criteria) (2.0.0), which states that the Regional Plan planning criteria will include, among other things, the individual Transmission Owner FERC-filed planning criteria as filed in FERC Form No. 715).

<sup>149</sup> *Id.* at 17-18.

<sup>150</sup> *Id.* at 18.

Board must approve Subregional RTEP Projects because they are selected in the Regional Plan for purposes of cost allocation.<sup>151</sup>

(c) **Commission Determination**

77. We find that PJM's proposed revisions to the local transmission planning process partially comply with the directives in the First Compliance Order concerning the consideration of transmission needs driven by public policy requirements in the local transmission planning process.

78. 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 transmission planning process. This requirement includes an obligation that public utility transmission providers have in place processes that give all stakeholders the opportunity to provide input into what they believe are transmission needs driven by public policy requirements, and for public utility transmission providers to describe the procedures not only for identifying, but also for evaluating potential solutions to, transmission needs driven by public policy requirements in the local transmission planning process. This includes a requirement that public utility transmission providers post on their websites an explanation of which transmission needs driven by public policy requirements will be evaluated for potential solutions in the local transmission planning process, as well as an explanation of why other suggested transmission needs will not be evaluated.<sup>152</sup>

79. We find that PJM adequately describes processes, outlined above, that give all stakeholders the opportunity, through participation in Subregional RTEP Committees, to provide input into what they believe are local transmission needs driven by public policy requirements.

80. We find, however, that the proposed changes to Schedule 6 do not address how local Transmission Owners incorporate any comments from the Subregional RTEP Committees into their Local Plans before finalizing them and incorporating them into the proposed Regional Plan, and do not specify how any modifications to those plans in response to comments will be communicated to stakeholders. Thus, while PJM explains that a proposed solution addressing transmission needs driven by public policy requirements identified in the local transmission planning process may ultimately be included in the regional transmission plan as either a Supplemental Project or a

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<sup>151</sup> *Id.* at 18 n.47.

<sup>152</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 203-209.

Subregional RTEP Project, following review by the Subregional RTEP Committees and Transmission Expansion Advisory Committee, PJM's OATT does not adequately describe the procedures by which local Transmission Owners will evaluate, with stakeholder input, such potential transmission solutions proposed in the local transmission planning process for selection in the Local Plan.

81. We also find that, while PJM does provide access through its website to each Transmission Owner's Local Plan,<sup>153</sup> PJM does not address the requirement that public utility transmission providers post on their websites an explanation of which transmission needs driven by public policy requirements will be evaluated for potential solutions in the local transmission planning process, as well as an explanation of why other suggested transmission needs will not be evaluated.

82. Finally, we note that PJM's proposed revisions to the second sentence of Schedule 6, § 1.3(d) create confusion about what the Subregional RTEP Committees review in each Transmission Owner's Local Plan.<sup>154</sup> We direct PJM to revise Schedule 6, § 1.3(d) to make its meaning consistent with our interpretation of the provision.

83. Accordingly, PJM must submit, within 60 days of the date of issuance of this order, a further compliance filing that describes the process by which local Transmission Owners incorporate into their Local Plans any comments from the Subregional RTEP Committees on the criteria, assumptions and models used in the local planning process, as well as on any identified needs and proposed solutions, prior to finalizing the Local Plans. PJM should also describe how it or local Transmission Owners will communicate to stakeholders any modifications made to Local Plans in response to comments from the

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<sup>153</sup> See *supra* note 144. In addition, PJM's Manual 14B, which describes the PJM region transmission planning process, notes that projects originating through local transmission owner planning will be posted on PJM's website. The website will allow interested parties to track the status of listed projects and planned in-service dates, and will include information regarding criteria and assumptions related to local planning. See PJM Manual 14B: PJM Regional Transmission Planning Process (Revision 25), at 9-10 (effective Oct. 24, 2013).

<sup>154</sup> As written, the sentence could imply, for example, that the Subregional RTEP Committees review "the criteria, assumptions and models used to identify [...] proposed solutions prior to finalizing the Local Plan..." We assume that the sentence should instead be interpreted to read, "This review shall include, but is not limited to, the review of [...] proposed solutions prior to finalizing the Local Plan..." See PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.3(d) (Establishment of Committees) (3.1.0).

Subregional RTEP Committees. In addition, we direct PJM to specify the procedures by which local transmission providers will evaluate potential solutions to transmission needs driven by public policy requirements in the local transmission planning process. We further direct PJM to describe how it or local Transmission Owners will post on their respective websites an explanation of which transmission needs driven by public policy requirements will be evaluated for potential solutions in the local transmission planning process, as well as an explanation of why other suggested transmission needs will not be evaluated. Finally, we direct PJM to revise Schedule 6, § 1.3(d) to make its meaning consistent with our interpretation of the provision described above.

**iii. State Agreement Approach**

**(a) First Compliance Order**

84. In its October 25, 2012 Compliance Filing, PJM explained that its proposed State Agreement Approach,<sup>155</sup> which it included as a mechanism by which states that desire to advance a transmission project addressing public policy requirements can have the project selected in the Regional Plan, was not intended to comply with Order No. 1000.<sup>156</sup> Nevertheless, because the proposed approach was related to other revisions PJM was making in compliance with Order No. 1000, the Commission found it appropriate to make a determination on the State Agreement Approach in its First Compliance Order. There, the Commission found that PJM's proposal for a State Agreement Approach was not needed for PJM to comply with Order No. 1000 and that the proposed approach supplements, but does not conflict with or otherwise replace, PJM's process to consider transmission needs driven by public policy requirements.<sup>157</sup>

85. The Commission found that, subject to modification, the State Agreement Approach is just and reasonable and not unduly discriminatory. However, the Commission determined that the State Agreement Approach did not adequately identify which entity determines whether a Supplemental Project will be selected in the Regional

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<sup>155</sup> The State Agreement Approach allows states to submit public policy transmission projects for inclusion in the Regional Plan that will not be subject to regional cost allocation. Instead, states may voluntarily assume responsibility for all costs of the proposed transmission project, which will be included in the Regional Plan as a Supplemental Project or state public policy transmission project. *See* PJM October 25, 2012 Compliance Filing at 45.

<sup>156</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 124.

<sup>157</sup> *Id.* P 142.

Plan. Therefore, the Commission ordered PJM to make a compliance filing clarifying this issue.<sup>158</sup>

(b) **Requests for Rehearing or Clarification**

(1) **Summary of Requests for Rehearing or Clarification**

86. Regarding the State Agreement Approach, Atlantic Grid and AWEA argue that stakeholders should be permitted to propose transmission projects intended to meet public policy requirements in the regional transmission planning process, even if such projects were initially proposed through the State Agreement Approach.<sup>159</sup> Moreover, Atlantic Grid requests that the Commission clarify that the State Agreement Approach has no impact on the classification of transmission projects such that, once a project is selected in the regional transmission plan for the purposes of cost allocation, any commitment under the State Agreement Approach is no longer applicable.<sup>160</sup>

(2) **Commission Determination**

87. As discussed above, the State Agreement Approach is a supplementary, but separate, mechanism by which state governmental entities authorized by their respective states may voluntarily agree to be responsible for the allocation of all costs of a proposed transmission enhancement or expansion developed pursuant to this separate approach. While we found in the First Compliance Order that the State Agreement Approach is sufficiently related to PJM's Order No. 1000 regional transmission planning process to include a determination on PJM's proposal, we explained that it is not necessary to consider whether the State Agreement Approach and the corresponding cost allocation method comply with Order No. 1000.<sup>161</sup> Rather, we determined that the State Agreement Approach is just and reasonable and not unduly discriminatory, subject to PJM clarifying the identity of the entity that determines whether a Supplemental Project will be included in the Regional Plan pursuant to the State Agreement Approach.

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<sup>158</sup> *Id.* PP 145, 147.

<sup>159</sup> Atlantic Grid Request at 6; AWEA Request at 3-4.

<sup>160</sup> Atlantic Grid Request at 6-7.

<sup>161</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 142.

88. We decline to require PJM to revise Schedule 6 to adopt Atlantic Grid's and AWEA's requested approach for how the State Agreement Approach should interact with PJM's regional transmission planning process. As the Commission stated in the First Compliance Order, nothing in Order No. 1000 prohibits market participants from negotiating alternative cost sharing arrangements voluntarily and separately from the regional cost allocation method or methods. In addition, Order No. 1000 did not establish any requirements regarding how such a supplementary, but separate, mechanism must interact with the Order No. 1000 regional transmission planning process, and we are not persuaded to address the interaction between these processes on rehearing. Order No. 1000 requires only that the transmission planning process adopted by a transmission planning region satisfy the transmission planning principles discussed in Order No. 1000 and in the orders on compliance.

89. For the same reasons, we decline to clarify or require PJM, as requested by Atlantic Grid, to specify that once a transmission project is selected in the regional transmission plan for the purposes of cost allocation, any commitment under the State Agreement Approach is no longer applicable. The Order No. 1000 reforms do not address how entities must resolve commitments made pursuant to negotiations separate from the regional transmission planning process. Accordingly, this issue is beyond the scope of this proceeding.

(c) **Compliance**

(1) **Summary of PJM Parties' Compliance Filing(s)**

90. PJM proposes to comply with the Commission's directive to specify the entity that determines whether a Supplemental Project should be included in the Regional Plan by revising Schedule 6 to clarify that authorized state governmental entities voluntarily agreeing to be responsible for the costs of a proposed project addressing public policy requirements will determine whether the project will be included in the Regional Plan as a Supplemental Project or a state public policy project.<sup>162</sup>

91. PJM further explains that, under the State Agreement Approach, if the state(s) affected by a proposed transmission project that addresses public policy requirements or public policy objectives expresses an interest to PJM in moving forward with the project, PJM will evaluate the project to determine if upgrades would be required to accommodate it and will inform the affected state(s) of this determination. According to

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<sup>162</sup> PJM July 22, 2013 Compliance Filing at 19; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.9(a) (State Agreement Approach) (3.1.0).

PJM, the state(s) will then notify PJM if it wishes to have the transmission project included in the Regional Plan, indicate whether the project should be classified as a Supplemental Project or a state public policy project, and affirm that the affected state(s) will be responsible for all costs of the project and any additional upgrades to PJM's system needed to accommodate the project. PJM states that it will then include the Supplemental Project or state public policy project in the recommended plan.<sup>163</sup>

## (2) Commission Determination

92. We find that PJM's proposed revision to Schedule 6 concerning the State Agreement Approach adequately clarifies which entity determines whether a transmission project proposed through the State Agreement Approach will be included in the Regional Plan as either a Supplement Project or as a state public policy transmission project. The revised language provides that, pursuant to the State Agreement Approach, a proposed transmission expansion or enhancement that addresses state public policy requirements identified or accepted by the state(s) in the PJM Region may be included in the recommended plan for informational purposes, but not for purposes of regional cost allocation, either as a Supplemental Project or a state public policy project, as determined by the authorized state governmental entities.<sup>164</sup> The affected state(s) will be responsible for all costs of the project and any additional upgrades to PJM's system needed to accommodate the project. The proposed revision is consistent with the determination in the First Compliance Order that the State Agreement Approach is an optional and complementary mechanism for the states in the PJM Region to submit state-approved public policy projects for selection in the Regional Plan, though such projects are not eligible for regional cost allocation unless selected in the regional transmission plan for purposes of cost allocation pursuant to PJM's Order No. 1000 compliant regional transmission planning process.<sup>165</sup> As the Commission stated in the First Compliance Order, "PJM's State Agreement Approach supplements, but does not conflict with or otherwise replace, PJM's process to consider transmission needs driven by public policy requirements as required by Order No. 1000."<sup>166</sup>

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<sup>163</sup> PJM July 22, 2013 Compliance Filing at 19.

<sup>164</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.9 (State Agreement Approach) (3.1.0).

<sup>165</sup> See First Compliance Order, 142 FERC ¶ 61,214 at P 143.

<sup>166</sup> *Id.* P 142.

## 2. Nonincumbent Transmission Developer Reforms

93. In Order No. 1000, the Commission adopted a framework of reforms to ensure that nonincumbent transmission developers have the opportunity to participate in the transmission development process. In particular, public utility transmission providers must eliminate federal rights of first refusal from Commission-jurisdictional tariffs and agreements and develop not unduly discriminatory qualification criteria and processes governing the submission and evaluation of proposals for new transmission facilities.

### a. Federal Rights of First Refusal

94. Order No. 1000 required each public utility transmission provider to remove provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.<sup>167</sup> The requirement to eliminate a federal right of first refusal does not apply to local transmission facilities,<sup>168</sup> or 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.<sup>169</sup> In addition, the requirement does not remove, alter, or limit an

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<sup>167</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313. In Order No. 1000-A, the Commission clarified that the phrase “a federal right of first refusal” refers only to rights of first refusal that are created by provisions in Commission-jurisdictional tariffs or agreements. Order No. 1000-A, 139 FERC ¶ 61,132 at P 415.

<sup>168</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 226, 258, 318. Order No. 1000 defined local transmission facilities 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. *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.

<sup>169</sup> 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

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incumbent transmission provider's use and control of its existing rights-of-way under state law.<sup>170</sup>

95. The Commission determined in Order No. 1000 that issues concerning the applicability of the *Mobile-Sierra* doctrine<sup>171</sup> to transmission owners' rights to build found in Commission-jurisdictional agreements are better addressed as part of the proceedings on Order No. 1000 compliance, where interested parties may provide additional information.<sup>172</sup>

**i. Mobile-Sierra**

**(a) First Compliance Order**

96. In the First Compliance Order,<sup>173</sup> the Commission rejected arguments that certain provisions in the PJM OATT and Agreements (i.e., the Consolidated Transmission Owners Agreement (Transmission Owners Agreement) and Operating Agreement), are properly read as federal rights of first refusal and are entitled to *Mobile-Sierra*<sup>174</sup> protection. The Commission explained that the *Mobile-Sierra* presumption necessarily (or automatically) applies to a contract only if the contract has certain characteristics that justify the presumption. The Commission found that Indicated PJM Transmission

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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.

<sup>170</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319.

<sup>171</sup> 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*).

<sup>172</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 292.

<sup>173</sup> *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013) (First Compliance Order).

<sup>174</sup> 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*).

Owners had not shown that the provisions of the Transmission Owners Agreement that Indicated PJM Transmission Owners contended include a federal right of first refusal bore such characteristics.<sup>175</sup>

97. The Commission explained in the First Compliance Order that contract rates are individualized rates that are negotiated freely at arm's length, in contrast to generally applicable rates or rates that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm's-length negotiations.<sup>176</sup> The *Mobile-Sierra* presumption necessarily applies only to contract rates. However, the U.S. Court of Appeals for the District of Columbia Circuit has determined that the Commission is legally authorized to impose a more rigorous application of the statutory "just and reasonable" standard of review on future changes to agreements that do not present contract rates.<sup>177</sup>

98. The Commission found in the First Compliance Order that the Transmission Owners Agreement provisions that Indicated PJM Transmission Owners contend include a federal right of first refusal are not necessarily entitled to a *Mobile-Sierra* presumption.<sup>178</sup> First, the Commission found that the Transmission Owners Agreement provisions at issue are prescriptions of general applicability. In support of this finding, the Commission pointed to the fact that any new PJM Transmission Owner would have to accept these Transmission Owners Agreement provisions as-is, with limited room for negotiation, because amending the Transmission Owners Agreement requires action by a two-thirds majority of current PJM Transmission Owners (i.e., parties to the Transmission Owners Agreement).<sup>179</sup> The Commission found that this requirement substantially inhibits the ability of a new PJM Transmission Owner to negotiate a change to these provisions, which is a fundamentally different position than parties who are able

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<sup>175</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 182.

<sup>176</sup> *Id.* P 183.

<sup>177</sup> *See New England Power Generators Ass'n, Inc. v. FERC*, No. 11-1422, at 10-12 (D.C. Cir. Feb. 15, 2013) (*NEGPA*).

<sup>178</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 186 (citing Illinois Commerce Commission, Comments, Docket No. ER13-195-000, at 3 (filed Dec. 10, 2012)); *id.* PP 187-190.

<sup>179</sup> *Id.* P 187 (citing PJM, Rate Schedules, Transmission Owners Agreement, Article 8, § 8.5.1 (Action by Two-thirds Majority) (1.0.0)).

to negotiate freely like buyers and sellers entering into a typical power sales contract that would be entitled to a *Mobile-Sierra* presumption.<sup>180</sup>

99. Second, the Commission found that the Transmission Owners Agreement provisions at issue arose in circumstances that do not provide the assurance of justness and reasonableness on which the *Mobile-Sierra* presumption rests. The Commission reasoned that the negotiation that led to the provisions at issue here were among parties—incumbent PJM Transmission Owners—with the same interest, namely, protecting themselves from competition in transmission development.<sup>181</sup> Thus, in the First Compliance Order the Commission found that while Indicated PJM Transmission Owners may have engaged in extensive negotiations, those negotiations do not bear the hallmarks necessary for the *Mobile-Sierra* presumption.

**(b) Request for Rehearing or Clarification**

100. Indicated PJM Transmission Owners take issue with the Commission’s analysis in the First Compliance Order as to whether the PJM Transmission Owners Agreement is entitled to *Mobile-Sierra* protection. Specifically, Indicated PJM Transmission Owners first argue that the Commission lacks the authority to impose additional conditions, or “pre-conditions,” to the availability of *Mobile-Sierra* protection to the Transmission Owners Agreement once it has been ascertained that the contract nowhere expressly disowns *Mobile-Sierra* applicability. They maintain that the Commission “purports to impose prerequisites on the availability of the *Mobile-Sierra* presumption-at-law that attaches to contracts.”<sup>182</sup> Thus, they aver that the Commission cannot withhold the *Mobile-Sierra* presumption for an agreement that “delimit[s], qualif[ies], or restrict[s] the ability of any other potential competitor to engage in the subject activity.”<sup>183</sup> Indicated PJM Transmission Owners state that any wholesale requirements customer restricts the ability of any other potential competitor to sell electricity to the buyer. Indicated PJM Transmission Owners also state that the Commission’s characterization of the Transmission Owners Agreement as essentially fixed and providing only limited room for a new PJM Transmission Owner to negotiate different terms makes the fixed nature of an agreement a reason to refuse to apply the public interest requirement rather than a

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<sup>180</sup> *Id.*

<sup>181</sup> *Id.* P 189.

<sup>182</sup> Indicated PJM Transmission Owners, Request for Rehearing, Docket No. ER13-195-001, at 7 (filed Apr. 22, 2013) (Request) (citation omitted).

<sup>183</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 186.

finding that the fixed rate seriously harms the consuming public. Indicated PJM Transmission Owners maintain that this holding improperly seeks to resurrect the view that the public interest requirement does not apply when a third party challenges a contract, something that the Supreme Court has rejected.<sup>184</sup>

101. Further, Indicated PJM Transmission Owners dispute the Commission's view that the Transmission Owners Agreement was negotiated among parties with common interests, stating that "[n]either the *Mobile-Sierra* cases nor any subsequent precedent has added a requirement that the contracting parties have completely adverse interests."<sup>185</sup> Finally, Indicated PJM Transmission Owners contend that the Commission's recognition that the Transmission Owners Agreement has some attributes of a generally applicable tariff does not authorize the Commission to refuse to apply the *Mobile-Sierra* presumption.

102. Indicated PJM Transmission Owners state that the Transmission Owners Agreement deserves *Mobile-Sierra* protection because it was freely negotiated at arm's length by sophisticated parties with disparate interests. They state that, while the Transmission Owners may have been united in invoking their right of first refusal rights, PJM had no right of first refusal to protect. They describe PJM as "a sophisticated party that dealt at arm's length with the Transmission Owners," and they point out that PJM was interested in an efficient planning process and in meeting the requirements placed on regional transmission organizations by Order No. 2000.<sup>186</sup> Indicated PJM Transmission Owners contend that the membership of the Transmission Owners in the new PJM RTO "was expressly made contingent upon the continuation of their pre-existing [rights of first refusal] being acknowledged and honored by PJM and all others."<sup>187</sup> They state that PJM Transmission Owners agreed to impose upon themselves the obligation to build whatever PJM deems necessary under its planning authority in return for retaining this right of first refusal.

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<sup>184</sup> Indicated PJM Transmission Owners Request at 8-9 (referencing *NRG Power Mktg., LLC v. Me. Pub. Utils. Comm'n*, 130 S. Ct. 693 (2009) (*NRG*)).

<sup>185</sup> Indicated PJM Transmission Owners Request at 9.

<sup>186</sup> *Id.* at 11 (citing *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999)).

<sup>187</sup> *Id.* at 12, 13, 15 (claiming the right of first refusal "is their *quid pro quo* for making this RTO formation a reality").

103. Lastly, Indicated PJM Transmission Owners state that PJM's right of first refusal provision has *Mobile-Sierra* protection because the right of first refusal is an FPA section 205 rate-related provision in PJM's open access transmission tariff (OATT) and, as such, it is safeguarded against abrogation, according to the Commission-approved October 2003 Settlement Agreement.<sup>188</sup> In turn, Indicated PJM Transmission Owners note that the settlement agreement provides that the terms applicable to section 205 rate-related provisions in PJM's OATT cannot be abrogated by the Commission.

(c) **Commission Determination**

104. As a threshold matter, the Commission explained in the First Compliance Order that mere inclusion of a federal right of first refusal in a contract does not necessarily establish that this provision is a "contract rate (or term or condition)" entitled to a *Mobile-Sierra* presumption.<sup>189</sup> The Commission further stated that the *Mobile-Sierra* presumption applies to a contract, or the relevant provision of a contract, only if there are certain characteristics that justify the presumption. Indicated PJM Transmission Owners dispute this analytical framework, arguing that the Commission lacks the authority to impose additional conditions, or preconditions, to the availability of *Mobile-Sierra* protection where a contract does not expressly reject *Mobile-Sierra* applicability.

105. We disagree with Indicated PJM Transmission Owners. We understand Indicated PJM Transmission Owners' argument to be that all contracts, regardless of their characteristics, are entitled to *Mobile-Sierra* protection. That view is overbroad, as it would sweep in even a situation where the terms of an agreement, if approved, would be incorporated into the service agreements of all present and future customers. As the Commission stated in the First Compliance Order, that situation presents terms to which the *Mobile-Sierra* presumption would not apply.<sup>190</sup> The Commission found that the Transmission Owners Agreement provisions at issue here similarly are not properly classified as establishing contract rates that are necessarily entitled to the *Mobile-Sierra* presumption.<sup>191</sup>

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<sup>188</sup> See *id.* at 17-18; see also *Pennsylvania-New Jersey-Maryland Interconnection*, 105 FERC ¶ 61,294 (2003), *order on reh'g*, 108 FERC ¶ 61,032 (2004) (*PJM*) (approving settlement agreement).

<sup>189</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 182.

<sup>190</sup> *Id.* P 185.

<sup>191</sup> In the First Compliance Order, the Commission explained that the Transmission Owners Agreement cannot be classified in its entirety as containing

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106. Indicated PJM Transmission Owners also take issue with the Commission's finding of a common interest among the incumbent PJM Transmission Owners at the time the Transmission Owners Agreement was negotiated with PJM. In doing so, they fail to acknowledge essential elements of arm's-length bargaining, which is a necessary precondition of a *Mobile-Sierra* presumption.

107. Courts have found that "arm's length negotiations or transactions are characterized as adversarial negotiations between parties that are each pursuing independent interests."<sup>192</sup> A "typical arm's length transaction involves an adversarial negotiation in which the parties have independent interests and each tries to obtain the best deal for itself."<sup>193</sup> Courts have characterized arm's-length transactions as transactions in which "adversarial parties," i.e., "business adversaries in the commercial sense," seek "to further their own economic interests."<sup>194</sup> Courts have described "the hallmark characteristics of arm's-length bargaining" as bargaining that is "negotiated rigorously, selfishly and with an adequate concern for price."<sup>195</sup>

108. The Commission has taken a similar position. In one instance involving gas sales, it found that "the test for arm's-length bargaining" is:

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contract rates or tariff rates. Recognizing the breadth and complexity of the Transmission Owners Agreement, the Commission found that it is neither practical nor necessary to evaluate whether the preponderance of the Transmission Owners Agreement provisions include contract rates. Rather, the Commission found that determining the standard of review that should apply to the specific provisions of the Transmission Owners Agreement at issue (i.e., the provisions that Indicated PJM Transmission Owners argue create a right of first refusal) was an appropriate way to recognize the distinctions among the Transmission Owners Agreement's provisions. *Id.*

<sup>192</sup> *Santomenno v. Transamerica Life Ins. Co.*, 2013 WL 603901, \*6 (C.D. CA).

<sup>193</sup> *Id.* 6 n.3 (citing Black's Law Dictionary 109 (6th ed. 1991) (defining an arm's length transaction as "a transaction negotiated by unrelated parties, each acting in his or her own self-interest .... A transaction in good faith in the ordinary course of business by parties with independent interests.")).

<sup>194</sup> *A.T. Kearney, Inc. v. Int'l Bus. Machines Corp.*, 73 F.3d 238, 242 (9th Cir.1995).

<sup>195</sup> *Jeanes Hosp. v. Sec'y of Health & Human Servs.*, 448 F. App'x 202, 206 (3d Cir. 2011).

whether the purchaser and seller have sufficiently distinct economic interests that the buyer's interests in the negotiations are aligned with those to whom it resells the gas, and not with the interests of the seller. If the negotiating parties have a common economic interest in the outcome of the negotiations, they cannot bargain at arm's length. If the purchaser has an economic incentive to pay a higher price or agree to other terms more favorable than necessary to provide a reasonable incentive to the seller for the production of the gas, there can be no arm's-length bargaining.<sup>196</sup>

109. In short, arm's-length bargaining is a process in which each party pursues its individual interests, and a negotiation in which the parties pursue a single, common, and shared interest is thus inconsistent with such bargaining.<sup>197</sup>

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<sup>196</sup> *Nw. Central Pipeline Corp.*, 44 FERC ¶ 61,200, at 61,719 (1988).

<sup>197</sup> We note that in certain situations, a transaction may be deemed to be an arm's-length transaction when parties cannot be assumed to be pursuing individual, adverse interests. For example, Black's Law Dictionary defines an arm's-length transaction, in part, as:

The standard under which unrelated parties, each acting in his or her own best interest *would carry out* a particular transaction. For example, if a corporation sells property to its sole shareholder for \$10,000, in testing whether \$10,000 is an "arm's length" price it must be ascertained for how much the corporation could have sold to property to a disinterested third party in a bargained transaction. (emphasis supplied)

Black's Law Dictionary 100 (5th ed. 1978). The Commission has taken a similar approach. *See, e.g., Indiana and Michigan Municipal Distributors Ass'n v. Indiana Michigan Power Co.*, 62 FERC ¶ 61,189, at 62,238 (1993) (stating that in assessing whether rates are just and reasonable, the Commission cannot presume prudence or assume . . . an arm's-length relationship if costs are incurred through an affiliate transaction, and the Commission will instead look to a range of market prices for comparable transactions during the same time period).

This alternative approach is not, however, applicable here. The Commission is not dealing with a price term that can be compared to prices in competitive markets or with a transaction that otherwise can be presumed to have a certain outcome when negotiated

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110. We thus reject Indicated PJM Transmission Owners' argument that commonality or adversity of interests is not a factor in *Mobile-Sierra* analysis. The issue is central to determining whether a contract was freely negotiated at arm's-length and is thus central to a determination of whether the *Mobile-Sierra* presumption applies in a specific case. The Commission found in the First Compliance Order that the incumbent PJM Transmission Owners had a common interest, namely, to protect themselves from competition in transmission development,<sup>198</sup> by "delimit[ing], qualif[ying], or restrict[ing] the ability of any other potential competitor to engage in the subject activity."<sup>199</sup> While Indicated PJM Transmission Owners may have engaged in extensive negotiations with respect to the Transmission Owners Agreement in general, their common interest relating to the right of first refusal undermines any assurance of justness and reasonableness associated with arm's-length negotiations of the particular provisions at issue here.<sup>200</sup>

111. We also reject Indicated PJM Transmission Owners' argument that there is no distinction between wholesale requirements contracts, which preclude competition by third-party sellers but are entitled to a *Mobile-Sierra* presumption, and a contract that by its terms specifies who may or may not engage in a certain activity. In the case of wholesale requirements contracts, the exclusion of third-party sellers is simply incidental to the fact the seller found the contract price sufficiently high, the buyer found the price sufficiently low, and both parties found the other terms and conditions of the contract to be sufficiently satisfactory to reach an agreement. There is a fundamental difference between an agreement where the parties agree to transact exclusively with each other and

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among parties that do not share common interests with respect to the substance of the transaction.

<sup>198</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 189.

<sup>199</sup> *Id.* P 186.

<sup>200</sup> We also disagree with Indicated PJM Transmission Owners' argument that negotiations between them and PJM constitute the type of arm's-length bargaining that justifies a *Mobile-Sierra* presumption. PJM is certainly a sophisticated entity in the sense that it possesses great expertise in transmission system operations. However, it is not a commercial entity, and it does seek to maximize its self-interest when interacting with its transmission owner members, as do commercial entities engaged in traditional arm's-length bargaining. Further, the Commission's finding that the Transmission Owners Agreement is a document of general applicability, however, applies to the Transmission Owners Agreement as a whole rather than turning on the limitation of the right of first refusal provision.

an agreement where the parties agree to prevent any other party from entering their line of business. Indicated PJM Transmission Owners thus fail to distinguish between contracts that are the product of competitive conditions, i.e., contracts that are freely negotiated at arm's-length, and contracts that by their terms seek to restrict competition by preventing entry into the market. Contracts that are formed under competitive conditions cannot be said to restrict competition because the parties to them must fulfill their contractual obligations to each other and thus in some instances must forego transacting with third parties.

112. Indicated PJM Transmission Owners further argue that the Commission's characterization of the Transmission Owners Agreement, as essentially fixed and providing only limited room for a new PJM Transmission Owner to negotiate different terms, improperly seeks to resurrect the view that the public interest requirement does not apply when a third party challenges a contract. Indicated PJM Transmission Owners argue that the U.S. Supreme Court rejected such a view in *NRG*. At the outset, *NRG* does not resolve the question of whether the *Mobile-Sierra* presumption applies to the rates at issue in a particular case. In *NRG*, the Court held that a *Mobile-Sierra* presumption applies to third-party challenges to "contract rates," but specifically declined to determine whether the matter at issue there presented "contract rates." Instead, the Court remanded that question to the D.C. Circuit,<sup>201</sup> which, in turn, remanded the question to the Commission.<sup>202</sup> Even if *NRG* resolved the issue as Indicated PJM Transmission Owners claim, the issue presented here would be whether the *Mobile-Sierra* presumption applies at all to the Transmission Owners Agreement provisions at issue. As discussed above, the Commission finds that the preconditions for a *Mobile-Sierra* presumption are not present in the case of the Transmission Owners Agreement provisions at issue here.

113. Lastly, Indicated PJM Transmission Owners argue that the Commission effectively exercised its discretion to grant *Mobile-Sierra* treatment to the provisions in the Transmission Owners Agreement that they maintain relate to a right of first refusal when it approved certain OATT provisions as part of a settlement agreement reached during the initial formation of the PJM RTO. Specifically, Indicated PJM Transmission Owners state that section 4.3 of the October 2003 Settlement Agreement directs that certain changes be made to PJM's OATT, including adding the following provisions to

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<sup>201</sup> *NRG*, 130 S.Ct. at 701.

<sup>202</sup> *Me. Pub. Util. Comm'n v. FERC*, 625 F.3d 754, 759-60 (2010). The Commission later found that the rates at issue on remand were not contract rates. *Devon Power*, 134 FERC ¶ 61,208 at PP 12-14. The D.C. Circuit rejected a challenge to this Commission finding. *NEGPA*, No. 11-1422 (D.C. Cir. Feb. 15, 2013).

the OATT (which were also incorporated into the Transmission Owners Agreement, at section 7.3.1):

Section 9.1, Rights of Transmission Owners:

“The Transmission Owners shall have the exclusive and unilateral rights to file pursuant to Section 205 of the FPA and the FERC’s rules and regulations thereunder . . . any provisions of the PJM Tariff governing . . . transmission – related” rate matters.

Section 9.4, Mobile-Sierra:

FERC’s right to change Section[] 9.1 . . . shall be limited to the maximum extent permissible by law and . . . such change shall be in accordance with the Mobile-Sierra public interest standard.<sup>[203]</sup>

114. Indicated PJM Transmission Owners’ argument—that the PJM OATT expressly contains *Mobile-Sierra* protection, which reaches the right of first refusal provisions—relies on their position that “the [right of first refusal] is a Section 205 rate-related provision . . . and, as such . . . it is safe-guarded against Commission abrogation under any but the highest standard permitted by law.”<sup>204</sup> Further, they posit that the October 2003 Settlement Agreement provides that “the terms applicable to Section 205 rate-related provisions in PJM’s tariff cannot be abrogated by the Commission under its Section 206 authority unless the Commission makes *Mobile-Sierra* findings.”<sup>205</sup> Thus, according to Indicated PJM Transmission Owners, all rate-related OATT terms are covered by *Mobile-Sierra* protection.

115. Indicated PJM Transmission Owners misread the Commission’s order approving the October 2003 Settlement Agreement and granting limited *Mobile-Sierra* treatment. In that order the Commission explained:

[W]hile we accept the proposed *Mobile-Sierra* “public interest” clause governing revisions to the parties’ voluntary agreement (as to the division between, essentially, rate-related

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<sup>203</sup> Indicated PJM Transmission Owners Request at 18-19.

<sup>204</sup> *Id.* at 17-18.

<sup>205</sup> *Id.* at 18.

filings and terms and conditions-related filings—with the PJM [Transmission Owners] filing the former and PJM the latter), if [the Transmission Owners] use their filing rights in a way that compromises RTO independence or functions or causes undue discrimination between or among RTO members or customers, the Commission will consider whether the Settlement Agreement is contrary to the public interest.[] We also intend to exercise careful oversight in connection with these matters and, if appropriate, institute a Section 206 proceeding to do so.<sup>[206]</sup>

Thus, the Commission granted *Mobile-Sierra* protection only to the *allocation* of filing rights—filing rights for rate-related provisions to the Transmission Owners, and filing rights for terms-and-conditions-related provisions to PJM. The Commission did not grant *Mobile-Sierra* protection to any particular rate-related provision or set of provisions.

116. Indicated PJM Transmission Owners neglect to quote or cite the previous paragraph of the Commission’s order where we clarified this limited grant of *Mobile-Sierra* protection. There, the Commission explained:

We note, in this regard, that the Commission’s Section 206 authority under the Settlement Agreement is limited only as to the extent of the Settlement Agreement, which addresses only the allocation of these rights. In other words, the Commission retains its authority to find a given rate to be unjust and unreasonable and to establish a just and reasonable rate.<sup>[207]</sup>

117. Accordingly, the Commission did not exercise its discretion to grant *Mobile-Sierra* protection to all the rate-related provisions—including the right of first refusal provision—as Indicated PJM Transmission Owners contend; rather, the Commission granted very limited *Mobile-Sierra* protection to the allocation of filing rights as between the transmission owners and PJM.

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<sup>206</sup> *PJM*, 105 FERC ¶ 61,294 at P 33.

<sup>207</sup> *Id.* P 32.

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

(a) **First Compliance Order**

118. In the First Compliance Order, the Commission disagreed with PJM's conclusion that the Commission had determined in *Primary Power*<sup>208</sup> that there is no existing federal right of first refusal in PJM's OATT and Agreements.<sup>209</sup> The Commission clarified that its findings in *Primary Power* were based on the particular issue raised in that complaint and therefore were limited to nonincumbent transmission developers' ability to receive cost-based recovery for *economic* projects.<sup>210</sup> Accordingly, the Commission directed PJM to remove or revise the provisions of its OATT and Agreements 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.<sup>211</sup>

119. Regarding the exceptions to Order No. 1000's requirement to eliminate a federal right of first refusal, the Commission found that PJM complied, in part, with Order No. 1000.<sup>212</sup> While the Commission found that PJM's solution-based exceptions in Schedule 6 of its Operating Agreement are consistent with Order No. 1000's exceptions to the requirement to eliminate a federal right of first refusal,<sup>213</sup> the Commission highlighted that PJM's OATT and Agreements contain various definitions for, and references to, several different types of upgrades.<sup>214</sup> The Commission thus found PJM's use of the term

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<sup>208</sup> *Primary Power, LLC*, 131 FERC ¶ 61,015 (2010) (*Primary Power*), order on *reh'g*, 140 FERC 61,052 (2012) (*Primary Power Rehearing Order*).

<sup>209</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 221 (citing *Primary Power*, 131 FERC ¶ 61,015 at P 62).

<sup>210</sup> *Id.* (emphasis added).

<sup>211</sup> *Id.* PP 221-222.

<sup>212</sup> *Id.* PP 225, 228.

<sup>213</sup> *Id.* P 228.

<sup>214</sup> PJM's solution-based exceptions designate an incumbent transmission owner as the Designated Entity for a transmission project when that transmission project is located

(continued...)

“upgrade” in section 1.5.8(1)(i) of Schedule 6 unclear.<sup>215</sup> Specifically, the Commission found that it is unclear what, if any, type of previously defined upgrade PJM intended to reference in section 1.5.8(1)(i). Therefore, the Commission directed PJM to revise section 1.5.8(1)(i) of Schedule 6 to clarify and define the term “upgrade” and to make any necessary conforming revisions to Schedule 6, as well as to the PJM OATT and Agreements.<sup>216</sup>

120. Regarding PJM’s proposal 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 the state,”<sup>217</sup> the Commission stated that Order No. 1000 does not require the removal from Commission-jurisdictional tariffs and 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.<sup>218</sup> However, the Commission found the PJM’s proposal went beyond mere reference to state or local laws or regulations; it referenced relevant state and local laws

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solely within a Transmission Owner’s zone and (1) the costs of the project are allocated solely to that zone or (2) the project is not selected in the Regional Plan for purposes of cost allocation.

<sup>215</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 227. Concern over the ambiguity of the term “upgrade” referred to a part of section 1.5.8(1)(i), which at that time read, in relevant part: “[A]n upgrade to a Transmission Owner’s own transmission facilities.” PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(1)(i) (Transmission Owners Required to be the Designated Entity) (3.0.0).

<sup>216</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 227.

<sup>217</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(1)(iv) (Transmission Owners Required to be the Designated Entity) (3.0.0).

<sup>218</sup> See First Compliance Order, 142 FERC ¶ 61,214 at P 230 (citing 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.”); Order No. 1000-A, FERC Stats. & Regs ¶ 31,132 at P 381).

and then used that reference to create a federal right of first refusal.<sup>219</sup> The Commission explained that Order No. 1000 did not permit a public utility transmission provider to add a federal right of first refusal for a “new transmission facility”<sup>220</sup> based on state law.<sup>221</sup> The Commission found that, while state laws and regulations may not be used to automatically exclude from consideration proposals for transmission facilities to be selected in the regional transmission plan for purposes of cost allocation as the more efficient or cost-effective transmission solution to regional transmission needs, it would be permissible to consider the effect of the state regulatory process at appropriate points in the regional transmission planning process.<sup>222</sup>

121. The Commission also found that PJM’s proposed exception to the requirement to eliminate a federal right of first refusal that would allow an incumbent transmission owner to retain a federal right of first refusal associated with an existing right-of-way was not permitted by Order No. 1000. Specifically, PJM proposed to designate an incumbent transmission owner as the Designated Entity<sup>223</sup> 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 right of way under state law.”<sup>224</sup> The Commission noted that, in

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<sup>219</sup> See First Compliance Order, 142 FERC ¶ 61,214 at P 230.

<sup>220</sup> Order No. 1000 defines new transmission facilities as transmission facilities that are subject to evaluation, or reevaluation, within a public utility transmission provider’s local or regional transmission planning process after the effective date of the public utility transmission provider’s filing adopting the relevant requirements of Order No. 1000. See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 65.

<sup>221</sup> See First Compliance Order, 142 FERC ¶ 61,214 at P 230.

<sup>222</sup> See *id.* P 232.

<sup>223</sup> PJM defines “Designated Entity” as “[a]n entity, including an existing Transmission Owner or Nonincumbent Developer, designated by the Office of Interconnection with the responsibility to construct, own, operate, maintain, and finance Immediate-need Reliability Projects, Short-term Projects, Long-lead Projects, or Economic-based Enhancements or Expansions pursuant to Section 1.5.8 of Schedule 6 of this Agreement.” PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (C-D), § 1.7A (Designated Entity) (3.1.0).

<sup>224</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 229 (quoting PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(1)(iv) (3.0.0)).

Order No. 1000, it acknowledged 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.”<sup>225</sup> The Commission stated, however, that it 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.<sup>226</sup>

(b) **Requests for Rehearing or Clarification**

(1) **Summary of Requests for Rehearing or Clarification**

122. PJM seeks clarification or, in the alternative, rehearing regarding the Commission’s directive that PJM remove or revise “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.”<sup>227</sup> Specifically, PJM states that the Commission has found in prior orders that sections 1.5.6(f) and 1.5.7(c)(iii) of Schedule 6 of the PJM Operating Agreement and section 4.2.1 of the Transmission Owners Agreement do not establish a right of first refusal.<sup>228</sup> Thus, PJM asserts, the only potentially applicable provisions in its OATT and Agreements that the Commission has not already interpreted in prior orders are the provisions that

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<sup>225</sup> See *id.* P 229 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31, 323 at P 319).

<sup>226</sup> See *id.*

<sup>227</sup> PJM, Limited Request for Clarification or, in the Alternative, Rehearing, Docket Nos. ER13-198-001, ER13-195-001, ER13-90-001, at 6 (filed Apr. 22, 2013) (PJM Request) (citing First Compliance Order, 142 FERC ¶ 61,214 at P 221); see also *id.* at 5 n.25 (referencing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.7 and PJM, Rate Schedules, Transmission Owners Agreement, Article 4, § 4.2.1, as the default reliability provisions).

<sup>228</sup> PJM Request at 4-5 (referencing *Primary Power*, 131 FERC ¶ 61,015 at PP 62-64; *Primary Power Rehearing Order*, 140 FERC ¶ 61,052 at PP 18, 44-57, 60; *Cent. Transmission, LLC v. PJM Transmission, L.L.C.*, 131 FERC ¶ 61,243, at P 2 (2010)).

authorize PJM to obligate an incumbent transmission owner to construct, own, and/or finance transmission enhancements or expansions selected in the Regional Plan.<sup>229</sup>

123. PJM therefore requests clarification that, to comply with the Commission's directive, it does not need to remove the provisions in its OATT that place an obligation to build on incumbent transmission owners.<sup>230</sup> PJM states that if the Commission denies its request for clarification, it alternatively requests rehearing of the Commission's directive and asserts that the Commission should not require PJM to remove the obligation to build provisions from the OATT because it would impede PJM's ability to meet its reliability obligations as an RTO.<sup>231</sup>

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<sup>229</sup> PJM Request at 2, 5 (referring to PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.7 and PJM, Transmission Owners Agreement, § 4.2.1). Section 1.7 of the Operating Agreement (Obligation to Build) reads:

Transmission Owners designated as the appropriate entities to construct, own and/or finance enhancements or expansions specified in the [Regional Plan] shall construct, own and/or finance such facilities or enter into appropriate contracts to fulfill such obligations.

PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.7 (Obligation to Build) (1.0.0).

And section 4.2.1 of the Transmission Owners Agreement reads:

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

PJM, Rate Schedules, Transmission Owners Agreement, Article 4 § 4.2.1 (Obligation to Build) (0.0.0).

<sup>230</sup> PJM Request at 6.

<sup>231</sup> *Id.* at 6-7 (citing First Compliance Order, 142 FERC ¶ 61,214 at P 221); *see also id.* at 5 n.25 (referencing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.7 and PJM, Rate Schedules, Transmission Owners Agreement, Article 4, § 4.2.1, as the default reliability provisions).

124. North Carolina Agencies, Indiana Commission, and NARUC request that the Commission reverse its decision to require PJM to remove language designating an incumbent transmission owner as the Designated Entity to build a transmission project when required to do so by state law, regulation, or administrative order. They argue that the language does not create a federal right of first refusal but rather acknowledges state law.<sup>232</sup> North Carolina Agencies contend that PJM's proposal complies with Order No. 1000 because it recognizes that state laws and regulations may limit the ability of nonincumbent transmission developers to construct transmission facilities.<sup>233</sup> Similarly, NARUC argues that PJM's proposed language is consistent with Order No. 1000's requirement that "regional transmission planners take into consideration the various State and local policy requirements."<sup>234</sup> NARUC asserts that the Commission's decision greatly exceeds the directive in Order No. 1000 concerning *federal* rights of first refusal.<sup>235</sup>

125. Indiana Commission also claims that the Commission's determination conflicts with Order No. 1000, potentially placing PJM's selection of a transmission developer in direct conflict with a state's power to autonomously regulate public utilities.<sup>236</sup> Indiana Commission further contends that the Commission's directive conflicts with section 201(a) of the FPA by allowing PJM to select a transmission developer that is not eligible to construct transmission facilities under state or local law.<sup>237</sup> It contends that the

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<sup>232</sup> See, e.g., North Carolina Agencies, Request for Rehearing, Docket No. ER13-198-001, at 3 (filed Apr. 22, 2013) (North Carolina Agencies Request for Rehearing); Indiana Commission, Request for Rehearing, Docket No. ER13-198-001, at 4-5 (filed Apr. 22, 2013) (Indiana Commission Request for Rehearing).

<sup>233</sup> North Carolina Agencies Request for Rehearing at 2-3.

<sup>234</sup> NARUC Petition at 6 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 2, 205, and 214).

<sup>235</sup> *Id.* at 5-6 (emphasis in original).

<sup>236</sup> Indiana Commission Request for Rehearing at 6-7.

<sup>237</sup> *Id.* at 3-5. FPA section 201(a) reads:

It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest and that Federal regulation of matters relating to generation to the extent provided in this

(continued...)

Commission's determination ignores state laws that limit eligibility to construct transmission facilities within a state and provides no guidance as to how PJM will administer its regional transmission planning process and respect such state laws.<sup>238</sup> Indiana Commission argues that allowing the selection of a transmission developer that is ineligible to construct a transmission facility under state law leads to increased litigation and coercive pressure on state commissions, and therefore to less efficient and more costly transmission development.<sup>239</sup>

126. Similarly, North Carolina Agencies contend that preventing PJM from considering state law when evaluating transmission developers on the front end, or to remove a transmission facility from the regional transmission plan due to its delays in obtaining state approvals, will create inefficiencies and delays, potentially precluding construction of the "best" transmission solutions.<sup>240</sup> North Carolina Agencies state that, in contrast, PJM's proposal to designate the incumbent transmission owner to build a transmission facility if the competing transmission developer is not able to lawfully do so is more efficient.<sup>241</sup> Finally, North Carolina Agencies argue that the Commission acted inconsistently in requiring that PJM consider certain public policies, such as renewable portfolio standards, in its regional transmission planning process, while requiring that PJM ignore other public policies, such as state laws and regulations restricting transmission development to state franchised utilities.<sup>242</sup>

127. Illinois Commission states that it supports the Commission's ruling that transmission projects that are selected in PJM's regional transmission plan for the

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Part and the Part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.

16 U.S.C. § 824 (2012).

<sup>238</sup> Indiana Commission Request for Rehearing at 6-7.

<sup>239</sup> *Id.* at 4-5.

<sup>240</sup> *See* North Carolina Agencies Request for Rehearing at 3-4.

<sup>241</sup> *Id.* at 3.

<sup>242</sup> *Id.* at 4.

purposes of cost allocation proceed through PJM's competitive project selection process, even if such projects are subject to a state right of first refusal statute.<sup>243</sup> However, Illinois Commission contends that transmission projects assigned to an incumbent transmission owner pursuant to a state statute, such as a state right of first refusal law, should be prohibited from receiving regional cost allocation.<sup>244</sup> Illinois Commission asserts that, where any state has a state law or regulation favoring incumbent transmission developers, in particular a state right of first refusal statute, nonincumbent transmission developers may be competitively disadvantaged.<sup>245</sup> Specifically, Illinois Commission claims that, as a practical matter, where a state has a right of first refusal statute for incumbent transmission owners, nonincumbent transmission developers will not be eager to submit transmission projects for consideration. Illinois Commission argues that without sufficient competition, customers, particularly those in states without such right of first refusal provisions, cannot be assured that the most efficient and cost-effective transmission project will be chosen or that the transmission rates they are paying for such projects are just and reasonable.<sup>246</sup>

## (2) Commission Determination

128. In the First Compliance Order, the Commission directed 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.<sup>247</sup> The Commission disagreed with PJM's broad conclusion that, in the *Primary Power* case, the Commission had determined that there is no federal right of first refusal in PJM's OATT and Agreements.<sup>248</sup> In the First Compliance Order, the Commission found that certain provisions of the OATT and Agreements may be read, or interpreted by some, to contain

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<sup>243</sup> Illinois Commission, Request for Rehearing, Docket No. ER13-198-001, at 8 (filed Apr. 18, 2013) (Illinois Commission Request for Rehearing).

<sup>244</sup> *Id.* at 9-10.

<sup>245</sup> *Id.* at 8.

<sup>246</sup> *Id.* at 9.

<sup>247</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 221.

<sup>248</sup> *Id.* (explaining that in the *Primary Power* proceeding the Commission specifically addressed the question of nonincumbent transmission developers' ability to receive cost-based recovery for economic projects).

a federal right of first refusal.<sup>249</sup> Accordingly, the Commission directed PJM to clarify these provisions 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.

129. PJM requests clarification that the Commission's directive does not require PJM to revise those provisions that enable PJM to obligate an incumbent transmission owner to construct, own, and/or finance transmission enhancements or expansions selected in the Regional Plan.<sup>250</sup> We grant PJM's clarification. We find that the directive in the First Compliance Order to remove or revise any provision that could be read as granting a federal right of first refusal does not require PJM to remove or revise the reliability default provisions that obligate an incumbent transmission owner to build. Having granted PJM's request for clarification, we need not address PJM's alternative request for rehearing, in which PJM contends that certain provisions do not establish a federal right of first refusal.

130. On rehearing, petitioners argue that the provisions that would have required PJM 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 the state," and when a transmission project 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 right of way under state law,"<sup>251</sup> merely acknowledge state law and do not create a federal right of first refusal. On

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<sup>249</sup> *Id.* P 222.

<sup>250</sup> *See supra* note 229.

<sup>251</sup> Schedule 6, § 1.5.8(1)(iv) as proposed by PJM in its October 25, 2012 Compliance Filing states: [Notwithstanding anything to the contrary in this Section 1.5.8, in all events, the Transmission Owner(s) in whose Zone(s) a proposed Short-term Project or Long-lead Project is to be located will be the Designated Entity for the project, when the Short-term Project or Long-lead Project 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 right of way under state law. Transmission Owner shall be the Designated Entity 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. PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(1)(iv) (Transmission Owners Required to be the Designated Entity) (3.0.0).

reconsideration, we agree and grant the requests for rehearing with respect to these provisions.

131. Noting that federal rights of first refusal create a barrier to entry that discourages nonincumbent transmission developers from proposing alternative transmission solutions for consideration at the regional level,<sup>252</sup> the Commission required public utility transmission providers to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.<sup>253</sup> Order No. 1000 concluded that such reforms were necessary to eliminate practices that have the potential to undermine the identification and evaluation of more efficient or cost-effective alternatives to regional transmission needs, which in turn can result in rates for Commission-jurisdictional services that are unjust and unreasonable, or otherwise result in undue discrimination by public utility transmission providers.<sup>254</sup> Nothing has changed the Commission's view that Order No. 1000's requirement to remove federal rights of first refusal is in the public interest. As the Commission made clear in several orders, Order No. 1000 requires that federal rights of first refusal must be eliminated from Commission-jurisdictional tariffs and agreements.<sup>255</sup>

132. We continue to require the elimination of federal rights of first refusal from Commission-jurisdictional tariffs or agreements, but that is not the issue here. Rather, the issue is whether it is appropriate for the Commission to prohibit PJM from recognizing state and local laws and regulations when designating the developer for a transmission project selected in the regional transmission plan for purposes of cost allocation. On

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<sup>252</sup> See, e.g., Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 257.

<sup>253</sup> See, e.g., Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313.

<sup>254</sup> See, e.g., Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 226. See also, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 286 (stating that "Indeed, the Supreme Court has said that 'the history of Part II of the Federal Power Act indicates an overriding policy of maintaining competition to the maximum extent possible consistent with the public interest.' In requiring the elimination of federal rights of first refusal from Commission-jurisdictional tariffs and agreements, we are acting in accordance with our duty to maintain competition.").

<sup>255</sup> See, e.g., *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,057 at P 118; *ISO New England Inc.*, 143 FERC ¶ 61,150 at P 227; First Compliance Order, 142 FERC ¶ 61,215 at P 200.

balance, we conclude that the Commission should not prohibit PJM from recognizing state and local laws and regulations as a threshold issue. Regardless of whether state or local laws or regulations are expressly referenced in the PJM tariff, some such laws or regulations may independently prohibit a nonincumbent transmission developer from developing a particular transmission project in a particular state, even if the nonincumbent transmission developer would otherwise be designated to develop the transmission project under PJM's regional transmission planning process. Indeed, in response to arguments about existing references to state-granted rights of first refusal in Commission-approved tariffs or agreements, the Commission explained that "such a right based on a state or local law or regulation would still exist under state or local law even if removed from the Commission-jurisdictional tariff or agreement and nothing in Order No. 1000 changes that law or regulation, for Order No. 1000 is clear that nothing therein is 'intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities.'"<sup>256</sup>

133. We find compelling the arguments petitioners expressed on rehearing regarding the potential for inefficiencies and delays that may occur if PJM must remove the provision requiring it 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 the state," and when a transmission project 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 right of way under state law."<sup>257</sup> In light of these arguments, we conclude that requiring PJM to remove these provisions from its tariff would result in a regional transmission planning process that does not efficiently account for the existence of state or local laws or regulations that impact the siting, permitting, and construction of transmission facilities. In particular, we find that ignoring these state or local laws or regulations at the outset of the regional transmission planning process would be counterproductive and inefficient, as it would require PJM's regional transmission planning process to expend time and resources to evaluate potential transmission developers for transmission projects that, under state or local laws or regulations, ultimately must be assigned to the incumbent transmission developer. Moreover, the designation of a transmission developer that is not eligible under state or local laws or regulations to develop a given transmission project selected in the regional transmission plan for purposes of cost allocation could hinder the possibility that needed

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<sup>256</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 381.

<sup>257</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(1)(iv) (Transmission Owners Required to be the Designated Entity) (3.0.0)).

transmission facilities would move forward. It could also unnecessarily delay the development of needed transmission facilities because PJM would still be required to evaluate potential transmission developers for a transmission project selected in the regional transmission plan for purposes of cost allocation that only the incumbent transmission developer may develop under state or local laws or regulations, postponing the development of the selected project. Indeed, one purpose of Order No. 1000 is to facilitate the likelihood that needed transmission facilities will move forward.<sup>258</sup>

Petitioners have persuaded us that it is appropriate for PJM to recognize state or local laws and regulations as a threshold matter in the regional transmission planning process and, accordingly, we grant rehearing and find that PJM may retain the provisions requiring it 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 the state,” and when a transmission project 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 right of way under state law.”<sup>259</sup>

134. We deny Illinois Commission’s request for rehearing concerning transmission projects subject to state rights of first refusal. In Order No. 1000, the Commission did not specifically address whether transmission solutions selected as more efficient or cost-effective in the regional transmission plan, and which are subject to *state* rights of first refusal, should be eligible for regional cost allocation. The Commission stated that Order No. 1000’s focus “is on the set of transmission facilities that are evaluated at the regional level and selected in the regional transmission plan for purposes of cost allocation” and “[i]n order for a transmission facility to be eligible for the regional cost allocation methods, the region must select the transmission facility in the regional transmission plan for purposes of cost allocation.”<sup>260</sup>

135. With respect to *federal* rights of first refusal, the Commission found that granting incumbent transmission providers a federal right of first refusal “effectively restricts the universe of transmission developers offering potential solutions for consideration in the

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<sup>258</sup> See, e.g. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 43-47 (noting that the requirements in Order No. 1000 are designed to “increase the likelihood that transmission facilities in the transmission plan will move forward to construction.”).

<sup>259</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(1)(iv) (Transmission Owners Required to be the Designated Entity) (3.0.0)).

<sup>260</sup> *Id.* P 318 & n.299.

regional transmission planning process.”<sup>261</sup> Highlighting the relationship between regional transmission planning and cost allocation, the Commission found that the removal of the federal right of first refusal, combined with cost allocation reforms, would “address disincentives that may be impeding participation by nonincumbent transmission developers in the regional transmission planning process.”<sup>262</sup> In Order No. 1000-A, the Commission further emphasized this relationship by stating that “if any costs of a new transmission facility are allocated regionally or outside of a public utility transmission provider’s retail distribution service territory or footprint, then there can be no federal right of first refusal associated with such transmission facility, except as provided in this order.”<sup>263</sup>

136. However, while Order No. 1000 addressed some disincentives that may deter nonincumbent transmission developers, the Commission recognized that the Order No. 1000 reforms did not address all disincentives to competition to develop transmission projects selected in the regional transmission plan for purposes of cost allocation. The Commission explained that, through the reforms to regional transmission planning, “[it] is seeking to ensure that a *robust process* is in place to identify and consider regional solutions to regional needs, whether initially identified through ‘top down’ or ‘bottom up’ transmission planning processes.”<sup>264</sup> The Commission acknowledged that “there may be restrictions on the construction of transmission facilities by nonincumbent transmission providers under rules or regulations enforced by other jurisdictions.”<sup>265</sup>

137. Thus, while Order No. 1000 sought to remove barriers to competition in regional transmission planning processes, it did not purport to address every barrier to participation by nonincumbent transmission developers. As noted above, the Commission acknowledged that “there may be restrictions on the construction of transmission facilities by nonincumbent transmission providers under rules or regulations enforced by other jurisdictions.”<sup>266</sup> The Commission’s decision to focus on *federal* (not state) right of first refusal provisions in Commission-jurisdictional tariffs was an exercise

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<sup>261</sup> *Id.* P 284.

<sup>262</sup> *Id.* P 320.

<sup>263</sup> Order No. 1000-A, FERC Stats. & Regs. ¶ 31,132 at P 430.

<sup>264</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 320 (emphasis added).

<sup>265</sup> *Id.* P 287.

<sup>266</sup> *Id.*

of remedial discretion designed to ensure that its nonincumbent transmission developer reforms do not result in the regulation of matters reserved to the states.<sup>267</sup> The Commission repeatedly emphasized that Order No. 1000 would not preempt those authorities vested in the states.<sup>268</sup>

138. Furthermore, while the competitive processes required in Order No. 1000 are a part of selecting the more efficient or cost-effective transmission solutions in the regional transmission plan for purposes of cost allocation, the regional transmission planning process is also an important tool for accomplishing this goal. We recognize that, even if a transmission project is subject to a state right of first refusal, the regional transmission planning process still results in the selection for planning purposes of transmission projects that are more efficient or cost-effective than would have been developed but for such processes. For all these reasons, we deny Illinois Commission's request for rehearing.

(c) **Compliance**

(1) **Summary of PJM Parties' Compliance Filing(s)**

139. In response to the Commission's directive that PJM remove or revise any provisions in its OATT and Agreements "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," PJM proposes to delete section 1.5.6(k) of Schedule 6, which provides:

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.<sup>[269]</sup>

140. PJM states that, in the *Primary Power* proceeding, PJM and PJM Transmission Owners cited to this provision as establishing a right of first refusal, but the Commission

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<sup>267</sup> See *id.* P 377.

<sup>268</sup> See, e.g., *id.* P 107.

<sup>269</sup> PJM July 22, 2013 Compliance Filing at 21-22.

found otherwise, noting that this section applied by its own terms “to the extent that one or more Transmission Owners are designated” and the “[t]o the extent’ clause does not provide for reassignment of projects assigned to ‘other entities.’”<sup>270</sup> PJM explains that it deleted this provision to alleviate any confusion as to the interpretation and application of the provision and whether it might be read to establish a right of first refusal.<sup>271</sup>

141. To clarify and define the term “upgrade,” PJM proposes to add the defined term “Transmission Owner Upgrade” to Schedule 6 to replace the phrase “an upgrade to a Transmission Owner’s own transmission facilities.”<sup>272</sup> PJM’s proposed definition of “Transmission Owner Upgrade” is “an upgrade to a Transmission Owner’s own transmission facilities, which is an improvement to, addition to, or replacement of a part of, an existing facility and is not an entirely new transmission facility.”<sup>273</sup> PJM asserts that its proposed definition of “Transmission Owner Upgrade” is consistent with the Commission’s definition of upgrade in Order No. 1000, because the proposed definition incorporates Order No. 1000’s definition.<sup>274</sup> PJM asserts that, as a result of this new proposed definition, the exception to the requirement to remove a federal right of first refusal in its tariff<sup>275</sup> is fully consistent with Order No. 1000<sup>276</sup> and complies with the Commission’s directive in the First Compliance Order.<sup>277</sup>

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<sup>270</sup> *Id.* at 22 (citing *Primary Power*, 131 FERC ¶ 61,015 at PP 63-64).

<sup>271</sup> *Id.*

<sup>272</sup> *Id.* at 23; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(1)(i) (Transmission Owners Required to be the Designated Entity) (3.1.0).

<sup>273</sup> PJM July 22, 2013 Compliance Filing at 23; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (S-T), § 1.46 (Transmission Owner Upgrade) (3.1.0); PJM, Intra-PJM Tariffs, OATT, Definitions (T-U-V), § 1.45I (Transmission Owner Upgrade) (3.0.0).

<sup>274</sup> PJM July 22, 2013 Compliance Filing at 23-24 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 426).

<sup>275</sup> *Id.* at 23; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(1)(i) (Transmission Owners Required to be the Designated Entity) (3.1.0).

<sup>276</sup> PJM July 22, 2013 Compliance Filing at 24 & n.69 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 426).

<sup>277</sup> *Id.* (citing First Compliance Order, 142 FERC ¶ 61,214 at P 227 & n.417).

142. To comply with the Commission's requirement that PJM remove certain provisions from Schedule 6 concerning state laws that the Commission determined establish federal rights of first refusal,<sup>278</sup> PJM proposes to delete the sentence stating that a "Transmission Owner shall be the Designated Entity when required by state law, regulation or administrative agency order with regard to enhancements or expansions or portions of such enhancements or expansions within that state."<sup>279</sup> Similarly, PJM proposes to delete the provision that allows PJM to designate an incumbent Transmission Owner as the entity to develop a transmission project selected in the regional transmission plan for purposes of cost allocation when that project 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."<sup>280</sup>

(2) **Protests/Comments**

143. Exelon states that it does not object to the proposed definition of Transmission Owner Upgrade.<sup>281</sup> However, Exelon notes that this definition will not provide guidance for a situation in which a portion of a new transmission facility will overlap with an existing transmission facility (i.e., "it is not clear where the line between Transmission Owner Upgrade and the new transmission facility would be").<sup>282</sup> Moreover, Exelon states that, outside of the context of an interconnection, neither PJM nor a third party has an inherent right to require an upgrade of a Transmission Owner's facilities for the benefit of another Transmission Owner or transmission developer.<sup>283</sup> Exelon notes that a Transmission Owner's facilities are its property, and the rights to such property are governed by state laws.<sup>284</sup> Therefore, Exelon asserts that, unless the parties are able to

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<sup>278</sup> First Compliance Order, 142 FERC ¶ 61,214 at PP 229, 231.

<sup>279</sup> PJM July 22, 2013 Compliance Filing at 25; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(1) (Transmission Owners Required to be the Designated Entity) (3.1.0).

<sup>280</sup> PJM July 22, 2013 Compliance Filing at 24-25; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(1)(iv) (Transmission Owners Required to be the Designated Entity) (3.1.0).

<sup>281</sup> Exelon Comments at 4.

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> *Id.* at 5.

reach a voluntary agreement, the determination of the rights to a transmission project with elements of both existing and new transmission facilities must be addressed on a case-by-case basis under the siting and property laws of the state where such a project is proposed to be located, so the Commission need not take any further action on this definition now.<sup>285</sup>

144. In its protest, LS Power argues that, while PJM largely complies with the Commission's directive that it 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, LS Power asserts that PJM's compliance filing is incomplete for several reasons. First, LS Power asserts that neither PJM nor PJM Transmission Owners removed the other sections of the OATT or Transmission Owners Agreement that PJM Transmission Owners cited in briefs in *Primary Power*<sup>286</sup> as supporting a right of first refusal. While LS Power states that it does not believe that these provisions create a federal right of first refusal, it requests that the Commission require the PJM Transmission Owners to show cause as to why any provision they previously relied on in the *Primary Power* case was not removed or revised.<sup>287</sup>

### (3) Commission Determination

145. In light of our decision to grant rehearing regarding PJM's references to state laws and regulations and rights of way when designating a transmission developer to build a transmission project selected in the regional transmission plan for purposes of cost allocation, we find that PJM's proposal to delete section 1.5.8(l)(iv) is moot. Accordingly, we direct PJM to submit, within 60 days of the date of issuance of this order, a further compliance filing to restore section 1.5.8(l)(iv) of Schedule 6 as proposed in its October 25, 2012 Compliance Filing.<sup>288</sup>

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<sup>285</sup> *Id.*

<sup>286</sup> *Primary Power Rehearing Order*, 140 FERC ¶ 61,052.

<sup>287</sup> LS Power Protest, Docket No. ER13-198-002, at 4 n.7.

<sup>288</sup> Schedule 6, § 1.5.8(l)(iv) as proposed by PJM in its October 25, 2012 Compliance Filing states:

Notwithstanding anything to the contrary in this Section 1.5.8, in all events, the Transmission Owner(s) in whose Zone(s) a proposed Short-term Project or Long-lead Project is

(continued...)

146. We agree with PJM's assertion that its proposed definition of "Transmission Owner's Upgrade" is consistent with the Commission's definition of upgrade in Order No. 1000.<sup>289</sup> Additionally, we note that no entity disputes PJM's assertion nor does any entity object to PJM's proposed definition. We further agree that PJM's definition incorporates Order No. 1000's definition of upgrade. We also find that PJM's proposed term of "Transmission Owner's Upgrade" complies with the directive in the First Compliance Order to clarify and define the term "upgrade," as used in Schedule 6 to describe transmission projects that will be assigned to incumbent transmission owners.<sup>290</sup> Therefore, we find that this exception to the requirement that PJM remove a federal right of first refusal in its OATT and Agreements is consistent with Order No. 1000 and complies with the directive in the First Compliance Order.

147. We also agree with Exelon's assertion that there is no need for the Commission to take any further action on this definition at this time. We reiterate that "[n]othing in [Order No. 1000] 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."<sup>291</sup> We will not speculate as to what may or may not be required by state siting and property laws when applied to the scenario that Exelon highlights.

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to be located will be the Designated Entity for the project, when the Short-term Project or Long-lead Project 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 right of way under state law. Transmission Owner shall be the Designated Entity 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.

PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(1)(iv) (Transmission Owners Required to be the Designated Entity) (3.0.0).

<sup>289</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 426.

<sup>290</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(1)(i) (Transmission Owners Required to be the Designated Entity) (3.1.0).

<sup>291</sup> Order No. 1000, FERC Stats. & Regs ¶ 31,323 at P 253 n.231

148. We deny LS Power's request to show cause and decline to revisit our determination in the *Primary Power* proceedings here. LS Power's assertion that certain provisions should be removed based only on the fact that the transmission owners cited them in support of their arguments that they have a federal right of first refusal in the *Primary Power* proceedings is not persuasive. LS Power does not explain how those provisions create a federal right of first refusal, and in fact states that it does not believe that the sections at issue in *Primary Power* create a right of first refusal.<sup>292</sup> Order No. 1000 requires that PJM eliminate any federal right of first refusal from its OATT and Agreements. Prior to Order No. 1000, it may have been unclear whether a particular provision in PJM's OATT or Agreements provided a federal right of first refusal. However, following the effective date of PJM's Order No. 1000 compliance filing, neither PJM's OATT nor its Agreements provides a federal right of first refusal. For these reasons, we reject LS Power's assertion.

**iii. Time-Based Transmission Project Proposal Process**

**(a) First Compliance Order**

The Commission conditionally accepted, subject to revision, PJM's proposed "time-based" transmission project proposal process, a competitive solicitation process with proposal windows through which all qualified transmission developers, both incumbent and nonincumbent, may propose transmission projects for selection in the regional transmission plan for purposes of cost allocation. The Commission determined that, in establishing three categories of transmission projects, Immediate-need Reliability Projects,<sup>293</sup> Short-term

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<sup>292</sup> LS Power, Protest, Docket No. ER13-198-002, at 4 n.7 (filed Aug. 21, 2013) (LS Power Protest, Docket No. ER13-198-002).

<sup>293</sup> PJM proposed to define an Immediate-need Reliability Project as:

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

(continued...)

Projects,<sup>294</sup> and Long-lead Projects,<sup>295</sup> PJM’s proposal “represents a reasonable exercise of judgment by PJM . . . that in certain instances time constraints may not allow for . . .

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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.

First Compliance Order, 142 FERC ¶ 61,214 at P 194 n.355; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (I-L), § 1.15A (Immediate-need Reliability Project) (1.0.0); PJM, Intra-PJM Tariffs, OATT, Definitions (I-L), § 1.14A.001 (Immediate-need Reliability Project) (1.0.0).

<sup>294</sup> PJM proposed to define a Short-term Project as

[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.

First Compliance Order, 142 FERC ¶ 61,214 at P 194 n.354; PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (S-T), § 1.41A.01 (Short-term Project) (3.0.0); PJM, Intra-PJM Tariffs, OATT, Definitions (R-S), § 1.42.001 (Short-term Project) (3.0.0).

<sup>295</sup> PJM proposed to define a Long-lead Project as “[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.” First Compliance Order, 142 FERC ¶ 61,214 at P 194 n.353; PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (I-L), § 1.19A (Long-lead Project) (1.0.0); PJM, Intra-PJM Tariffs, OATT, Definitions (L-M-N), § 1.17B (Long-lead Project) (3.0.0).

open solicitation of transmission projects, without risking reliability of the system.”<sup>296</sup>

149. The Commission found that PJM’s proposed definitions of Short-term and Long-lead Projects partially complied with Order No. 1000. However, the Commission required PJM to clarify whether transmission projects proposed to solve an economic constraint (i.e., market efficiency projects) may be proposed and evaluated as either Short-term or Long-lead Projects.<sup>297</sup> The Commission accepted PJM’s proposal to establish a default 30-day window for proposing Short-term Projects and a default 120-day window for Long-lead Projects, as well as PJM’s proposal to allow it to shorten or extend the default length of the proposal windows for Short-term and Long-lead Projects under certain circumstances.<sup>298</sup> However, in order to ensure transparency with respect to PJM’s decision to shorten or extend the default proposal window for Short-term and Long-lead Projects, the Commission required PJM to provide on compliance 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.<sup>299</sup>

150. The Commission conditionally accepted PJM’s procedures for addressing instances where no Short-term or Long-lead Projects are determined to be the more efficient or cost-effective solution.<sup>300</sup> With respect to Long-lead Projects, the Commission found that PJM’s proposal provided some transparency regarding how it will determine whether there is sufficient time to conduct another proposal window before assigning a transmission project to the transmission owner in whose zone the transmission project is to be located, including a list of five criteria that PJM will take into account in its determination.<sup>301</sup> However, the Commission directed PJM to further

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<sup>296</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 235.

<sup>297</sup> *Id.* P 237.

<sup>298</sup> *Id.* P 238.

<sup>299</sup> *Id.* P 239.

<sup>300</sup> *Id.* PP 240-242.

<sup>301</sup> The five criteria are 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. *Id.* P 241.

explain, on compliance, how it proposes to consider the enumerated criteria when determining whether there is insufficient time for reposting and reevaluating unsolved violations, system conditions, and economic constraints, and how such a determination requires that an incumbent transmission owner be designated as the Designated Entity for a Long-lead Project.<sup>302</sup>

151. In its October 25, 2012 Compliance Filing, PJM proposed a category of transmission projects, Immediate-need Reliability Projects, which it would develop, recommend, and designate to the transmission owner in the zone in which the Immediate-need Reliability Project is located unless there is sufficient time to hold a shortened proposal window.<sup>303</sup> PJM proposed to define an Immediate-need Reliability Project as a transmission facility needed in three years or less to solve a reliability violation.<sup>304</sup> The Commission found that PJM's proposal regarding Immediate-need Reliability Projects partially complied with Order No. 1000. Specifically, the Commission found that, "to avoid delays in the development of transmission facilities needed to resolve a time-sensitive reliability criteria violation" it was just and reasonable to have a class of transmission projects that are exempt from competitive solicitation.<sup>305</sup>

152. While the Commission approved this exception from the requirement to eliminate a federal right of first refusal, the Commission adopted the following five criteria, which it believed would place reasonable bounds on PJM's discretion to determine whether there is sufficient time to permit competition to develop a reliability-based transmission enhancement or expansion and, as a result, would ensure that an exception from the requirement to eliminate a federal right of first refusal for reliability projects will be used in limited circumstances.<sup>306</sup> First, the reliability-based enhancement or expansion must be needed in three years or less to solve reliability criteria violations. Second, PJM must

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<sup>302</sup> *Id.* P 242.

<sup>303</sup> *See id.* P 247.

<sup>304</sup> *See supra* note 289 for the definition of Immediate-need Reliability Project that PJM proposed, and the Commission accepted, in the First Compliance Order; *see also* First Compliance Order, 142 FERC ¶ 61,214 at P 194 n.355; PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (I-L), § 1.15A (Immediate-need Reliability Project) (1.0.0); *and* PJM, Intra-PJM Tariffs, OATT, Definitions (I-L), § 1.14A.001 (Immediate-need Reliability Project) (1.0.0).

<sup>305</sup> *See* First Compliance Order, 142 FERC ¶ 61,214 at P 247.

<sup>306</sup> *See id.* P 248.

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 a reliability-based enhancement or expansion 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, and must be filed with the Commission as an informational filing in January of each calendar year covering the designations of the prior calendar year.<sup>307</sup>

153. Regarding the first criterion, that the reliability-based enhancement or expansion be needed in three years or less, the Commission found that, on balance, three years is just and reasonable.<sup>308</sup> The Commission explained that on one side of the balance is Order No. 1000's removal of barriers to entry that discourage nonincumbent transmission developers from proposing alternative solutions at the regional level and Order No. 1000's 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.<sup>309</sup> The Commission directed the removal of the federal right of first refusal to

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<sup>307</sup> *See id.*

<sup>308</sup> *See id.* P 249.

<sup>309</sup> *See id.* (referring to Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at 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).

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. The Commission found that the more transmission projects that an exception for reliability-based enhancements or expansions covers, the more barriers are maintained against potential competitive transmission solutions proposed by nonincumbent transmission developers.<sup>310</sup>

154. The Commission explained that on the other side of the balance is the fact that delays in the development of a reliability-based enhancement or expansion could adversely affect the ability of incumbent transmission providers, and PJM, to meet their reliability transmission needs.<sup>311</sup> When balancing these goals of Order No. 1000, the Commission found that defining an Immediate-need Reliability Project as transmission facilities needed in three years or less to solve a reliability violation strikes a reasonable balance.<sup>312</sup>

155. However, the Commission found that, without additional information, it could not 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."<sup>313</sup> The Commission explained that 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 and noted that PJM had 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. The Commission also found that PJM did not explain how, when determining whether an expedited designation is required, it will implement its proposal to consider the following factors, such as, but not limited to, the time necessary: (1) to obtain regulatory approvals, (2) to acquire long lead equipment, (3) to

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<sup>310</sup> *See id.*

<sup>311</sup> *See id.* P 250 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 263).

<sup>312</sup> *See id.*

<sup>313</sup> *See id.* P 194 n.355; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, Definitions (I-L), § 1.15A (Immediate-need Reliability Project) (3.1.0); PJM, Intra-PJM Tariffs, OATT, Definitions (I-L), § 1.14A.001 (Immediate-need Reliability Project) (1.1.0).

meet construction schedules, (4) to complete engineering plans, and (5) for other time-based factors impacting the feasibility of achieving the required in-service date.<sup>314</sup>

Therefore, the Commission directed PJM, in a further compliance filing, to explain: (1) 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. The Commission explained that it would determine whether PJM's filing complies with Order No. 1000 after PJM makes its further compliance filing.<sup>315</sup>

156. As for the remaining four criteria, the Commission directed 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, the Commission directed PJM to file OATT revisions to comply with these criteria if PJM cannot demonstrate that its current definition and procedures related to Immediate-need Reliability Projects comply.<sup>316</sup>

(b) **Requests for Rehearing or Clarification**

(1) **Summary of Requests for Rehearing or Clarification**

157. Illinois Commission and LS Power request rehearing or clarification of certain aspects of the Commission's determination regarding PJM's proposed time-based transmission project proposal process. LS Power argues that the Commission erred when it accepted PJM's proposal to assign a transmission project to the incumbent transmission owner where PJM determines that none of the transmission projects submitted during the proposal window is the more efficient or cost-effective solution.<sup>317</sup> LS Power asserts that, if a transmission planning region adopts a sponsorship model, as PJM has, Order No. 1000 requires "a fair and not unduly discriminatory mechanism" to grant an incumbent or a nonincumbent transmission developer the right to use the regional cost allocation method for unsponsored transmission projects that are selected in the regional

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<sup>314</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 251.

<sup>315</sup> *Id.* P 252.

<sup>316</sup> *Id.* P 253.

<sup>317</sup> LS Power, Request for Clarification and Rehearing, Docket Nos. ER13-198-001 & ER13-90-001, at 9-10 (filed Apr. 22, 2013) (LS Power Request) (citing First Compliance Order, 142 FERC ¶ 61,214 at P 243).

transmission plan for purposes of cost allocation.<sup>318</sup> LS Power further argues that PJM's procedure to assign an unsponsored transmission project to the incumbent transmission owner where PJM determines that none of the transmission project proposals submitted during the proposal window is a more efficient or cost-effective solution pre-supposes that entities did, in fact, submit proposals to address identified transmission needs, indicating their interest in participating. LS Power asks the Commission to require that PJM make available such an unsponsored transmission project on a non-discriminatory basis.<sup>319</sup>

158. LS Power also asserts that PJM's ability to determine whether its proposed transmission project is "unsponsored" should be decided on the basis of whether PJM's proposal is "materially different" from transmission projects submitted during the proposal window to address the same transmission need. While LS Power acknowledges that PJM is in the best position to optimize transmission project proposals, LS Power contends that any *de minimis* enhancements or subtractions PJM makes to an existing transmission project submitted during the proposal window should not dictate which transmission developer is selected as the Designated Entity. Instead, it argues, PJM should be required to award "materially similar" transmission projects to the transmission developer that proposed the original transmission project.<sup>320</sup>

159. Illinois Commission requests rehearing of the Commission determination that PJM's proposal to assign certain Short-term Projects and Immediate-need Reliability Projects to incumbent transmission owners partially complies with Order No. 1000. Illinois Commission contends that PJM's proposal to exempt certain transmission projects from competitive selection for reliability reasons enables incumbent transmission owners to avoid the meaningful and transparent competitive project selection process required by Order No. 1000.<sup>321</sup> Illinois Commission argues that the Commission must

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<sup>318</sup> *Id.* at 10 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 336). LS Power asserts that the Commission's acceptance of PJM's proposal is inconsistent with the Commission's decision to require South Carolina Electric & Gas Company to provide, in a further compliance filing, a mechanism that grants to an incumbent transmission provider or nonincumbent transmission developer the right to use the regional cost allocation method for an unsponsored transmission project selected in the regional transmission plan for purposes of cost allocation. *Id.* at 11 (citing *S.C. Elec. & Gas Co.*, 143 FERC ¶ 61,058, at P 207 (2013)).

<sup>319</sup> *Id.* at 11-13.

<sup>320</sup> *Id.* at 12.

<sup>321</sup> Illinois Commission Request for Rehearing at 3.

maintain a competitive solicitation process for all transmission projects receiving regional cost allocation because the competitive selection process is the mechanism that ensures transmission solutions in the regional transmission plan for purposes of cost allocation are efficient and cost-effective and that the costs of projects assigned directly to incumbent transmission owners are just and reasonable.<sup>322</sup> Illinois Commission argues that, pursuant to Order No. 1000, transmission projects that are not subject to PJM's competitive project selection process should not be eligible to receive regional cost allocation, and that the costs of such projects should be assigned directly to the incumbent transmission owner.<sup>323</sup>

160. While LS Power does not seek rehearing of the Commission's approval of PJM's proposal to exclude Immediate-need Reliability Projects from competitive solicitation, it does seek clarification regarding two aspects of the Commission's proposed criteria for Immediate-need Reliability Projects. LS Power contends that the criterion that an Immediate-need Reliability Project is needed in three years or less to solve reliability criteria violations should refer only to transmission projects required for compliance with NERC Reliability Standards.<sup>324</sup> LS Power argues that upgrades to support Incremental Auction Revenue Rights and the simultaneous feasibility of all Stage 1A Auction Revenue Rights should not qualify as transmission expansions or enhancements to resolve reliability criteria violations.<sup>325</sup> LS Power also contends that, to the extent that factors beyond NERC Reliability Standards play a role in identifying Immediate-need Reliability Projects, the Commission should require PJM to specifically identify these factors.<sup>326</sup>

161. LS Power also asserts that PJM must identify whether the incumbent transmission owner or affiliate created the system condition leading to the need for an Immediate-need Reliability Project.<sup>327</sup> LS Power argues that, if the entity that causes the need for an Immediate-need Reliability Project is also the entity that will be designated to build the project, PJM should be required to look at all alternatives to avoid designation of an

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<sup>322</sup> *Id.* at 5-6.

<sup>323</sup> *Id.* at 4-5 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 430).

<sup>324</sup> LS Power Request at 5-6.

<sup>325</sup> *Id.* at 6-7.

<sup>326</sup> *Id.* at 6.

<sup>327</sup> *Id.* at 7.

Immediate-need Reliability Project. Further, LS Power argues that PJM should be required to include as part of the information it must provide to stakeholders when it designates an Immediate-need Reliability Project all relevant information, including the financial impact of the alternatives reviewed to avoid the designation of an Immediate-need Reliability Project.<sup>328</sup> LS Power also asserts that, if PJM finds that a generator deactivation caused the need for the Immediate-need Reliability Project, such a project should be excluded from the Immediate-need Reliability Project exception because it could otherwise incentivize a generator to delay its deactivation notice so as to create an Immediate-need Reliability Project for itself or an affiliate.<sup>329</sup>

## (2) Commission Determination

162. We deny rehearing with respect to our conclusion that PJM's procedures for determining whether a project is "unsponsored" (i.e., one that is not largely identical to projects submitted during the proposal window) complies with Order No. 1000. As we noted in the First Compliance Order, this determination will be made on a fact-specific basis, and among the factors PJM may consider is that none of the transmission projects submitted during the proposal window is the more efficient or cost-effective solution.<sup>330</sup> Contrary to LS Power's assertion, Order No. 1000 does not prohibit PJM from designating an incumbent transmission owner to develop a transmission project addressing a transmission need where PJM identifies and posts the transmission need, openly solicits proposals from both incumbent and nonincumbent transmission developers to address that need, and determines, after evaluating the proposals, that none of the proposed transmission projects is a more efficient or cost-effective solution to satisfy the transmission need. PJM's proposal provides sufficient transparency to address any undue discrimination concerns. As we explained in the First Compliance Order, PJM's proposal "complies with Order No. 1000 because, at that point, both incumbent and nonincumbent transmission developers will have had an opportunity to submit proposals to address the identified need."<sup>331</sup>

163. We deny LS Power's request that PJM's ability to designate an "unsponsored" transmission project addressing an identified transmission need be limited to those transmission projects that are "materially different" from transmission projects submitted

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<sup>328</sup> *Id.* at 7-8.

<sup>329</sup> *Id.*

<sup>330</sup> *Id.* at 9-10 (citing First Compliance Order, 142 FERC ¶ 61,214 at P 243).

<sup>331</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 243.

during the proposal window to address the same transmission need. Order No. 1000 does not prohibit PJM from designating the incumbent transmission owner to develop a transmission project that PJM proposes where none of the proposed solutions is the more efficient or cost-effective solution. As the Commission explained in the First Compliance Order, PJM is required to make an affirmative determination that none of the proposed transmission projects are the more efficient or cost-effective transmission solution.<sup>332</sup> Additionally, the Commission explained in the First Compliance Order that the requirement in PJM's OATT that PJM provide stakeholders, including LS Power, an opportunity to review and comment on these transmission projects "provides any stakeholder the opportunity to raise concerns it may have with that transmission project within the stakeholder process."<sup>333</sup> As a result of these requirements, we find that it should be clear to stakeholders why a transmission project was or was not selected. In addition, it should be clear to stakeholders how the unsponsored project that PJM develops is different than those proposed by incumbent or nonincumbent transmission developers. Given this transparency, we are not convinced that PJM's discretion must be limited beyond what the Commission found reasonable in the First Compliance Order, and LS Power does not present any evidence that Order No. 1000 requires us to do so.

164. We affirm the finding that PJM's proposal to exempt Immediate-need Reliability Projects and certain Short-term Projects from competitive selection for reliability reasons complies with Order No. 1000. As we explained in the First Compliance Order, we recognize that in certain instances time constraints may not allow for the open solicitation of reliability-related transmission projects without risking the reliability of the system, because it may not be feasible to hold a competitive selection process in time to solve a reliability violation.<sup>334</sup> We thus determined that "to avoid delays in the development of transmission facilities needed to resolve a time-sensitive reliability criteria violation . . . it is just and reasonable to include a class of reliability-related transmission projects that are exempt from the [competitive selection.]"<sup>335</sup> PJM 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 [a proposal window]."<sup>336</sup> As we recognized in the First Compliance

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<sup>332</sup> *Id.* P 245.

<sup>333</sup> *Id.*

<sup>334</sup> *See id.* P 235.

<sup>335</sup> *Id.*

<sup>336</sup> *Id.*

Order, Order No. 1000's reforms are intended to ensure that regional transmission planning processes produce a transmission plan that can meet transmission needs more efficiently and cost-effectively, while at the same time supporting the development of those transmission facilities identified by each transmission planning region as necessary to satisfy reliability standards.<sup>337</sup>

165. We thus affirm the finding that PJM's proposal is reasonable, given the limited instances in which imminent reliability issues may prevent a project from going through a competitive solicitation process and the transparency of PJM's proposed procedures for designating Immediate-need Reliability Projects. Having affirmed that PJM's proposal complies with Order No. 1000, we disagree with Illinois Commission that such projects should not be eligible for cost allocation. We reiterate our finding in the First Compliance Order, that in each of these limited circumstances, PJM is required to provide stakeholders an opportunity to review and comment on these transmission projects.<sup>338</sup> We find that this requirement provides Illinois Commission an avenue to raise its stated concerns about the efficiency and cost-effectiveness of a transmission project or the just and reasonableness of a project's cost.<sup>339</sup> Given this opportunity, we are unconvinced that this process is neither meaningful nor transparent, such that a project developed in these limited circumstances should not be eligible for regional cost allocation as alleged by Illinois Commission. We therefore deny Illinois Commission's request for rehearing.

166. Moreover, we disagree with LS Power that the category of transmission projects needed in three years or less to solve reliability criteria violations should be limited to only those transmission projects required for compliance with NERC Reliability Standards. Public utility transmission providers are required to comply with other reliability standards, such as any reliability standards adopted by the state in which the public utility transmission provider is located. They are also required to accept the reliability-related criteria that PJM proposed that it may consider when it determines that a transmission project is needed in three years or less. We note that under the second criterion for Immediate-need Reliability Projects that the Commission laid out in the First Compliance Order, PJM is required to separately identify and then post an explanation in advance, whether or not it intends to provide for a proposal window, of the reliability violations and system conditions for which there is a time-sensitive need.<sup>340</sup> Therefore,

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<sup>337</sup> *Id.* P 247; *see* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 2, 4.

<sup>338</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 245.

<sup>339</sup> Illinois Commission Request for Rehearing at 5-6.

<sup>340</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 248.

we find that consistent with this criterion, PJM must specifically identify the factors that play a role in identifying Immediate-need Reliability Projects, including factors beyond NERC Reliability Standards such as a generator deactivation.

167. We also disagree with LS Power's argument that Order No. 1000 requires PJM to identify whether a system condition leading to the need for an Immediate-need Reliability Project was created by the incumbent transmission owner that will be designated to build the Immediate-need Reliability Project or by its affiliate and that the category of projects should be limited accordingly. The criteria that the Commission required PJM to apply to Immediate-need Reliability Projects already places an emphasis on ensuring that PJM's decision making process is transparent. In addition, the criteria provide that there will be a written record of its decision making process. Therefore, if a party such as LS Power is concerned that an incumbent transmission owner may be manipulating resources to create more Immediate-need Reliability Projects, as LS Power alludes to in its request for rehearing,<sup>341</sup> the concerned party can use the written record created in PJM's process in support of a complaint. We therefore decline to adopt LS Power's suggestion and affirm the determination that, subject to the compliance required in the First Compliance Order, PJM's time-based transmission project proposal process complies with Order No. 1000.

(c) **Compliance**

(1) **Summary of PJM Parties' Compliance Filing(s)**

168. PJM clarifies that it will only consider market efficiency projects in the 24-month planning cycle, and therefore qualified entities may only propose such projects in the 120-day proposal window that currently applies to Long-lead Projects.<sup>342</sup> PJM explains that, because market efficiency projects do not have required in-service dates to address a reliability violation, if no project is proposed in the 120-day proposal window that would eliminate an economic constraint, "to the extent [the economic constraint] remains unaddressed, the economic constraint always will be re-evaluated and re-posted in the next 120-day proposal window."<sup>343</sup>

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<sup>341</sup> LS Power Request at 7-8.

<sup>342</sup> PJM July 22, 2013 Compliance Filing at 27.

<sup>343</sup> *Id.*

169. PJM proposes several revisions to the Operating Agreement to incorporate these clarifications regarding market efficiency projects. First, PJM proposes to add a new definition, “Economic-based Enhancement or Expansion” that PJM states defines market efficiency projects.<sup>344</sup> Specifically, PJM proposes to define an Economic-based Enhancement or Expansion as “an enhancement or expansion described in Section 1.5.7(b) (i) - (iii) of Schedule 6 of the [Operating Agreement] that is designed to relieve transmission constraints that have an economic impact.”<sup>345</sup> Second, PJM proposes to revise Schedule 6 to specify that the 120-day proposal window will apply to proposals for Economic-based Enhancements or Expansions.<sup>346</sup> Third, PJM proposes to revise the definitions of “Long-lead Project” and “Short-term Project” to remove the reference to “economic constraints” as a constraint to be addressed by such projects because such constraints will instead be addressed by projects that meet the new definition of “Economic-based Enhancement or Expansion.”<sup>347</sup> Fourth, PJM proposes to amend the procedures it will use if no proposed project addresses the reliability violation or economic constraint to specify that “[t]o the extent that an economic constraint remains unaddressed, the economic constraint will be re-evaluated and reposted.”<sup>348</sup> Fifth, PJM proposes to modify the definition of “Designated Entity” to include an entity PJM selects to construct an Economic-based Enhancement or Expansion.<sup>349</sup> Sixth, PJM proposes

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<sup>344</sup> *Id.*; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (E-F), § 1.7D (Economic-based Enhancement or Expansion) (2.0.0); PJM, Intra-PJM Tariffs, OATT, Definitions (E-F), § 1.18 (3.0.0).

<sup>345</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (E-F), § 1.7D (Economic-based Enhancement or Expansion) (2.0.0).

<sup>346</sup> PJM July 22, 2013 Compliance Filing at 27; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(c) (Project Proposal Windows) (3.1.0).

<sup>347</sup> PJM July 22, 2013 Compliance Filing at 27; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (S-T), § 1.41A.01 (Short-term Project) (3.1.0); *id.* Definitions (I-L), § 1.19A (Long-lead Project) (3.0.0).

<sup>348</sup> PJM July 22, 2013 Compliance Filing at 27-28; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(g) (Procedures if No Long-lead Project or Economic-based Enhancement or Expansion Proposal is Determined to be the More Efficient or Cost-Effective Solution) (3.1.0).

<sup>349</sup> PJM July 22, 2013 Compliance Filing at 28; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (C-D), § 1.7A (3.1.0).

non-substantive changes to Schedule 6 to reflect the use of the new defined term “Economic-based Enhancement or Expansion.”<sup>350</sup>

170. PJM proposes to amend Schedule 6 to list the criteria that PJM will use to determine whether to shorten or extend the proposal window for Short-term Projects and Long-lead Projects.<sup>351</sup> PJM enumerates various criteria that it will apply to make this determination depending on whether a proposal window is open at the time the determination is made. PJM has revised Schedule 6 of its Operating Agreement to state that, when a proposal window is not yet open, PJM may shorten or lengthen the proposal window based on one or both of the following criteria: (1) the complexity of the violation or system condition; and (2) whether there is sufficient time remaining in the relevant transmission planning cycle to accommodate a standard proposal window and timely address the violation or system condition.<sup>352</sup> With respect to a proposal window that is already open, PJM has revised Schedule 6 of its Operating Agreement to provide that it may lengthen the proposal window based on one or more of the following criteria: (1) changes in the assumptions or conditions relating to the underlying need for the project, such as load growth or Reliability Pricing Model auction results; (2) the availability of new or changed information regarding the nature of the violations and the facilities involved; and (3) the time remaining in the relevant proposal window.<sup>353</sup>

171. PJM states that its evaluation of the above-listed criteria will be on a case-by-case basis and fact-specific. As a result, PJM asserts, it cannot explain, at this point in time, how each criterion will be considered in evaluating whether to lengthen or shorten a proposal window.<sup>354</sup> PJM further asserts that “[t]he courts have long held that the tariff

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<sup>350</sup> PJM July 22, 2013 Compliance Filing at 28; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.7 (Development of *Economic-based Enhancements or Expansions*) (3.1.0); *id.* § 1.5.8 (Development of Long-lead Projects, Short-term Projects, Immediate-need Reliability Projects, and *Economic-based Enhancements or Expansions*) (3.1.0) (emphasis added).

<sup>351</sup> PJM July 22, 2013 Compliance Filing at 28 (citing First Compliance Order, 142 FERC ¶ 61,214 at P 239).

<sup>352</sup> *Id.*; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(c) (Project Proposal Windows) (3.1.0).

<sup>353</sup> PJM July 22, 2013 Compliance Filing at 28-29; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(c) (Project Proposal Windows) (3.1.0).

<sup>354</sup> PJM July 22, 2013 Compliance Filing at 29.

need not provide every implementation detail in order to meet the [FPA]'s section 205 requirement."<sup>355</sup> However, to provide for greater transparency, PJM proposes to further amend Schedule 6 to state:

In the event that the Office of the Interconnection determines to lengthen or shorten a proposal window, it will post on the PJM website the new proposal window period and an explanation as to the reasons for the change in the proposal window period.<sup>356</sup>

PJM states that these proposed changes contain sufficient criteria and transparency to allow stakeholders to understand how PJM determines whether to shorten or extend the default proposal windows for Long-lead and Short-term Projects.<sup>357</sup>

172. With respect to the Commission's requirement that PJM explain how it proposes to consider the criteria proposed to determine whether to reevaluate and repost a violation for which PJM has found that no proposed Long-lead Project is the more efficient or cost-effective solution, PJM proposes to amend Schedule 6 to provide that PJM will develop a transmission solution construction timeline for each violation for which sufficient solutions were not proposed.<sup>358</sup> PJM further states that it will post this timeline on its website for input and review by the Transmission Expansion Advisory

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<sup>355</sup> *Id.* (citing *City of Cleveland v. FERC*, 773 F.2d 1368 at 1376 (D.C. Cir. 1985)).

<sup>356</sup> See PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(c) (Project Proposal Windows) (3.1.0). In its transmittal, PJM states that this proposed change is to section 1.5.3(c) of Schedule 6. See PJM July 22, 2013 Compliance Filing at 29. However, context of the transmittal indicates that this text is actually located in section 1.5.8 of Schedule 6. A review of PJM's proposed eTariff records indicates that this text is indeed located in section 1.5.8(c) of Schedule 6. Therefore, this appears to be a typographical error in PJM's transmittal.

<sup>357</sup> PJM July 22, 2013 Compliance Filing at 29 (citing First Compliance Order, 142 FERC ¶ 61,214 at PP 242, 246).

<sup>358</sup> *Id.* at 30; see also PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(g) (Procedures if No Long-lead Project or Economic-based Enhancement or Expansion Proposal is Determined to be the More Efficient or Cost-Effective Solution) (3.1.0).

Committee.<sup>359</sup> This timeline will include factors such as, but not limited to: (1) deadlines for obtaining regulatory approvals; (2) dates by which long lead equipment should be acquired; (3) the time period necessary to complete a proposed solution to meet the required in-service date; and (4) other time-based factors impacting the feasibility of achieving the required in-service date.<sup>360</sup> PJM asserts that it will use this timeline and the Transmission Expansion Advisory Committee's input to determine whether there is sufficient time to conduct a reevaluation and repost and timely address the existing and projected limitations on the transmission system that result in the need for the enhancement or expansion.<sup>361</sup> PJM states that utilizing this proposed timeline will provide transparency regarding the dates on which it bases its determination regarding the feasibility of reevaluating and reposting a violation, as well as enabling stakeholders, through the Transmission Expansion Advisory Committee, to have input into the determination.<sup>362</sup> PJM further states that it will only designate an existing transmission owner to construct a Long-lead Project when the construction timeline demonstrates that reevaluation and reposting would prevent a violation from being timely addressed.<sup>363</sup> Finally, PJM notes that the proposed timeline process will apply only to unaddressed violations or system conditions that affect the reliability of the system.<sup>364</sup>

173. PJM proposes several revisions to Schedule 6 to address the five criteria the Commission adopted in the First Compliance Order relating to Immediate-need

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<sup>359</sup> PJM July 22, 2013 Compliance Filing at 30; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(g) (Procedures if No Long-lead Project or Economic-based Enhancement or Expansion Proposal is Determined to be the More Efficient or Cost-Effective Solution) (3.1.0).

<sup>360</sup> PJM July 22, 2013 Compliance Filing at 30-31; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(g) (Procedures if No Long-lead Project or Economic-based Enhancement or Expansion Proposal is Determined to be the More Efficient or Cost-Effective Solution) (3.1.0).

<sup>361</sup> PJM July 22, 2013 Compliance Filing at 31; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(g) (Procedures if No Long-lead Project or Economic-based Enhancement or Expansion Proposal is Determined to be the More Efficient or Cost-Effective Solution) (3.1.0).

<sup>362</sup> PJM July 22, 2013 Compliance Filing at 31.

<sup>363</sup> *Id.*

<sup>364</sup> *Id.*

Reliability Projects. With respect to the Commission's first criterion, PJM proposes to delete part (ii) of the definition of Immediate-need Reliability Project.<sup>365</sup> PJM asserts that as a result, its definition of Immediate-need Reliability Project fully complies with the Commission's first criterion.<sup>366</sup>

174. PJM proposes several revisions to section 1.5.8(m) of Schedule 6, which it states provide transparency and clarity such that the "Immediate-need Reliability Projects" definition and procedures meet the Commission's criteria two through five.<sup>367</sup> First, PJM states that it proposes revisions to clarify that: (1) through the Regional Plan process PJM will identify immediate reliability needs that must be addressed in three years or less; and (2) PJM will develop proposed Immediate-need Reliability Projects to address

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<sup>365</sup> *Id.* at 33; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (I-L), § 1.15A (Immediate-need Reliability Project) (3.0.0). As originally proposed, PJM's part (ii) of PJM's proposed definition of "Immediate-need Reliability Project" stated:

[A reliability-based transmission enhancement or expansion:]  
(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.

First Compliance Order, 142 FERC ¶ 61,214 at P 194 n.355.

<sup>366</sup> PJM July 22, 2013 Compliance Filing at 33.

<sup>367</sup> *Id.* at 33-37 (citing First Compliance Order, 142 FERC ¶ 61,214 at P 248); *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m) (Immediate-need Reliability Projects) (3.1.0).

those needs when a proposal window is infeasible.<sup>368</sup> Second, PJM proposes three criteria that it will use to determine whether it is infeasible to conduct a proposal window for Immediate-need Reliability Projects: (1) the nature of the reliability criteria violation; (2) the nature and type of potential solution required; and (3) the projected construction time for a potential solution to the type of reliability criteria violation to be addressed.<sup>369</sup> PJM states that enumerating the criteria it will use to make this determination complies with the transparency requirement of the Commission's third criterion.<sup>370</sup>

175. Third, PJM proposes that, in the event that it determines that a proposal window is infeasible, PJM will post on its website, for review and comment by the Transmission Expansion Advisory Committee and other stakeholders, descriptions of the Immediate-need Reliability Projects.<sup>371</sup> Additionally, PJM states that these descriptions shall include an explanation of PJM's decision to designate the existing Transmission Owner (i.e., the incumbent transmission owner) as the Designated Entity for a project rather than holding a proposal window, including an explanation of: (1) the time-sensitive need for the project, (2) other transmission and non-transmission options that were considered, but that PJM concluded would not sufficiently address the immediate reliability need, (3) the circumstances that generated the immediate reliability need, and (4) why the immediate reliability need was not identified earlier.<sup>372</sup> PJM states that these proposed revisions comply with the posting requirement of the Commission's third criterion.<sup>373</sup>

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<sup>368</sup> PJM July 22, 2013 Compliance Filing at 34; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1) (Immediate-need Reliability Projects) (3.1.0).

<sup>369</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1) (3.1.0).

<sup>370</sup> PJM July 22, 2013 Compliance Filing at 34 (citing First Compliance Order, 142 FERC ¶ 61,214 at P 248).

<sup>371</sup> *Id.* at 35; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1) (Immediate-need Reliability Projects) (3.1.0).

<sup>372</sup> PJM July 22, 2013 Compliance Filing at 35; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1) (Immediate-need Reliability Projects) (3.1.0).

<sup>373</sup> PJM July 22, 2013 Compliance Filing at 35.

176. Fourth, PJM proposes that, after descriptions of the Immediate-need Reliability Projects are posted on the PJM website, stakeholders will have a reasonable opportunity to provide comments to PJM, which will then be made publicly available on the PJM website.<sup>374</sup> PJM states that this proposed revision complies with the Commission's fourth criterion.<sup>375</sup> PJM further proposes that, based on the comments received from stakeholders and the Transmission Expansion Advisory Committee's review, it will, if necessary, conduct further study and evaluation and post a revised recommended plan for review and comment by the Transmission Expansion Advisory Committee.<sup>376</sup>

177. Fifth, PJM proposes to specify that in January of each year, PJM shall post on its website and file with the Commission for informational purposes, a list of the Immediate-need Reliability Projects for which an existing Transmission Owner was designated in the prior year as the Designated Entity.<sup>377</sup> PJM states that this list shall include: (1) the needed by date of the Immediate-need Reliability Project; and (2) the date that the Transmission Owner energized the Immediate-need Reliability Project.<sup>378</sup> PJM states that this meets the requirements of the Commission's fifth criterion stated in the First Compliance Order.<sup>379</sup>

178. Finally, PJM proposes tariff language specifying that when there is sufficient time to open a shortened proposal window for an Immediate-need Reliability Project, PJM will include an explanation of the time-sensitive need for the project in its posting of the

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<sup>374</sup> *Id.* at 35-36; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1) (Immediate-need Reliability Projects) (3.1.0).

<sup>375</sup> PJM July 22, 2013 Compliance Filing at 36.

<sup>376</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1) (Immediate-need Reliability Projects) (3.1.0).

<sup>377</sup> PJM July 22, 2013 Compliance Filing at 36; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1) (Immediate-need Reliability Projects) (3.1.0).

<sup>378</sup> PJM July 22, 2013 Compliance Filing at 36; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1) (Immediate-need Reliability Projects) (3.1.0).

<sup>379</sup> PJM July 22, 2013 Compliance Filing at 36 (citing First Compliance Order, 142 FERC ¶ 61,214 at PP 242, 248).

violations and system conditions.<sup>380</sup> PJM states that this proposed revision is consistent with the Commission's third criterion and provides stakeholders with information as to the urgency of the need to be addressed.<sup>381</sup>

## (2) Protests/Comments

179. LS Power raises several issues with PJM's proposed process for assigning Long-lead Projects to an incumbent transmission owner, which it proposes to do when the construction timeline demonstrates that reevaluation and reposting would prevent a violation from being addressed. LS Power argues that, under these proposed provisions, PJM may assign a Long-lead Project to an incumbent transmission owner according to terms even less stringent than the Commission required for shorter term projects and without holding a subsequent proposal window.<sup>382</sup>

180. LS Power also asserts that, in the circumstances where PJM determines that the Office of Interconnection must propose a project to address unresolved violations or system conditions,<sup>383</sup> PJM will not conduct a solicitation process based on a specific solution PJM identified and instead will only repost the unresolved violations if it determines there is sufficient time for additional submissions.<sup>384</sup> LS Power states that PJM does not explain why it could not propose a project to solve the violations and then hold a proposal window to build that project.<sup>385</sup> LS Power suggests that, "with an identified project, the proposal window could conceivably be much shorter, like the 30 day proposal window for Short-term projects."<sup>386</sup>

181. Finally, LS Power asserts that, as part of PJM's determination of whether to hold an additional solicitation window, PJM proposes to develop and post on the PJM website

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<sup>380</sup> *Id.*; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(2) (Immediate-need Reliability Projects) (3.1.0).

<sup>381</sup> PJM July 22, 2013 Compliance Filing at 36-37.

<sup>382</sup> LS Power Protest, Docket No. ER13-198-002 at 7.

<sup>383</sup> *Id.* at 8 n.14 (referring to Schedule 6, § 1.5.8(g)).

<sup>384</sup> *Id.* at 7.

<sup>385</sup> *Id.* at 8.

<sup>386</sup> *Id.*

a transmission solution construction timeline for input and review by the Transmission Expansion Advisory Committee. LS Power states its concern that potential delays in the input and review by the Transmission Expansion Advisory Committee of the transmission solution construction timeline could reduce the window available for holding a subsequent proposal window.<sup>387</sup> LS Power suggest that, to the extent feasible, PJM should identify the factors it will use to establish a construction timeline before the initial posting of violations or system enhancements, thus obviating the need for additional input and review.<sup>388</sup>

### (3) Answer

182. In response to LS Power's protest, PJM notes that, in the First Compliance Order, the Commission rejected LS Power's argument that the Commission should prohibit PJM from assigning an unsponsored transmission project to the incumbent transmission owner when PJM has already held an initial proposal window and determined that none of the proposed projects is the more efficient of cost-effective solution.<sup>389</sup> PJM asserts that LS Power's protest is a collateral attack of the First Compliance Order.<sup>390</sup> PJM also argues that LS Power's request that PJM conduct a proposal window in the event it determines the Office of Interconnection must propose a project to address unresolved violations or system conditions is inconsistent with PJM's proposed transmission project sponsorship process, which allows both incumbent transmission owners and nonincumbent transmission developers to propose transmission projects, but is not designed or intended to award bid-based contracts for transmission solutions that PJM proposes.<sup>391</sup> PJM contends that the competitive bidding model for which LS Power argues has been rejected repeatedly by PJM, its stakeholders, and the Commission, and that the proper vehicle for such a challenge is thus through a request for rehearing of the First

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<sup>387</sup> *Id.*

<sup>388</sup> *Id.*

<sup>389</sup> PJM Answer at 7-8.

<sup>390</sup> *Id.* at 8-9.

<sup>391</sup> *Id.* at 9.

Compliance Order.<sup>392</sup> PJM argues that LS Power is attempting to reargue concerns that the Commission rejected in the First Compliance Order.<sup>393</sup>

183. PJM also argues that the Commission should reject LS Power's suggestion that PJM identify the factors by which it will establish a construction timeline before the violations are posted the first time.<sup>394</sup> PJM adds that requiring it to develop a construction timeline for the identified violations and system conditions prior to posting them for an initial proposal window would be a waste of time and manpower.<sup>395</sup> However, PJM states that, if during its review of project proposals PJM sees that none of the solutions are likely to be satisfactory, PJM will endeavor to develop construction timelines for those violations, rather than wait until a final determination has been made, and post the timeline together with related information at the earliest opportunity for stakeholder review with regard to determining the viability of a subsequent proposal window.<sup>396</sup>

184. PJM argues that, while LS Power argues that allowing for the Transmission Expansion Advisory Committee to review and provide input on a transmission solution construction timeline will result in delays and limit the opportunity to conduct a subsequent proposal window, the Commission found in the First Compliance Order that PJM's proposal was just and reasonable because it provides stakeholders the opportunity to raise any concerns that they may have relating to an unsponsored transmission project.<sup>397</sup> PJM states that LS Power's proposal that PJM identify the factors by which it will establish a construction timeline before the violations are posted the first time to obviate the need for additional Transmission Expansion Advisory Committee input and review would diminish the transparency of PJM's competitive process, which PJM asserts is inconsistent with Order No. 1000 and the Order No. 890 transmission planning

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<sup>392</sup> *Id.* at 9-10.

<sup>393</sup> *Id.* at 8-9.

<sup>394</sup> *Id.* at 10.

<sup>395</sup> *Id.* at 10-11.

<sup>396</sup> *Id.* (emphasis in original).

<sup>397</sup> *Id.* at 11 (citing First Compliance Order, 142 FERC ¶ 61,214 at P 245).

principles.<sup>398</sup> PJM concludes that LS Power's proposal is without merit, is contrary to Order No. 1000, and should be rejected.<sup>399</sup>

#### (4) Commission Determination

185. We find that PJM complies, subject to a further compliance filing, with the directives in the First Compliance Order concerning PJM's proposed time-based project proposal process. Accordingly, we direct PJM to submit, within 60 days of the date of issuance of this order, a further compliance filing with the requested clarifications as detailed below.

186. In the First Compliance Order, the Commission found that PJM's proposed definitions for Short-term and Long-lead Projects and statements in its transmittal created confusion 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 in PJM's proposed transmission project proposal process."<sup>400</sup> As a result, the Commission required PJM to submit a further compliance filing to clarify this issue.<sup>401</sup> In response, PJM clarifies that market efficiency projects, for which PJM created a new definition "Economic-based Enhancement or Expansion",<sup>402</sup> will be considered using the same proposal process that PJM has proposed to use for Long-lead Projects.<sup>403</sup> We note that while Economic-based Enhancements or Expansions will use the same proposal process as Long-lead Projects, PJM makes several distinctions as to the nature of the needs to be addressed by Economic-based Enhancements or Expansions. Specifically, the definition of "Economic-based Enhancement or Expansion," as well as various

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<sup>398</sup> *Id.*

<sup>399</sup> *Id.* at 12.

<sup>400</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 237.

<sup>401</sup> *Id.*

<sup>402</sup> PJM proposes to define an Economic-based Enhancement or Expansion to mean "an enhancement or expansion described in Section 1.5.7(b) (i) – (iii) of Schedule 6 of the Operating Agreement that is designed to relieve transmission constraints that have an economic impact." PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (E-F), § 1.7D (2.0.0); PJM, Intra-PJM Tariffs, OATT, Definitions (E-F), § 1.10A (3.0.0).

<sup>403</sup> PJM July 22, 2013 Compliance Filing at 27; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(c) (Project Proposal Windows) (3.1.0)).

conforming revisions to Schedule 6 that incorporate this category of projects, make clear that an Economic-based Enhancement or Expansion transmission project proposal is designed to relieve transmission constraints that have an economic impact.

187. As a result, PJM makes clear that Economic-based Enhancements or Expansions are meant to meet an explicit need that is distinguishable from those projects proposed as Short-term or Long-lead Projects. We further note that PJM makes a distinction in the transmission project proposal process that applies to the development of Economic-Based Enhancements or Expansions. The proposal window process for such transmission projects largely follows the process that the Commission approved, subject to clarifications, which PJM proposed to apply to Long-lead Projects. Similar to Long-lead Projects, PJM must make an affirmative determination that none of the proposed Economic-based Enhancement or Expansion transmission projects is the more efficient or cost-effective solution. However, unlike Long-lead Projects, PJM's proposed revisions commit it to reevaluate and repost an economic constraint to the extent that it remains unaddressed, in the event that no Economic-based Enhancement or Expansion proposal is determined to be the more efficient or cost-effective solution.<sup>404</sup> With these distinctions made clear in PJM's tariff, we find that PJM partially complies with the Commission's directive in the First Compliance Order to clarify how potential transmission developers can propose market efficiency projects and how PJM will evaluate market efficiency projects as part of its transmission project proposal process.

188. While PJM clarifies that Economic-Based Enhancements or Expansions will be considered using the same proposal process that PJM has proposed to use for Long-lead Projects,<sup>405</sup> we find that PJM must make additional revisions to Schedule 6 to make this clear. Specifically, we find that Schedule 6 does not state that PJM will apply, to Economic-Based Enhancements or Expansions, the criteria PJM uses to (1) evaluate a transmission project for selection in the regional transmission plan for purposes of cost allocation<sup>406</sup> and (2) to determine the Designated Entity for a transmission project.<sup>407</sup>

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<sup>404</sup> PJM July 22, 2013 Compliance Filing at 27; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(g) (Procedures if No Long-lead Project or Economic-based Enhancement or Expansion Proposal is Determined to be the More Efficient or Cost-Effective Solution) (3.1.0).

<sup>405</sup> PJM July 22, 2013 Compliance Filing at 27; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(c) (Project Proposal Windows) (3.1.0)).

<sup>406</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(e) (Criteria for Considering Inclusion of a Project in the Recommended Plan) (3.1.0)).

Therefore, PJM must revise sections 1.5.8(e) and (f) of Schedule 6 to make clear that PJM will use the same criteria for Economic-Based Enhancements or Expansions as it does for Long-lead Projects. In addition, PJM must make a corresponding change to section 1.5.7(d) of Schedule 6 that references 1.5.8(e) to make clear that PJM will use the same criteria to determine both the more efficient or cost-effective Long-lead Project and the more efficient or cost-effective Economic-Based Enhancement or Expansion. We direct PJM to submit, within 60 days of the date of issuance of this order, a further compliance filing making these revisions to Schedule 6.

189. Next, we find that the criteria PJM proposed to determine whether to shorten or extend the proposal window for Short-term and Long-lead Projects, as well as the accompanying explanation, comply with the Commission directive in the First Compliance Order. In the First Compliance Order, the Commission found that PJM's proposal to shorten or extend the default proposal window for Short-term and Long-lead Projects was generally reasonable, but also was concerned with the lack of transparency as to how PJM will make this determination.<sup>408</sup> In response, PJM amended Schedule 6 to add criteria for shortening or lengthening a proposal window that is not yet open, as well as criteria for shortening or lengthening a proposal window that already is open.<sup>409</sup> We find that the criteria PJM proposed in its second compliance filing could reasonably affect the timeframe needed to timely address a violation or system condition, and therefore, are appropriate factors to consider in determining whether to shorten or extend a proposal window.

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<sup>407</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(f) (Entity-Specific Criteria Considered in Determining the Designated Entity for a Project) (3.1.0)).

<sup>408</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 239.

<sup>409</sup> PJM July 22, 2013 Compliance Filing at 28-29; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(c) (Project Proposal Windows) (3.1.0). For a proposal window not yet open, PJM will use the following criteria: (1) the complexity of the violation or system condition; and (2) whether there is sufficient time remaining in the relevant transmission planning cycle to accommodate a standard proposal window and timely address the violation or system condition. PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(c) (Project Proposal Windows) (3.1.0). For a proposal window that already is open, PJM will consider: (1) changes in assumptions or conditions relating to the underlying need for the project; (2) availability of new or changed information regarding the nature of the violations and the facilities involved; and (3) time remaining in the relevant proposal window. *Id.*

190. PJM states that it will apply these criteria on a case-by-case-basis, and commits to posting on its website the new proposal window period and an explanation as to the reasons for the change in the proposal window period.<sup>410</sup> This commitment adequately addresses our concerns regarding the transparency of PJM's decisions on whether to shorten or extend proposal windows. However, as part of this commitment to post an explanation, we expect PJM to explain if, and how, each potential criterion applies and how that criterion justifies, in whole or in part, PJM's decision to shorten or length a Short-term or Long-lead proposal window.

191. Next, we accept PJM's proposal to comply with the Commission's directive in the First Compliance Order that PJM explain how it will evaluate the enumerated criteria<sup>411</sup> that it will consider when deciding whether there is sufficient time to repost and reevaluate unresolved violations and system conditions, and when PJM will designate an incumbent transmission owner for a Long-lead Project.<sup>412</sup>

192. We find PJM's proposal to develop and post on its website for the Transmission Expansion Advisory Committee's review a transmission solution construction timeline for each violation for which sufficient solutions were not proposed (i.e., none of the proposed Long-lead Projects are found to be the more efficient or cost-effective solution) as a reasonable means to consider the criteria the Commission accepted in the First Compliance Order. Specifically, the PJM proposed revisions to Schedule 6 state the following:

In determining whether there is insufficient time for re-posting and re-evaluation, the Office of the Interconnection shall develop and post on the PJM website a transmission solution construction timeline for input and review by the Transmission Expansion Advisory Committee that will include ~~consider~~ factors such as, but not limited to, ~~the time~~

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<sup>410</sup> PJM July 22, 2013 Compliance Filing at 29; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(c) (Project Proposal Windows) (3.1.0).

<sup>411</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 242 (“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.”).

<sup>412</sup> *Id.*

necessary: (i) deadlines for obtaining to obtain regulatory approvals, (ii) dates by which to acquire long lead equipment should be acquired, (iii) to meet construction schedules, (iv) the time necessary to complete a proposed solution to meet the required in-service date, and (iv) for other time-based factors impacting the feasibility of achieving the required in-service date. Based on input from the Transmission Expansion Advisory Committee and the time frames set forth in the construction timeline, the Office of the Interconnection shall determine whether there is sufficient time to conduct a re-evaluation and re-post and timely address the existing and projected limitations on the Transmission System that give rise to the need for an enhancement or expansion.<sup>413]</sup>

193. As a result of PJM's commitment to provide additional transparency as to how it determines whether there is insufficient time for it to repost and reevaluate Long-lead Projects, we expect that stakeholders will be able to understand how PJM is utilizing the time-based factors set forth in its OATT to make its determination. In addition, we note that PJM makes the statement that "[i]n such situations, PJM only will designate an existing Transmission Owner to construct a Long-lead Project when the construction timeline demonstrates that re-evaluation and re-posting would prevent a violation from being timely addressed."<sup>414</sup>

194. We find that PJM's proposed revisions to its Immediate-need Reliability Project definition and proposal process partially comply with the five criteria that the Commission adopted in the First Compliance Order.<sup>415</sup>

195. The first criterion requires that the Immediate-need Reliability Project must be needed in three years or less to solve reliability criteria violations.<sup>416</sup> To address this criterion, PJM proposes to remove the second part of the definition of Immediate-need

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<sup>413</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(h) (Procedures if No Long-lead Project or Economic-based Enhancement or Expansion Proposal is Determined to be the More Efficient or Cost-Effective Solution.) (3.1.0).

<sup>414</sup> PJM July 22, 2013 Compliance Filing at 31.

<sup>415</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 248.

<sup>416</sup> *Id.*

Reliability Project.<sup>417</sup> PJM asserts that as a result, the definition now fully complies with the first criterion.<sup>418</sup> We agree.

196. The second criterion requires PJM to 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. We find that PJM's proposal does not fully comply with this criterion. As part of PJM's regional planning process, PJM will post for review and comment the violations and system conditions that could be addressed by potential Short-term Projects and Long-lead Projects.<sup>419</sup> In the case of time-sensitive needs for Immediate-need Reliability Projects where PJM intends to open a proposal window, PJM proposes to post, for review and comment, the violations and system conditions that could be addressed by Immediate-need Reliability Project proposals, including an explanation of the time-sensitive need for an Immediate-need Reliability Project.<sup>420</sup> However, PJM does not similarly propose to separately identify and post in advance those reliability violations and system conditions driving a time-sensitive need for an Immediate-need Reliability Project where PJM does not intend to open a proposal window.<sup>421</sup> Absent such tariff language, PJM does not fully comply with the second criterion. Therefore, we direct PJM to submit, within 60 days of the date of issuance of this order, a further compliance filing revising Schedule 6 to provide for the posting in advance for review and comment the violations and system conditions that PJM identifies as needing to be addressed by Immediate-need Reliability Projects for which PJM does not intend to open a proposal window.

197. The Commission's third criterion requires that: (1) the process that PJM uses to decide whether an Immediate-need Reliability Project is assigned to an incumbent

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<sup>417</sup> PJM July 22, 2013 Compliance Filing at 33; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (I-L), § 1.15A (Immediate-need Reliability Project) (3.1.0); PJM, Intra-PJM Tariffs, OATT, Definitions (I-L), § 1.14A.001 (Immediate-need Reliability Projects) (1.1.0).

<sup>418</sup> PJM July 22, 2013 Compliance Filing at 33.

<sup>419</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(b) (Posting of Transmission System Needs) (3.1.0).

<sup>420</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(2) (Immediate-need Reliability Projects) (3.1.0).

<sup>421</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1) (Immediate-need Reliability Projects) (3.1.0).

transmission owner be clearly outlined in PJM's OATT and must be open, transparent, and not unduly discriminatory; and (2) PJM provide to stakeholders and post on its website a full and supported written description explaining the decision to designate an incumbent transmission owner as the entity responsible for construction and ownership of the transmission 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 the circumstances that generated the immediate reliability need and an explanation of why that immediate reliability need was not identified earlier.<sup>422</sup> We find that PJM complies with this criterion. First, PJM proposes to post on the PJM website for stakeholder review and comment descriptions of the proposed Immediate-need Reliability Projects for which PJM concludes a proposal window is infeasible. Second, these descriptions "shall include an explanation of the decision to designate the Transmission Owner as the Designated Entity for the Immediate-need Reliability Project rather than conducting a proposal window."<sup>423</sup> Third, this description includes: (1) an explanation of the time-sensitive need for the Immediate-need Reliability Project; (2) other transmission and non-transmission options that were considered but it was concluded would not sufficiently address the immediate reliability need; (3) the circumstances that generated the immediate reliability need; and (4) why the immediate reliability need was not identified earlier.<sup>424</sup> As a result of these requirements, we find that it should be clear to stakeholders how an Immediate-need Reliability Project is assigned to an incumbent transmission owner. Therefore, we find the process that PJM proposes to use to decide whether an Immediate-need Reliability Project is assigned to an incumbent transmission owner is clearly outlined in PJM's OATT and is an open, transparent, and not unduly discriminatory process.

198. The fourth criterion requires that stakeholders have time to provide comments in response to the description in criterion three and that such comments be made publicly available.<sup>425</sup> We find that PJM complies with this criterion. PJM proposes to post descriptions of the Immediate-need Reliability Projects on the PJM website and then allow stakeholders a reasonable opportunity to provide comments to PJM, which it will

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<sup>422</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 248.

<sup>423</sup> PJM July 22, 2013 Compliance Filing at 35 (quoting PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1) (Immediate-need Reliability Projects) (3.1.0)).

<sup>424</sup> *Id.*; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1) (Immediate-need Reliability Projects) (3.1.0).

<sup>425</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 248.

also post on the PJM website.<sup>426</sup> PJM further proposes that based on the comments received from stakeholders and the Transmission Expansion Advisory Committee's review it will, if necessary, conduct further study and evaluation and post a revised recommended plan for review and comment by the Transmission Expansion Advisory Committee.<sup>427</sup> This added step provides further assurance that the process that PJM uses to decide whether an Immediate-need Reliability Project is assigned to an incumbent transmission owner is clearly outlined in PJM's OATT and is open, transparent, and not unduly discriminatory.

199. The fifth criterion requires PJM to 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.<sup>428</sup> The list must include the project's need-by date and the date the incumbent transmission owner actually energized the project, and must be filed with the Commission as an informational filing in January of each calendar year covering the designations of the prior calendar year.<sup>429</sup> We find that PJM's proposal to specify that: (1) in January of each year PJM shall post on its website and file with the Commission for informational purposes a list of the Immediate-need Reliability Projects for which an existing Transmission Owner was designated in the prior year as the Designated Entity, and (2) the list shall include the need by date of the Immediate-need Reliability Project as well as the date the Transmission Owner actually energized the Immediate-need Reliability Project, complies with this criterion.<sup>430</sup>

200. Finally, with regard to LS Power's protests of PJM's process for assigning Long-lead Projects to an incumbent transmission owner if PJM determines that the Office of Interconnection must propose a project to address unresolved violations or system

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<sup>426</sup> PJM July 22, 2013 Compliance Filing at 35-36; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1) (Immediate-need Reliability Projects) (3.1.0).

<sup>427</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1) (Immediate-need Reliability Projects) (3.1.0).

<sup>428</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 248.

<sup>429</sup> *Id.*

<sup>430</sup> PJM July 22, 2013 Compliance Filing at 36; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(m)(1) (Immediate-need Reliability Projects) (3.1.0).

conditions, we find that LS Power offers no convincing evidence as to why the Commission should require PJM to further limit the circumstances under which PJM will assign a Long-lead Project to an incumbent transmission owner without a second solicitation. In the First Compliance Order, the Commission found PJM's proposal to develop transmission projects in the limited circumstances it proposed to be just and reasonable.<sup>431</sup> In making this conclusion, we responded to similar objections from LS Power,<sup>432</sup> ultimately rejecting LS Power's contention that PJM's proposal does not comply with Order No. 1000. In addition, above, we reject LS Power's request for rehearing of those determinations. Although we recognize that LS Power continues to have concerns about PJM's ability to assign a Long-lead Project to an incumbent transmission owner, and makes several suggestions for additional requirements to be placed on PJM's ability in this instance, LS Power makes no showing that these additional requirements are necessitated by, or in compliance with, Order No. 1000.

201. We find that PJM has complied with the Commission's directive by making its process more transparent. We note that in its protest, LS Power does not attempt to demonstrate why PJM's proposal is insufficient to comply with the Commission's further compliance directive in the First Compliance Order to make more transparent PJM's determination to assign a Long-lead Project to an incumbent transmission owner without a second solicitation.<sup>433</sup>

202. We accept PJM's commitment regarding its development of a construction timeline as part of its effort to determine whether to hold an additional solicitation window in the event that PJM determines that none of the proposed Long-lead Projects received during the Long-lead Project proposal window would be the more efficient or cost-effective solution to resolve a posted violation or system condition. PJM states that, if during its review of transmission project proposals PJM sees that none of the solutions are likely to be satisfactory, PJM will endeavor to develop construction timelines for those violations, rather than wait until a final determination has been made, and post the timeline together with related information at the earliest opportunity for stakeholder review with regard to determining the viability of a subsequent proposal window.<sup>434</sup>

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<sup>431</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 245.

<sup>432</sup> *See id.* PP 243-245.

<sup>433</sup> *See id.* P 242.

<sup>434</sup> PJM Answer at 10-11 (emphasis in original).

**b. Qualification Criteria**

203. Order No. 1000 required each public utility transmission provider to revise its OATT to establish 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.<sup>435</sup> The Commission explained that these criteria must not be unduly discriminatory or preferential when applied to either an incumbent transmission provider or a nonincumbent transmission developer.<sup>436</sup> In addition, Order No. 1000 required public utility transmission providers to adopt procedures for timely notifying transmission developers of whether they satisfy the region's qualification criteria and allowing them to remedy any deficiencies.<sup>437</sup>

204. The Commission also clarified in Order No. 1000-A that it would be an impermissible barrier to entry to require a transmission developer to demonstrate, as part of the qualification criteria, that it has, or can obtain, state approvals necessary to operate in a state to be eligible to propose a transmission facility.<sup>438</sup>

**i. First Compliance Order**

205. In the First Compliance Order, the Commission found that PJM's proposal partially complied with Order No. 1000's directives regarding the qualification criteria for determining a transmission developer's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation.<sup>439</sup> Therefore, the Commission conditionally accepted PJM's proposed criteria, subject to further compliance and clarification. Specifically, the Commission directed PJM to: (1) clarify that the pre-qualification criteria requirements apply to both incumbent transmission owners and nonincumbent transmission developers;<sup>440</sup> (2) include the phrase "entity or its affiliates, partner or parent company" throughout all of section 1.5.8(a) or

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<sup>435</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 225, 323.

<sup>436</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 323.

<sup>437</sup> *Id.* P 324.

<sup>438</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 441.

<sup>439</sup> First Compliance Order, 143 FERC ¶ 61,010 at P 273.

<sup>440</sup> *Id.* P 276.

demonstrate why such language should not be included in a particular provision;<sup>441</sup> and (3) clarify the interaction among, and the timeline of, the pre-qualification window, the reevaluation of an entity's pre-qualification, and the proposed Short-term and Long-lead Project proposal windows.<sup>442</sup> With respect to the third directive, the Commission required that such clarification must include, but is not limited to, what points in the proposal window process PJM determines: (1) in the first instance, whether an entity is qualified to be Designated Entity and, (2) upon PJM's reevaluation, whether an entity is no longer qualified to be a Designated Entity.<sup>443</sup>

**ii. Summary of PJM Parties' Compliance Filing(s)**

206. PJM first proposes the following revisions to clarify that the pre-qualification criteria apply to both incumbent transmission owners and nonincumbent transmission developers.<sup>444</sup> First, PJM proposes to add a definition of "Nonincumbent Developer" to its OATT and Operating Agreement to clarify the distinction between a nonincumbent transmission developer and an existing transmission owner.<sup>445</sup> Next, PJM proposes to modify the definition of "Designated Entity"<sup>446</sup> to clarify that a Designated Entity can be both an existing Transmission Owner as well as a Nonincumbent Developer. Finally,

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<sup>441</sup> *Id.* P 277.

<sup>442</sup> *Id.* P 279.

<sup>443</sup> *Id.*

<sup>444</sup> PJM July 22, 2013 Compliance Filing at 37-38.

<sup>445</sup> PJM proposes to define Nonincumbent Developer as:

- (1) a transmission developer that does not have an existing Zone in the PJM Region as set forth in Attachment J of the PJM Tariff; or
- (2) a Transmission Owner that proposes a transmission project outside of its existing Zone in the PJM Region as set forth in Attachment J of the PJM Tariff.

PJM July 22, 2013 Compliance Filing at 38 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (M-N), § 1.26A.01 (2.0.0)); *see also* PJM, Intra-PJM Tariffs, OATT, Definitions (L-M-N), § 1.27A.01 (Nonincumbent Developer) (3.1.0).

<sup>446</sup> PJM July 22, 2013 Compliance Filing at 38; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (C-D), § 1.7A (Designated Entity) (3.1.0).

PJM proposes to include references to existing Transmission Owners and Nonincumbent Developers in its Operating Agreement to further clarify that the qualification criteria apply to both nonincumbent transmission developers and incumbent transmission owners.<sup>447</sup>

207. PJM also proposes to add the phrase “entity or its affiliate, partner or parent company” to several parts of section 1.5.8(a) of Schedule 6.<sup>448</sup> However, PJM states that it did not add the phrase to the section requesting the name and address of a potential Designated Entity<sup>449</sup> because PJM requires the name and address of the entity proposing to own the transmission project, not its affiliate, partner, or parent company. PJM further states that it did not add the phrase to the section that requires an entity proposing a transmission project to commit to execute the Transmission Owners Agreement if that entity becomes the Designated Entity for that project.<sup>450</sup> PJM argues that, while it may be appropriate to allow an affiliate, partner, or parent company to enhance an entity’s application in terms of technical and engineering qualifications, construction experience and expertise, or finances, PJM requires that the entity ultimately responsible for the transmission project be the applicant and owner of the project proposal.<sup>451</sup>

208. In addition, PJM proposes various revisions to section 1.5.8(a) of Schedule 6 to add clarity to the interaction among, and the timeline of, PJM’s pre-qualification and proposal window processes.<sup>452</sup> Specifically, PJM proposes to remove the reference to “prior to the next proposal window” and replace it with further revisions to Schedule 6. Pursuant to section 1.5.8(a)(1), PJM will open a 30-day pre-qualification window on

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<sup>447</sup> PJM July 22, 2013 Compliance Filing at 38; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(a)(1) (Pre-Qualification Process) (3.1.0); *id.* § 1.5.8(c)(1) to (4) (Project Proposal Windows) (3.1.0).

<sup>448</sup> PJM July 22, 2013 Compliance Filing at 39; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(a) (Pre-Qualification Process) (3.1.0).

<sup>449</sup> PJM July 22, 2013 Compliance Filing at 39; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(a)(1)(i) (Pre-Qualification Process) (3.1.0).

<sup>450</sup> PJM July 22, 2013 Compliance Filing at 39; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(a)(1)(vii) (Pre-Qualification Process) (3.1.0).

<sup>451</sup> PJM July 22, 2013 Compliance Filing at 39.

<sup>452</sup> *Id.* at 40; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(a) (Pre-Qualification Process) (3.1.0).

September 1 of each year for both existing Transmission Owners and Nonincumbent Developers to submit a pre-qualification application or update information previously provided. Further, section 1.5.8(a)(2) provides that PJM will notify such entities, no later than October 31 of each year, whether they are, or will continue to be, pre-qualified as eligible to be a Designated Entity.<sup>453</sup> PJM's proposes to revise section 1.5.8(a)(2) to provide that PJM will notify an entity in the event the entity is not, or no longer will continue to be, eligible to be a Designated Entity or fails to provide sufficient information for PJM to determine pre-qualification. In addition, section 1.5.8(a)(2) provides that PJM will include the basis for its determination in the notification to the entity. PJM explains that the entity then may submit additional information, which PJM will consider in reevaluating whether the entity is eligible to be qualified. Revised section 1.5.8(a)(2) further provides that if the entity submits the additional information by November 30, PJM will notify the entity of the results of its reevaluation no later than December 15, and if the entity submits the additional information after November 30, PJM will use "reasonable efforts" to reevaluate the application and notify the entity of its results "as soon as practicable." As PJM states, section 1.5.8(a)(2) further provides that PJM will post on its website the list of entities that are pre-qualified as eligible to be Designated Entities no later than December 31. Finally, section 1.5.8(a)(2) provides that if PJM notifies an entity that does not pre-qualify or will not continue to be pre-qualified as eligible to be a Designated Entity, such entity may request dispute resolution pursuant to Schedule 5 of the Operating Agreement.

209. PJM revises section 1.5.8(a)(3) to provide that an entity is not required to pre-qualify for the upcoming year, if such entity was pre-qualified as eligible to be a Designated Entity in the previous year.<sup>454</sup> PJM states that if the entity's information on which its pre-qualification is based changes with regard to the upcoming year, PJM will require the entity to submit such updated information during the 30-day pre-qualification window and all notification requirements in section 1.5.8(a)(2) will apply. PJM further states that if the entity's information on which prequalification is based changes with respect to the current year, such entity must submit all updated information to PJM at the time the information changes and PJM shall use reasonable efforts to evaluate the updated information and notify the entity as soon as practicable.

210. PJM proposes to revise section 1.5.8(a)(4) to permit an entity to submit a pre-qualification application outside the annual 30-day window upon a showing of good

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<sup>453</sup> PJM July 22, 2013 Compliance Filing at 40-41; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(a)(2) (3.1.0).

<sup>454</sup> PJM July 22, 2013 Compliance Filing at 41.

cause.<sup>455</sup> PJM proposes to revise section 1.5.8(a)(5) to provide that Transmission Owners and Nonincumbent Developers must be prequalified as eligible to be a Designated Entity in order to be designated as a Designated Entity for a project proposal. PJM further clarifies that section 1.5.8(a) does not apply to entities that do not intend to be a Designated Entity.<sup>456</sup>

### iii. Commission Determination

211. We find that PJM’s proposed qualification criteria provisions comply with the directives in the First Compliance Order.

212. First, we find that PJM’s proposed qualification criteria comply with the directive in the First Compliance Order to clarify that the pre-qualification criteria apply to both incumbent transmission owners and nonincumbent transmission developers. Specifically, we find that PJM’s proposal to add a definition in its OATT and Operating Agreement for a “Nonincumbent Developer”<sup>457</sup> and to clarify the definition in its Operating Agreement for “Designated Entity,”<sup>458</sup> when combined with the additional references to “existing Transmission Owners and Nonincumbent Developers” in its Operating Agreement,<sup>459</sup> make clear that the pre-qualification criteria apply to both an existing Transmission Owner and a Nonincumbent Developer.

213. Second, we find that PJM’s proposed qualification criteria comply with the directive in the First Compliance Order because PJM includes the phrase “entity or its affiliates, partner or parent company” in the appropriate provisions throughout section

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<sup>455</sup> *Id.* PJM explains that it will use reasonable efforts to process an application received outside the annual 30-day window and, as soon as practicable, will notify the entity whether it pre-qualifies.

<sup>456</sup> *Id.* at 42.

<sup>457</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (M-N), § 1.26A.01 (Nonincumbent Developers) (2.0.0).

<sup>458</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Definitions (C-D), § 1.7A, (Designated Entity) (3.1.0).

<sup>459</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(a)(1) (Pre-Qualification Process) (3.1.0); *id.* § 1.5.8(c)(1)–(4) (Project Proposal Windows) (3.1.0).

1.5.8(a).<sup>460</sup> In addition, we find reasonable PJM's explanations as to why it did not add this phrase to (1) the section requesting the name and address of the potential Designated Entity and (2) the section requiring an entity proposing a transmission project to commit to execute the Transmission Owners Agreement if that entity becomes the Designated Entity for that transmission project. We agree with PJM that only the entity itself, and not its affiliates, partner, or parent company, must meet these provisions because it is the one ultimately responsible if it is selected as the Designated Entity for a transmission project selected in the regional transmission plan for purposes of cost allocation.

214. Third, we find that PJM's proposed qualification criteria comply with the directive in the First Compliance Order to clarify the interaction among, and the timeline of, the pre-qualification window, the reevaluation of an entity's pre-qualification, and the proposed Short-term and Long-lead Project proposal windows. In particular, we find that PJM's specific dates for opening a 30-day pre-qualification window and deadline for notifying entities whether they are, or will continue to be, pre-qualified as eligible to be a Designated Entity provide sufficient clarity and adequate opportunity for both existing Transmission Owners and Nonincumbent Developers to pre-qualify to be a Designated Entity.<sup>461</sup> We further find that PJM's proposal provides reasonable deadlines for an entity that must submit additional information because it either is not or is no longer qualified to be a Designated Entity, as well as for an entity that must submit updated information for PJM's consideration in its reevaluation process.<sup>462</sup> Finally, we find that PJM's proposal to remove the reference to "prior to the next proposal window," along with its addition of specific timelines for the pre-qualification process, complies with the directive for it to clarify the interaction among the proposal windows for which an entity is qualified to be a Designated Entity.<sup>463</sup>

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<sup>460</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(a) (Pre-Qualification Process) (3.1.0).

<sup>461</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(a)(1)–(2) (Pre-Qualification Process) (3.1.0).

<sup>462</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(a) (2) (Pre-Qualification Process) (3.1.0).

<sup>463</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(a) (2)–(4) (Pre-Qualification Process) (3.1.0).

**c. Information Requirements**

215. Order No. 1000 required each public utility transmission provider to identify in its OATT the information that a prospective transmission developer must submit in support of a transmission project proposed in the regional transmission planning process.<sup>464</sup> The information requirements must be sufficiently detailed to allow a proposed transmission project to be evaluated comparably to other transmission facilities proposed in the regional transmission planning process. The information requirements must be fair and not be so cumbersome as to effectively prohibit transmission developers from proposing transmission facilities, yet not be so relaxed that they allow for relatively unsupported proposals.<sup>465</sup> Order No. 1000 also required each public utility transmission provider to identify in its OATT the date by which a transmission developer must submit information on a proposed transmission project to be considered in a given transmission planning cycle.<sup>466</sup>

**i. First Compliance Order**

216. In the First Compliance Order, the Commission conditionally accepted PJM's proposed information requirements for transmission projects proposed in the regional transmission planning process, subject to further clarification. In particular, the Commission required PJM to clarify that it will use the dates by which all necessary state approvals must be obtained as part of its ongoing monitoring of progress of the estimated construction schedules, consistent with Order No. 1000-A.<sup>467</sup>

**ii. Summary of PJM Parties' Compliance Filing(s)**

217. On compliance, PJM proposes to amend its Operating Agreement to state that PJM shall use the needed in-service date for the project and the date by which all necessary state approvals should be met, as included in the notification of Designated

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<sup>464</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 325.

<sup>465</sup> *Id.* P 326.

<sup>466</sup> *Id.* P 325.

<sup>467</sup> First Compliance Order, 143 FERC ¶ 61,010 at P 298.

Entity, “as part of its on-going monitoring of the progress of the project to ensure that the project is completed by its needed in-service date.”<sup>468</sup>

**iii. Commission Determination**

218. We find that the proposed provisions in PJM’s July 22, 2013 Compliance Filing that address what information a transmission developer must submit regarding its proposed transmission project comply with the directives in the First Compliance Order because they clarify that PJM will use the milestone dates as part of its ongoing monitoring of progress of the estimated construction schedules. Specifically, we find reasonable PJM’s proposed clarification that it will include in the Designated Entity notification the needed in-service date for the selected transmission project and the date by which all necessary state approvals should be met.

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

219. Order No. 1000 required 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 purposes of cost allocation.<sup>469</sup> The evaluation process must ensure transparency and provide the opportunity for stakeholder coordination.<sup>470</sup> In addition, 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.<sup>471</sup>

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<sup>468</sup> PJM July 22, 2013 Compliance Filing at 42; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(i) (Notification of Designated Entity) (3.1.0).

<sup>469</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 452.

<sup>470</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 454.

<sup>471</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 328; Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

**i. First Compliance Order**

220. In the First Compliance Order, the Commission conditionally accepted PJM's proposed provisions addressing the evaluation of proposed transmission projects, subject to clarification.<sup>472</sup> Specifically, the Commission found PJM's evaluation process to be transparent, as PJM's evaluation of each proposed transmission project is reviewed by stakeholders through the Transmission Expansion Advisory Committee and the Subregional RTEP Committee and posted on the PJM website. The Commission also found that PJM's evaluation criteria apply equally to transmission projects proposed by incumbent and nonincumbent transmission developers. However, the Commission also found that additional clarification is necessary regarding the evaluation of more efficient or cost-effective solutions.<sup>473</sup>

221. The Commission noted that PJM proposed to consider other factors in addition to the benefit to cost ratio when determining whether to select an economic transmission project in the regional transmission plan for purposes of cost allocation but did not specify what factors it would consider.<sup>474</sup> Finding that this lack of specificity may permit PJM to use an unduly discriminatory evaluation process, the Commission directed PJM to provide additional detail in its OATT about the other factors that PJM will use in the evaluation process.<sup>475</sup>

222. In addition, the Commission found that PJM's proposal did not obligate it to use cost in determining the more efficient or cost-effective solutions. The Commission acknowledged that PJM's proposal provided that PJM would consider the cost-effectiveness of a proposed transmission project, to the extent that this factor is applicable, in determining whether a proposed transmission project is a more efficient or cost-effective transmission solution to regional transmission needs.<sup>476</sup> However, the Commission explained that the cost-effectiveness of a proposed transmission solution is fundamental to evaluating those transmission solutions that may meet the region's transmission needs more efficiently or cost-effectively.<sup>477</sup> Accordingly, the Commission

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<sup>472</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 310.

<sup>473</sup> *Id.*

<sup>474</sup> *Id.* P 312.

<sup>475</sup> *Id.*

<sup>476</sup> *Id.* P 313.

<sup>477</sup> *Id.* (citing Order No. 1000, FERC Stats & Regs. ¶ 31,323 at P 315).

directed 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.<sup>478</sup>

223. The Commission rejected LS Power's proposal that PJM only be permitted to conduct public discussion between PJM and stakeholders during the proposal window and evaluation process.<sup>479</sup> However, while the Commission acknowledged that there are circumstances in which it would be prudent for PJM to keep confidential the substance of discussions with stakeholders in the evaluation process, the Commission found that such discussions may include information concerning the transmission project proposal process that would be beneficial to all stakeholders participating in the regional transmission planning process. Thus, the Commission directed PJM 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.<sup>480</sup> The Commission noted that this directive is not intended to require PJM to make public any Critical Energy Infrastructure Information (CEII) or any confidential or commercially sensitive data.<sup>481</sup>

(a) **Summary of Requests for Rehearing or Clarification**

224. LS Power requests clarification or, alternatively, rehearing of the Commission's determination that PJM's evaluation process for selecting transmission proposals for inclusion in the regional transmission plan for purposes of cost allocation complies with Order No. 1000, subject to clarification.<sup>482</sup> LS Power contends that PJM has not provided sufficient information on how it will measure the relative efficiency and cost-effectiveness of a proposed transmission project and argues that a "mere list of selection factors" is insufficient to explain how PJM selects the more efficient or cost-effective solution.<sup>483</sup> In particular, LS Power asserts that the Commission erred by not requiring

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<sup>478</sup> *Id.*

<sup>479</sup> *Id.* P 311.

<sup>480</sup> *Id.*

<sup>481</sup> *Id.*

<sup>482</sup> LS Power Request at 4, 13.

<sup>483</sup> *Id.* at 3-4.

PJM to clarify the relative weight of cost-effectiveness compared to other factors in the evaluation process and how the factors used to evaluate each transmission facility will ensure the selection of the more efficient or cost-effective solution.<sup>484</sup> LS Power claims that the Commission mandated this specificity from Midcontinent Independent Transmission System Operator, Inc. (MISO) and California Independent System Operator Corp. (CAISO).<sup>485</sup>

225. Additionally, LS Power argues that some of PJM's evaluation criteria are excessively vague. For example, LS Power states, PJM will consider in its evaluation process "any other factor that may be relevant to the proposed project," but does not explain how these other factors relate to the determination of cost-effectiveness, how they will be applied, or how they will be weighed against cost.<sup>486</sup> Similarly, Atlantic Grid argues that, absent project selection criteria, PJM could exclude transmission projects for any reason at all, potentially allowing for unduly discriminatory outcomes. AWEA asserts that the Commission should require PJM to explain why it selects a transmission project in the regional transmission plan for purposes of cost allocation, including the facts PJM relied upon in selecting the project.<sup>487</sup>

226. LS Power also contends that PJM must clarify the manner in which it will evaluate cost estimates and establish protocols by which it will review the reasonableness of cost estimate evaluations.<sup>488</sup>

227. In addition, Atlantic Grid and AWEA contend that public policy considerations must not be "secondary considerations" when PJM evaluates transmission projects for selection in the regional transmission plan for purposes of cost allocation.<sup>489</sup> Atlantic Grid and AWEA also ask the Commission to clarify that it would be reasonable for PJM

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<sup>484</sup> *Id.*

<sup>485</sup> *Id.* at 2, 3 & n.7 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215, at P 339 (2013) (MISO Order) and *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,057, at P 230 (2013) (CAISO Order)).

<sup>486</sup> *Id.* at 4 n.12 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(f)).

<sup>487</sup> AWEA Request at 5-6.

<sup>488</sup> LS Power Request at 4.

<sup>489</sup> Atlantic Grid Request at 11; AWEA Request at 6.

to select a more expensive transmission option where that option addresses both public policy requirements and reliability or market efficiency needs.<sup>490</sup> AWEA further asserts that, when PJM considers two transmission projects that cost about the same and provide similar reliability or market efficiency benefits, PJM must chose the project that best addresses public policy requirements.<sup>491</sup>

**(b) Commission Determination**

228. We deny the requests for clarification or rehearing of the Commission's decision to accept, subject to compliance, PJM's evaluation process for selecting proposed transmission projects in the regional transmission plan for purposes of cost allocation. With respect to arguments that PJM's evaluation criteria are vague and that PJM does not sufficiently explain how it selects the more efficient or cost-effective solution or evaluates public policy requirements, we affirm that PJM's proposal is generally consistent with the evaluation requirements of Order No. 1000 and complies with the requirement to describe a transparent and not unduly discriminatory process for evaluating proposed transmission solutions for selection in the regional transmission plan for purposes of cost allocation.<sup>492</sup> As proposed and conditionally accepted, Schedule 6 defines a reasonable framework for PJM's evaluation process that allows PJM the necessary flexibility in conducting its evaluation and applying the criteria, while not giving PJM unwarranted discretion. The individual evaluation factors in general are sufficiently detailed to provide prospective transmission developers with an understanding of how PJM will evaluate their proposals. In addition, contrary to LS Power's assertion, PJM's OATT specifies not only the evaluation factors that PJM will consider when selecting among competing transmission developers' proposals, but also the procedures PJM uses to determine the more efficient or cost-effective solutions, including robust stakeholder participation.<sup>493</sup>

229. Further, PJM's evaluation process gives stakeholders opportunities at various stages to review and comment on PJM's evaluation of proposed transmission projects. We find this open and transparent evaluation process ensures that stakeholders may monitor and participate in the process. Schedule 6 provides that, following an initial

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<sup>490</sup> Atlantic Grid Request at 11; AWEA Request at 5.

<sup>491</sup> AWEA Request at 5-6.

<sup>492</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 310.

<sup>493</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8 (d) (Posting and Review of Projects) (3.0.0).

review of all proposed transmission solutions based on the evaluation criteria,<sup>494</sup> PJM will present to the Transmission Expansion Advisory Committee its determination of the transmission proposals that merit further consideration for selection in the regional transmission plan.<sup>495</sup> PJM will post descriptions of the enhancements and expansions recommended for selection in the regional transmission plan on its website and present the enhancements and expansions to the Transmission Expansion Advisory Committee. Stakeholders may review and comment on PJM's determinations, and PJM may conduct further study and evaluation based on this input. PJM will post on its website and present to the Transmission Expansion Advisory Committee any revised enhancements and expansions for review and comment. After consultation with the Transmission Expansion Advisory Committee, PJM will then determine the more efficient or cost-effective transmission enhancements and expansions for selection in the regional transmission plan for purposes of cost allocation.<sup>496</sup>

230. Furthermore, with respect to LS Power's argument that PJM does not explain how it will measure the relative efficiency and cost-effectiveness of a proposed transmission project, including how it will relate "other factors" to the determination of cost-effectiveness or how such factors will be applied and weighed against cost, we note that PJM, in its July 22, 2013 Compliance Filing, provides further explanation of the circumstances under which a proposed transmission solution's cost-effectiveness would be applicable in PJM's evaluation. However, we decline to require PJM to make additional specifications in its OATT regarding the relative weight attributable to the factors considered in the evaluation process. As the Commission stated in the First Compliance Order, PJM's evaluation criteria are sufficiently descriptive to provide prospective transmission developers with an understanding of how their proposals will be evaluated and are consistent with Order No. 1000. Order No. 1000 does not require a public utility transmission provider to specify in its OATT the relative weight of the

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<sup>494</sup> These evaluation criteria include: (i) the extent to which a Short-term Project or Long-lead Project would address and solve the posted violation, system condition, or economic constraints; (ii) the extent to which the relative benefits of the project meets a benefit to cost ratio threshold of at least 1.25:1; (iii) the extent to which the Short-term Project or Long-lead Project would have secondary benefits; and (iv) other factors such as cost-effectiveness, the ability to timely complete the project, and project development feasibility. PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8 (e) (Criteria for Considering Inclusion of a Project in the Recommended Plan) (3.0.0).

<sup>495</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.7(d) (3.0.0).

<sup>496</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.7(d) (3.0.0).

factors considered in the evaluation process. Furthermore, the Commission recognized in Order No. 1000 that the process for evaluating whether to select a transmission facility in the regional transmission plan for purposes of cost allocation will likely vary from region to region.<sup>497</sup> While the Commission allowed flexibility in choosing a process to evaluate projects, once MISO chose a “weighting” approach, the Commission required more information to ensure that those weights are transparent and not unduly discriminatory or preferential.<sup>498</sup>

231. We similarly decline to require PJM to describe procedures by which it reviews the reasonableness of cost estimates that prospective transmission developers submit with project proposals. Contrary to LS Power’s assertion, Order No. 1000 does not require public utility transmission providers to independently evaluate the reasonableness of cost estimates submitted by prospective transmission developers. Rather, Order No. 1000 requires that “[w]hen 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.”<sup>499</sup>

232. We deny Atlantic Grid’s and AWEA’s request for rehearing and clarification regarding public policy considerations in PJM’s evaluation of transmission projects for selection in the regional transmission plan for purposes of cost allocation. We disagree with Atlantic Grid’s and AWEA’s contention that PJM’s treatment of public policy considerations in the evaluation process is inconsistent with the requirements of Order No. 1000. PJM describes in its OATT the process for evaluating and considering the extent to which transmission solutions proposed by both incumbent and nonincumbent transmission developers satisfy enumerated factors, such as addressing the underlying transmission system need, meeting a benefit to cost ratio, and providing other secondary benefits. We affirm the finding in the First Compliance Order that PJM’s proposal complies with the evaluation requirements of Order No. 1000, because it is an open and transparent evaluation process with evaluation criteria that apply equally to transmission solutions proposed by incumbent and nonincumbent transmission developers.<sup>500</sup> We also

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<sup>497</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 323.

<sup>498</sup> See MISO Order, 142 FERC ¶ 61,215 at P 339; CAISO Order, 143 FERC ¶ 61,057 at P 230.

<sup>499</sup> See First Compliance Order, 142 FERC ¶ 61,214 at P 300 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 455).

<sup>500</sup> *Id.* P 310.

note that PJM considers public policy, reliability, and market efficiency needs comprehensively as part of the sensitivity studies, modeling assumption variations, and scenario planning analyses on which PJM relies to identify transmission system needs for which transmission projects are evaluated for selection in the regional plan for purposes of cost allocation.

233. We also deny Atlantic Grid's and AWEA's requested clarification concerning the selection of transmission solutions addressing public policy requirements. PJM's current evaluation process considers other factors in addition to cost-effectiveness and the extent to which a proposed solution satisfies transmission needs, such as the feasibility of the proposed solution and the transmission developer's ability to complete the project. Pursuant to PJM's evaluation process, PJM will consider these other enumerated factors to the extent they are applicable to a particular transmission solution. In Order No. 1000, while requiring public utility transmission providers to establish transparent and not unduly discriminatory processes to evaluate potential solutions to regional transmission needs, the Commission declined to require that any particular proposals be accepted or that selected transmission facilities be constructed.<sup>501</sup> In addition, the Commission acknowledged that "the selection of any transmission facility in the regional transmission plan for purposes of cost allocation requires the careful weighing of data and analysis specific to each transmission facility."<sup>502</sup> Consistent with this acknowledgment, we decline to specify the circumstances under which it would be reasonable for PJM to select a particular solution or under which PJM must select a particular solution.

**ii. Compliance**

**(a) Summary of PJM Parties' Compliance Filing(s)**

234. PJM outlines a process whereby it will make public certain generally applicable information regarding the transmission project proposal process discussed in a confidential meeting. First, PJM states that to avoid providing an undue advantage, it will not discuss with any stakeholder the specific proposals that an entity is considering submitting during the proposal windows. Second, if at any point PJM becomes aware of information relevant to the regional transmission planning process, it shall post such information on PJM's website to the extent that it: (1) relates to changes in the nature of a violation, system condition, economic constraint, or public policy requirement posted in accordance with section 1.5.8(b) of Schedule 6 or related facilities; or (2) clarifies a

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<sup>501</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 331.

<sup>502</sup> *Id.* P 330.

posting made pursuant to section 1.5.8(b). Third, PJM states that, if it receives any confidential, or commercially sensitive data, or any data that would be appropriately classified as CEII during the regional transmission planning process, it will treat such information in accordance with its existing confidentiality and CEII procedures. PJM argues that this process will ensure that all interested stakeholders are aware of useful information that may arise during the regional transmission planning process, while also protecting confidential information and CEII.<sup>503</sup>

235. With respect to the Commission's directive to provide additional detail in its OATT about the other factors that PJM will use to evaluate economic-based enhancements or expansions, PJM proposes to withdraw its earlier proposal to amend section 1.5.7(d). In its October 25, 2012 Compliance Filing, PJM proposed to add "considered for inclusion" in the regional transmission plan in anticipation of a future multi-driver approach, which is not yet fully developed in PJM. PJM now proposes to revert to the original language, which requires PJM to include an economic-based enhancement or expansion in the regional transmission plan if the relative benefits and costs of the economic-based enhancement or expansion satisfy the benefit to cost ratio threshold. Until the development of the multi-driver approach is completed, PJM proposes to retain the 1.5.7(d) language<sup>504</sup> in existence prior to its October 25, 2012 Compliance Filing.<sup>505</sup>

236. PJM explains that consistent with the Commission's determination that it is not necessarily impermissible for public utility transmission providers to consider the effect of the state regulatory process at appropriate points in the regional transmission planning process, PJM may consider during the evaluation of proposals the effect of the state regulatory process when it considers the ability of a prospective transmission developer to timely complete a transmission project, project development feasibility, and other factors that may be relevant to a proposed project.<sup>506</sup> However, PJM notes that while it

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<sup>503</sup> PJM July 22, 2013 Compliance Filing at 46.

<sup>504</sup> "An Economic-based Enhancement or Expansion shall be *included* in the Regional Transmission Expansion Plan recommended to the PJM Board, if the relative benefits and costs of the Economic-based Enhancement or Expansion meet a Benefit/Cost Ratio Threshold of at least 1.25:1." PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.7(d) (3.1.0). *See* PJM July 22, 2013 Compliance Filing at 47 n.124 (emphasis in original).

<sup>505</sup> PJM July 22, 2013 Compliance Filing at 47.

<sup>506</sup> *Id.* at 25-26 (citing First Compliance Order, 142 FERC ¶ 61,214 at P 232 and Order No. 1000-A, 139 FERC ¶ 61,132 at P 454).

may consider state regulatory process and right-of-way issues as factors in addressing project feasibility and timeliness, neither state regulatory process nor right-of-way issues will be a threshold disqualifier of a transmission project.<sup>507</sup>

237. Finally, PJM provides further clarification as to the specific criteria it will consider in selecting the more efficient or cost-effective Short-term or Long-lead transmission solution, which are set forth in section 1.5.8(e) of Schedule 6.<sup>508</sup> PJM states that if it is presented with two or more competing Short-term or Long-lead project proposals, with all other factors being equal, cost-effectiveness will be used in all cases as one factor in selecting a proposed transmission project. However, PJM also states that, should it have two or more competing Short-term or Long-lead project proposals and only one of those project proposals solves the potential violation(s), then cost-effectiveness may not be as applicable in selecting among the competing project proposals. Therefore, PJM argues, section 1.5.8(e) of Schedule 6 is consistent with Commission precedent in Order No. 1000 because it allows PJM to “evaluate and select among competing transmission solutions and resources,” using criteria that include “the relative economics and effectiveness of performance for each alternative offered for consideration.”<sup>509</sup>

**(b) Protests/Comments**

238. LS Power is concerned that cost-effectiveness is not appropriately central to PJM’s evaluation process and that PJM fails to meet Order No. 1000’s requirement that it select the more efficient and cost-effective transmission project.<sup>510</sup> With respect to PJM’s illustration that cost-effectiveness may not be an applicable factor when evaluating two competing project proposals where only one solves the potential violation, LS Power argues this answer signals a deficiency in the PJM selection process, and, to the extent that one of the proposals does not solve the identified violation, it is simply not a viable proposal. Regarding PJM’s explanation that cost-effectiveness will be *one* of the factors used to select a transmission project if all other factors between competing proposals are equal, LS Power argues that cost-effectiveness should be the *only* determining factor for selection in such a scenario.<sup>511</sup> It states that PJM offers no insight into what factors

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<sup>507</sup> PJM July 22, 2013 Compliance Filing at 26.

<sup>508</sup> *Id.* at 48.

<sup>509</sup> *Id.* at 48-49 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 315).

<sup>510</sup> LS Power Protest, Docket No. ER13-198-002 at 9.

<sup>511</sup> *Id.* at 9-10 (emphasis added).

besides cost-effectiveness may play a role in the selection process, if all other factors are equal. Based on these concerns, LS Power proposes specific revisions to section 1.5.8(e) that it believes will meet the requirements of Order No. 1000.<sup>512</sup>

239. Indiana Commission asserts that PJM's references to state laws and regulations as proposed in PJM's October 25, 2012 Compliance Filing were appropriate.<sup>513</sup> Notwithstanding its support for PJM's originally proposed references, Indiana Commission notes that PJM proposes to remove references to "state law, regulation, or administrative agency order" from its process for determining the Designated Entity but explained in its transmittal it may consider the effect of state regulatory processes when considering the ability of a transmission developer to timely complete a proposed transmission project.<sup>514</sup> Indiana Commission notes, however, that in its proposed tariff revisions in this proceeding, PJM fails to reference state laws and regulations as one of the factors it will consider.<sup>515</sup> Indiana Commission takes issue with this failure and requests that the Commission require PJM to revise Schedule 6 of its Operating Agreement, as underlined below, to include an appropriate reference to state and local laws and regulations.<sup>516</sup>

(f) Entity-Specific Criteria Considered in Determining the Designated Entity for a Project. In determining whether the entity proposing a Short-term Project or a Long-lead Project recommended for inclusion in the plan shall be the Designated Entity, the Office of the Interconnection shall consider: . . . any other factors that may be relevant to the proposed project, including the effect of applicable state and local laws and regulations.<sup>517</sup>

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<sup>512</sup> *Id.*

<sup>513</sup> Indiana Commission, Protest, Docket No. ER13-198-002, at 1 (filed Aug. 19, 2013) (Indiana Commission Protest).

<sup>514</sup> *Id.* at 1-2 (citing PJM, July 22, 2013 Compliance Filing at 25).

<sup>515</sup> *Id.* at 1.

<sup>516</sup> *Id.* at 2-3.

<sup>517</sup> *Id.* at 3-4.

240. Indiana Commission asserts that this proposed reference would allow PJM to consider the effect of applicable state and local laws and regulations and still comply with the Commission's assertion that the language in PJM's October 25, 2012 Compliance Filing created a federal right of first refusal.<sup>518</sup>

(c) **Answer**

241. PJM states that LS Power's protest misses the point, namely, that under PJM's sponsorship model, performance is the primary factor, but not the only factor, in considering competing transmission project proposals.<sup>519</sup> PJM illustrates that if only one of three transmission project proposals solves a violation, PJM may find it unnecessary to consider other factors, such as cost-effectiveness, regulatory risk, or ability to timely complete the project. However, PJM continues, if the performance among competing transmission project proposals is comparable, PJM will consider such other factors.<sup>520</sup> Thus, PJM concludes that its proposed Schedule 6 revisions are compliant with or superior to the requirements of Order No. 1000 and, therefore, states that the Commission does not need to address the merits of an alternative proposal.<sup>521</sup>

242. In response to Indiana Commission, PJM states that it does not oppose Indiana Commission's proposed revision. However, PJM states that it will consider such state or local statutes or regulations to the extent they are brought to PJM's attention.

(d) **Commission Determination**

243. We find that PJM's proposed revisions to its process to evaluate proposed transmission facilities comply with the directives in the First Compliance Order. We find

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<sup>518</sup> *Id.* at 3.

<sup>519</sup> PJM Answer at 13.

<sup>520</sup> PJM clarifies that, in the July 22, 2013 Compliance Filing, it overstated its point in its example that if presented with two or more competing transmission project proposals *with all other factors being equal*, cost-effectiveness will be used in all cases as one factor in selecting a proposed transmission project. It meant that if presented with two or more competing transmission project proposals *with performance of the projects being comparable*, cost-effectiveness will be used in all cases as one of the factors in selecting a proposed transmission solution. PJM Answer at 13 n.52 (emphasis in original).

<sup>521</sup> *Id.* at 14.

that PJM proposes a process whereby it will determine and provide any generally applicable information discussed in a confidential meeting regarding the transmission project proposal process, which is sufficient to comply with the directive in the First Compliance Order. We also find that PJM's withdrawal of its previous proposal in section 1.5.7(d) resolves the concern that PJM did not specify the other factors it would consider when determining whether to select an economic transmission project in the regional transmission plan for purposes of cost allocation. Lastly, we find that PJM has given sufficient explanation of the circumstances under which consideration of a proposed transmission solution's cost-effectiveness would not be applicable in PJM's evaluation.

244. We are not convinced by LS Power's argument that cost-effectiveness is not appropriately central to PJM's evaluation process. Although cost-effectiveness is one of several factors that PJM will consider when presented with two or more transmission project proposals that solve an identified violation, we note that the other factors that PJM will consider in some way evaluate the cost of the proposed transmission project to the customer. For instance, considering the ability of a potential transmission developer to timely complete a proposed transmission project allows PJM to consider the likelihood that a transmission project will be delayed and thereby expose customers to increased costs from a prolonged, unresolved transmission need. Given that cost-effectiveness is a separate factor, and is considered throughout PJM's other evaluation criteria, we find that cost-effectiveness is appropriately assessed in PJM's proposed evaluation process. We therefore reject LS Power's request that we require PJM to adopt its proposed language for section 1.5.8(e).

245. In addition, PJM states that during the evaluation process it "may consider the effect of the state regulatory process when it considers the ability of a proposer to timely complete a project, project feasibility, and other factors that may be relevant to a proposed project."<sup>522</sup> PJM further states that it will not use state regulatory processes or right-of-way issues as a threshold disqualifier of a transmission project.<sup>523</sup> We note that PJM made this statement in response to our directive in the First Compliance Order that 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. However, we grant rehearing in this order on the issue of whether it is appropriate for PJM to recognize state or local laws and regulations

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<sup>522</sup> PJM July 22, 2013 Compliance Filing at 26 (citing PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(e) and (f)).

<sup>523</sup> PJM July 22, 2013 Compliance Filing at 26.

as a threshold matter in the regional transmission planning process. As a result, the request of the Indiana Commission has been addressed.

e. **Reevaluation Process for Transmission Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation**

246. To ensure the incumbent transmission provider can meet its reliability needs or service obligations, Order No. 1000 required each public utility transmission provider to amend its OATT to describe the circumstances and procedures for reevaluating the regional transmission plan to determine if alternative transmission solutions must be evaluated as a result of delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation.<sup>524</sup> If an evaluation of alternatives is needed, the regional transmission planning process must allow the incumbent transmission provider to propose solutions that it would implement within its retail distribution service territory or footprint, and if that solution is a transmission facility, then the proposed transmission facility should be evaluated for possible selection in the regional transmission plan for purposes of cost allocation.<sup>525</sup>

i. **First Compliance Order**

247. In the First Compliance Order, the Commission found that PJM's proposed reevaluation process clearly identifies the circumstances and procedures for reevaluating transmission projects that are selected in the regional transmission plan for purposes of cost allocation, and under which circumstances. However, the Commission stated that the lack of description regarding how PJM will decide whether to retain a transmission project, remove a transmission project, or select an alternative transmission solution following such reevaluation may allow PJM too much discretion in making this determination. Accordingly, the Commission directed PJM to provide an explanation of the basis upon which it will retain or remove a selected transmission project, or select an alternative transmission solution.<sup>526</sup>

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<sup>524</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 263, 329; Order No. 1000-A, 139 FERC ¶ 61,132 at P 477.

<sup>525</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329.

<sup>526</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 318.

**ii. Summary of PJM Parties' Compliance Filing(s)**

248. PJM clarifies that when reevaluating the need for a transmission project, it will consider several factors, including: (1) the current transmission needs and changes in the system since the project was designated and selected in the regional transmission plan; (2) the development stage of the project (beginning, middle, end); and (3) the amount of delay caused by the failure of a project to meet the milestone versus choosing another solution.<sup>527</sup>

249. PJM explains that the first factor, system changes, would likely include, but not be limited to, increases or decreases in load, generation deactivations, generation interconnections, and intervening enhancements or expansions to the transmission system.<sup>528</sup> As an example, PJM states that if the transmission project is to serve an area where load growth has declined, it may determine that the project is no longer necessary or that a less robust solution is sufficient. Regarding the second factor, the development stage of a transmission project, PJM explains that it may be more efficient or cost-effective to retain a project that is in the final development stage when the reevaluation occurs. With respect to the third factor, PJM provides several examples, such as where a missed milestone would delay a transmission project only a few weeks but to designate a new project would take a few months, and thereby endanger the needed in-service date even further, in which case PJM may determine that retaining the project is the more prudent action. PJM asserts that each situation will be fact-specific and will require PJM to use its best judgment. It further argues that any modification to the Regional Plan that results from a reevaluation shall be presented to the Transmission Expansion Advisory Committee for review and comment and approved by the PJM Board, thus preventing PJM from having unfettered discretion in the reevaluation process.<sup>529</sup>

**iii. Protests/Comments**

250. LS Power states that PJM's explanation is not sufficient for compliance with Order No. 1000 and the First Compliance Order.<sup>530</sup> Specifically, it states that section 1.5.8(k) of Schedule 6 continues to allow PJM unfettered discretion, particularly with respect to whether PJM reassigns a transmission project it decides to retain. LS Power

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<sup>527</sup> PJM July 22, 2013 Compliance Filing at 49-50.

<sup>528</sup> *Id.* at 50.

<sup>529</sup> *Id.* at 50-51.

<sup>530</sup> LS Power Protest, Docket No. ER13-198-002 at 15-16.

states that reassignment ought to require material evidence of abandonment or material evidence of a lack of commercially reasonable competence to advance the project by the Designated Entity. It argues that, although the language references delays beyond the control of the Designated Entity, the proposed language does not condition in any way the ability to reassign. LS Power states that the Transmission Owners Agreement conditions the incumbent transmission owners' obligation to build on a number of factors, any of which can excuse that obligation, and the ability to reassign transmission projects should not be exercised in a manner that holds Designated Entities to a higher standard than the Transmission Owners Agreement.<sup>531</sup> LS Power states that section 1.5.8(k) should contain clearer language limiting the discretion PJM has to retain, remove, or select an alternative project or to reassign a retained project.<sup>532</sup>

**iv. Answer**

251. PJM disagrees with LS Power's claim that PJM fails to adequately explain how it will retain or remove a selected transmission project or select an alternative transmission project.<sup>533</sup> PJM states that a failure to perform is a trigger to reevaluate a transmission project outside the annual Regional Plan reevaluation process. It also states that the actual reevaluation process is straightforward, as it follows the same planning process utilized to identify the original need. However, PJM states that each failure to perform will be fact-specific and will require PJM to use its best judgment. Rather than try to identify and provide for every fact-based scenario in tariff language, PJM proposes to safeguard against unfettered discretion by requiring Transmission Expansion Advisory Committee review and input, and approval by the PJM Board prior to modifying a selected transmission project. PJM states that the Commission has recognized that certain instances may require discretion in applying the results of a reevaluation and that PJM may be permitted to use such discretion, provided that stakeholders have the opportunity for consideration and comment at every stage.<sup>534</sup> PJM further states that it proposes to expand stakeholder involvement by ensuring that stakeholders will formally

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<sup>531</sup> *Id.*.

<sup>532</sup> *Id.* at 15.

<sup>533</sup> PJM Answer at 18.

<sup>534</sup> *Id.* at 18-19 (citing *PJM Interconnection, L.L.C.*, 141 FERC ¶ 61,169, at P 23 (2013)).

have the opportunity to comment on any modifications to the Regional Plan based on its reevaluation.<sup>535</sup>

252. PJM states that LS Power's argument that reassignment of a project should require material evidence of abandonment or a lack of competence to advance the project is beyond the scope of its compliance filing.<sup>536</sup> PJM states that LS Power may express its concerns with respect to this issue in the context of its stakeholder process.

**v. Commission Determination**

253. We find that PJM's proposal concerning the reevaluation of the regional transmission plan complies with the directives in the First Compliance Order. PJM's proposal provides a sufficient explanation of the basis upon which it will retain or remove a selected transmission project, or select an alternative transmission solution after reevaluating the regional transmission plan. With respect to LS Power's protest that PJM's reevaluation process continues to allow PJM unfettered discretion in the reassignment of a selected transmission project, we find that PJM's reevaluation process sufficiently restricts its discretion by requiring Transmission Expansion Advisory Committee review and input of its decision, and the PJM Board's approval prior to modifying or reassigning a selected transmission project. We recognize that it may not be possible for PJM to predict and specify in its OATT every relevant factor it may consider in its determination to retain or remove a selected transmission project or select an alternative transmission project. We find that PJM has an appropriate amount of discretion in its reevaluation process in light of its proposal to expand stakeholder involvement for any modifications to the Regional Plan.

**f. Cost Allocation for Transmission Facilities Selected in the Regional Transmission Plan for Purposes of Cost Allocation**

254. Order No. 1000 required each public utility transmission provider to participate in a regional transmission planning process that provides the same eligibility to nonincumbent transmission developers and incumbent transmission developers to use a regional cost allocation method or methods for any transmission facility selected in the regional transmission plan for purposes of cost allocation.<sup>537</sup> Order No. 1000 also

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<sup>535</sup> PJM Answer at 19.

<sup>536</sup> *Id.* at 22.

<sup>537</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 332.

required that the regional transmission planning process include 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 transmission facilities selected in the regional transmission plan for purposes of cost allocation.<sup>538</sup>

**i. First Compliance Order**

255. In the First Compliance Order, the Commission found that the PJM Transmission Owners October 11, 2012 Compliance Filing partially complied with Order No. 1000's requirement that a nonincumbent transmission developer must be eligible to use a regional cost allocation method or methods for a transmission facility selected in the regional transmission plan for the purposes of cost allocation.<sup>539</sup> PJM will use non-discriminatory criteria to determine whether a nonincumbent transmission developer is qualified to build a transmission project selected in the regional transmission plan for purposes of cost allocation, and if that transmission developer is designated to build the transmission project,<sup>540</sup> it will be able to use the regional cost allocation associated with the transmission project.<sup>541</sup>

256. The Commission also found to be just and reasonable, in concept, PJM Transmission Owners' proposal to revise the definition of "Transmission Owner" in Schedule 12 to allow an entity with no transmission facilities in service in PJM, who is therefore not a party to the Transmission Owners Agreement, to recover the costs of

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<sup>538</sup> *Id.* P 336.

<sup>539</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 325.

<sup>540</sup> According to PJM's regional transmission planning process, a transmission developer seeking to propose a transmission solution for selection in the regional transmission plan for purposes of cost allocation must indicate, as part of the information submitted with a transmission project proposal, "whether the entity intends to be the Designated Entity for a proposed project." PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(c)(1) (Project Proposal Windows) (3.1.0). PJM will determine, based on criteria enumerated in Schedule 6, whether the developer that proposed a transmission project selected in the regional transmission plan for purposes of cost allocation shall be the Designated Entity for that transmission project. PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(f) (Entity-Specific Criteria Considered in Determining the Designated Entity for a Project) (3.1.0).

<sup>541</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 326.

constructing a Regional Plan project, including the costs of construction work in progress. The Commission noted, however, that other provisions in the OATT and PJM Agreements could prevent nonincumbent transmission developers from filing for cost-based rates prior to becoming a party to the Transmission Owners Agreement. The Commission therefore directed PJM Parties to either revise the provisions specified in the First Compliance Order to enable a nonincumbent transmission developer to file related agreements on cost allocation under Schedule 12 and recover the costs of a Regional Plan transmission project, or explain why the specified provisions do not prevent a nonincumbent transmission developer from doing so.<sup>542</sup>

257. The Commission additionally required PJM to revise 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 Electric Co. v. FERC*,]”<sup>543</sup> and to revise any provisions of the PJM OATT and Agreements that “lock nonincumbent transmission developers into market-based rates before they enter the regional transmission planning process.”<sup>544</sup>

258. The Commission also directed PJM to clarify that, when any entity (an incumbent or nonincumbent transmission owner) becomes the Designated Entity to develop a project, it must comply with the provisions requiring: (1) a letter of credit, (2) an executed agreement, and (3) construction and state approval milestones, within 60 days of the designation in order to remain eligible to use the cost allocation method for the regional project. Finally, the Commission directed PJM to submit any *pro forma* Designated Entity Agreement for the Commission’s review.<sup>545</sup>

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<sup>542</sup> *Id.* PP 327-333.

<sup>543</sup> *Id.* P 222 (citing *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002) (*Atlantic City*); *Atlantic City Elec. Co. v. FERC*, 329 F.3d 856 (D.C. Cir. 2003) (*Atlantic City II*)).

<sup>544</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 224.

<sup>545</sup> *Id.* P 280.

**ii. Requests for Rehearing or Clarification****(a) Summary of Requests for Rehearing or Clarification**

259. LS Power seeks clarification regarding when PJM must submit to the Commission the *pro forma* Designated Entity Agreement. LS Power argues that it is important for prospective transmission developers to be able to review the *pro forma* Designated Entity Agreement, and it should be established prior to full implementation of the Order No. 1000 changes in PJM, since it is important that the commercial terms related to the agreement be vetted sooner rather than later. LS Power asks the Commission to clarify that PJM should file the *pro forma* Designated Entity Agreement with the Commission with the supplemental compliance filing due 120 days from the date of issuance of the First Compliance Order, consistent with recent Commission precedent.<sup>546</sup>

260. In addition, LS Power asserts that the Commission erred in rejecting the argument that incumbent transmission owners should not have the sole right to develop cost allocation methods for future transmission projects.<sup>547</sup> LS Power states that incumbent transmission owners should establish the cost allocation method for those transmission projects that they have the exclusive right to construct and own (i.e., future “local” and Immediate-need Reliability Projects). LS Power argues, however, that as to construction of future transmission projects that are selected in the regional transmission plan for purposes of cost allocation, incumbent transmission owners and nonincumbent transmission developers are on an equal footing, and thus, a nonincumbent transmission developer should be able to participate in the development of cost allocation.<sup>548</sup> LS

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<sup>546</sup> LS Power Request at 8-9 & n.20 (citing *S.C. Elec. & Gas Co.*, 143 FERC ¶ 61,058, at P 208 (2013) (*SCE&G*) (“[W]e . . . direct SCE&G to submit any such *pro forma* agreement for review by the Commission in its compliance filing within 120 days from the data of the issuance of this order.”)).

<sup>547</sup> *Id.* at 13 (citing First Compliance Order, 142 FERC ¶ 61,214 at P 447, which rejects 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). (LS Power notes that the Commission stated that, “[i]f 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).”).

<sup>548</sup> LS Power Request at 14.

Power states that all PJM stakeholders, under PJM's direction, should establish the cost allocation method for future competitive transmission projects, arguing that those who are required to pay should set the method rather than those that collect.<sup>549</sup> LS Power argues that, if an incumbent or nonincumbent transmission developer does not like the cost allocation method for a particular future transmission project, it should not bid to develop that project, and existing transmission owners have no section 205 rights for transmission projects that they do not own and may never own and, as to those projects, are in the same position as LS Power. LS Power states that allowing incumbent transmission owners to set the cost allocation method for all future transmission projects, when they have no more right to those projects than nonincumbent transmission developers, is in error.<sup>550</sup>

**(b) Commission Determination**

261. We deny LS Power's request for clarification, because LS Power is not seeking clarification of an earlier ruling, but rather is asking for new and different relief. However, We direct PJM to file its *pro forma* Designated Entity Agreement within 60 days of the date of issuance of this order. PJM previously stated that it anticipates developing the *pro forma* Designated Entity Agreement over the next several months and filing it with the Commission for review and acceptance prior to January 1, 2014, the effective date of its Order No. 1000 compliance reforms;<sup>551</sup> however, it has not done so. We agree with LS Power that prospective developers of transmission should be able to fully vet this *pro forma* agreement, and we will therefore require PJM to file it with us in sufficient time to allow that review.

262. We also deny LS Power's requests for rehearing. We affirm the finding in the First Compliance Order that it is permissible for PJM to restrict entities that are not yet transmission owners from being able to participate in the development of PJM's cost allocation method beyond reviewing and commenting upon proposals during development. Section 7.3.2 of the Transmission Owners Agreement requires PJM Transmission Owners to consult with PJM and the PJM Members Committee thirty days prior to making a section 205 filing, but also provides that neither PJM nor the Members

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<sup>549</sup> *Id.*

<sup>550</sup> *Id.* at 14-15.

<sup>551</sup> PJM Transmission Owners, Compliance Filing, Docket No. ER13-90-002, at 45 (filed July 22, 2013) (PJM Transmission Owners July 22, 2013 Compliance Filing).

Committee may veto that filing.<sup>552</sup> However, we clarify that while PJM may restrict entities that are not yet transmission owners from having decision-making authority on what cost allocation method may be filed with the Commission, PJM or PJM Transmission Owners may not restrict entities that are not yet transmission owners from participating in the stakeholder process as PJM's cost allocation method is being developed. We note that prior to the PJM Transmission Owners October 11, 2012 Compliance Filing, several nonincumbent transmission developers were actively involved in the stakeholder process through which PJM Transmission Owners presented their cost allocation proposal to stakeholders and solicited comments. Several nonincumbent transmission developers submitted comments in response.<sup>553</sup> We expect such opportunities for involvement of entities that are not yet transmission owners to continue. Under Schedule 12, the costs of all Required Transmission Enhancements are recovered through charges assessed to customers taking Network Integration Transmission Service, which is a service a transmission owner provides using its own assets.<sup>554</sup> Therefore, the right to make a section 205 filing to change the cost allocation method for Required Transmission Enhancements in PJM is appropriately the exclusive right of PJM Transmission Owners.<sup>555</sup> Once PJM Transmission Owners develop a new cost allocation method, the Commission reviews it to determine whether it is just and reasonable, and any party may intervene in that proceeding and present arguments on that point.

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<sup>552</sup> PJM, Rate Schedules, Transmission Owners Agreement, Article 7, § 7.3.2 (Filing of Transmission Rates and Rate Design Under Section 205) (0.0.0). This section further provides that this 30-day notice may be omitted in the case of imminent harm to system reliability or imminent severe economic harm to electric consumers. Additionally, Section 7.6 provides procedures to resolve disputes as to whether PJM or the PJM Transmission Owners have the right to make a particular filing.

<sup>553</sup> Submitted comments on the PJM Attachment H Cost Allocation Proposal are posted on PJM's website at: <http://www.pjm.com/committees-and-groups/committees/toa-ac.aspx>, within the "Meeting Materials" section, under "09.05.2012 – Attachment H Transmission Owners Proposed Cost Allocation Meeting."

<sup>554</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (a) (Establishment of Transmission Enhancement Charges) (5.0.0)

<sup>555</sup> *Atlantic City*, 295 F.3d at 11.

**iii. Compliance****(a) Summary of PJM Parties' Compliance Filing(s)**

263. PJM Transmission Owners propose to revise section (a)(iv) of Schedule 12 to clarify that, consistent with the First Compliance Order, no provision of the PJM OATT or the Transmission Owners Agreement may be interpreted to conflict with Schedule 12 or to prevent an entity designated to construct a Regional Plan project from recovering its costs under Schedule 12's cost allocation methods.<sup>556</sup>

264. In response to the Commission's concerns in the First Compliance Order that the definition of "Transmission Owner" in provisions of the PJM OATT and the Transmission Owners Agreement might restrict the ability of an entity designated to construct a Regional Plan project from submitting filings under section 205 to recover the costs of the project under the regional cost allocation method applicable under Schedule 12, PJM Transmission Owners assert that none of these provisions would have such an effect.<sup>557</sup> PJM Transmission Owners state that, "[t]hrough these provisions, for purposes other than Schedule 12, the OATT and the [Transmission Owners Agreement] appropriately recognize the rights and obligations of the owners of the transmission facilities over which PJM provides transmission service."<sup>558</sup> PJM Transmission Owners assert that, in particular, these provisions: (1) set forth the rights each PJM Transmission Owner has retained to make filings under section 205 with respect to the rates charged for services provided over the facilities that the Transmission Owner has made available to PJM; and (2) do not preclude a non-Transmission Owner from establishing the revenue requirement applicable to a Regional Plan project that it is selected to build and having cost responsibility for the project assigned under Schedule 12.<sup>559</sup> PJM Transmission

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<sup>556</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 6; *see also* PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (a)(iv) (Entities Not Yet Eligible to Become Transmission Owners) (5.1.0). Notably, PJM Transmission Owners state that they proposed these revisions under the assumption that, "for the purposes of [their July 22 Filing], the Commission's rulings with respect to the designation of nonincumbent developers to construct Regional Plan projects are undisturbed on rehearing and upheld on appeal." PJM Transmission Owners July 22, 2013 Compliance Filing at 5.

<sup>557</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 6 (referencing First Compliance Order 142 FERC ¶ 61,214 at PP 328, 330-332).

<sup>558</sup> *Id.* (emphasis in original).

<sup>559</sup> *Id.*

Owners address each section of the OATT and Transmission Owners Agreement with which the Commission expressed concern,<sup>560</sup> and argue that none of the PJM OATT and Transmission Owners Agreement provisions cited in the First Compliance Order would prevent cost responsibility of a nonincumbent transmission developer's Regional Plan project being assigned under the amended Schedule 12 in the same manner as an existing transmission owner's Regional Plan project.<sup>561</sup>

265. First, PJM Transmission Owners state that the definition of "Transmission Owner" in the OATT does not bar a nonincumbent transmission developer from recovering the cost of a transmission project it is selected in the Regional Plan to build under Schedule 12, as revised in PJM Transmission Owners October 11, 2012 Compliance Filing.<sup>562</sup> PJM Transmission Owners further state that, as the Commission noted, Schedule 12, as revised, specifies that references to "Transmission Owner" in Schedule 12 encompass entities designated to construct a Regional Plan project that are not yet eligible to become parties to the Transmission Owners Agreement, because their projects are not yet in service.<sup>563</sup> PJM Transmission Owners assert that the fact that such entities are not Transmission Owners for other purposes under the OATT does not deny them access to cost recovery under Schedule 12. PJM Transmission Owners state that the further revision they propose to Schedule 12 underscores that conclusion.<sup>564</sup>

266. Second, PJM Transmission Owners assert that there is no basis for the Commission's concern that section 9.1 of the OATT, combined with the definition of "Transmission Owner," could be read to imply "that a nonincumbent transmission developer is barred from filing . . . its rates . . . under Schedule 12 of the OATT until it has a possessory interest in transmission facilities that provide Commission-jurisdictional transmission service."<sup>565</sup> PJM Transmission Owners state that while this provision appropriately reserves to Transmission Owners the exclusive rights to make certain section 205 filings, a nonincumbent transmission developer's section 205 filing submitted before its transmission project enters service would not fall into those categories of

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<sup>560</sup> *Id.* at 6-9.

<sup>561</sup> *Id.* at 9.

<sup>562</sup> *Id.* at 7.

<sup>563</sup> *Id.* (citing First Compliance Order, 142 FERC ¶ 61,214 at P 327).

<sup>564</sup> *Id.*

<sup>565</sup> *Id.* (citing First Compliance Order, 142 FERC ¶ 61,214 at P 330).

filings.<sup>566</sup> PJM Transmission Owners assert that despite the fact that a nonincumbent transmission developer would not be a Transmission Owner until its project enters service, section 9.1 of the OATT does not conflict with Schedule 12, as amended in PJM Transmission Owners October 11, 2012 Compliance Filing.<sup>567</sup> PJM Transmission Owners state that a nonincumbent transmission developer's filing to recover its own costs before its project enters service: (1) does not relate to the establishment and recovery of a Transmission Owner's transmission revenue requirements; (2) does not involve transmission rate design; and (3) does not involve a change to any other PJM OATT provisions governing the recovery of transmission-related costs incurred by the Transmission Owners.<sup>568</sup> Rather, PJM Transmission Owners state, a nonincumbent transmission developer's filing identifies the developer's costs to be allocated under the existing rate design specified in Schedule 12.<sup>569</sup>

267. Third, PJM Transmission Owners argue that neither section 4.10 of the Transmission Owners Agreement nor Parts IV and VI of the OATT stand as a barrier to a nonincumbent transmission developer's recovery of a Regional Plan project's costs under Schedule 12, as amended by PJM Transmission Owners October 11, 2012 Compliance Filing.<sup>570</sup> Specifically, PJM Transmission Owners assert that these provisions do not preclude interconnection with the facilities of an entity that will become a Transmission Owner once its facilities have been energized and integrated into the PJM transmission system and do not limit any rights of an entity interconnecting to a Transmission Owner's facilities to submit filings to the Commission to recover its costs. PJM Transmission Owners also assert that a Transmission Owner's right to recover the costs of interconnecting a new customer does not preclude a nonincumbent transmission developer from using Schedule 12. Further, PJM Transmission Owners argue that the fact that a nonincumbent transmission developer pursuing a Merchant Transmission Facility<sup>571</sup> might be a customer under Part IV or Part VI does not restrict its ability to use Schedule 12 for a Regional Plan project.<sup>572</sup>

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<sup>566</sup> *Id.*

<sup>567</sup> *Id.* at 7-8 (emphasis in original).

<sup>568</sup> *Id.* (emphasis in original).

<sup>569</sup> *Id.* at 8.

<sup>570</sup> *Id.*

<sup>571</sup> Merchant Transmission Facilities are defined as transmission facilities interconnected to the facilities of a Transmission Owner that do not include: (a)

268. Finally, PJM Transmission Owners state that sections 7.1.1 and 7.1.3 of the Transmission Owners Agreement, which, according to PJM Transmission Owners, appropriately reflect the reserved rights of each Transmission Owner (i.e., each entity with operating transmission facilities available under the PJM OATT) to make section 205 filings to establish rates for transmission services provided under the OATT using its own transmission facilities, do not bar a nonincumbent transmission developer selected for a Regional Plan project from filing under section 205 to recover its own project's costs under Schedule 12, as amended.<sup>573</sup> PJM Transmission Owners state that a nonincumbent transmission developer's filing does not establish or change the revenue requirements of a current Transmission Owner or modify any zonal rate that is based solely on the costs of a Transmission Owner's facilities.<sup>574</sup> PJM Transmission Owners state that as a result, a nonincumbent transmission developer's filing would not conflict with the rights reserved to individual Transmission Owners under sections 7.1.1 and 7.1.3 of the Transmission Owners Agreement.<sup>575</sup>

269. In PJM's July 22, 2013 Compliance Filing, it states that the Commission correctly interpreted the requirement for a 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."<sup>576</sup> Therefore, PJM proposes to clarify section 1.5.8(j) of Schedule 6 by amending it to state:

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interconnection facilities; (b) facilities in existence before March 20, 2003; (c) system expansions or enhancements not specifically identified as Merchant Transmission Facilities; and (d) facilities included in the rate base of a public utility and on which a regulated rate of return is earned.

<sup>572</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 8-9.

<sup>573</sup> *Id.*.

<sup>574</sup> *Id.* at 9.

<sup>575</sup> *Id.* In its July 22, 2013 Compliance Filing, PJM Transmission Owners refer to the rights reserved to individual Transmission Owners under Section 7.1.1 and 7.1.3 of the PJM OATT. A review of PJM Transmission Owners July 22, 2013 Compliance Filing and the First Compliance Order indicates that this reference is, or should be, to the Transmission Owners Agreement. Therefore, this appears to be a typographical error in PJM Transmission Owners July 22, 2013 Compliance Filing.

<sup>576</sup> *Id.* at 44 (citing First Compliance Order, 143 FERC ¶ 61,010 at P 280).

within 60 days of receiving notification of its designation (or other such period as mutually agreed upon by the Office of the Interconnection and the Designated Entity), the Designated Entity (both existing Transmission Owners and Nonincumbent Developers) shall submit to the Office of the Interconnection a letter of credit . . . and return to the Office of the Interconnection an executed Designated Entity Agreement containing a mutually agreed upon development schedule.<sup>[577]</sup>

270. PJM proposes to further revise section 1.5.8(j) to provide that, in the alternative, the Designated Entity may request: (1) dispute resolution pursuant to Schedule 5 of the Operating Agreement or (2) that the Designated Entity Agreement be filed unexecuted with the Commission.<sup>578</sup>

271. PJM states that it determined that additional changes should be made to Schedule 6 to clarify the process surrounding the submission and use of development schedules submitted by Designated Entities.<sup>579</sup> PJM asserts that these revisions are necessary to give Designated Entities and PJM the opportunity to develop more accurate and workable development schedules and to ensure that transmission projects are timely constructed to meet system needs. Specifically, PJM proposes that, within 30 days of receiving notification that it has been selected as a Designated Entity (or as extended by PJM for good cause shown), such entity shall submit to PJM a development schedule that includes “milestones necessary to develop and construct the project to achieve the required in-service date, including milestone dates for obtaining all necessary authorizations and approvals, including but not limited to, state approvals.”<sup>580</sup> PJM proposes that it will review the submitted development schedule and, within 15 days or other reasonable time, will: (1) notify the Designated Entity of any issues regarding the development schedule that may need to be addressed to ensure that the project meets its needed in-service date, and (2) tender the Designated Entity an executable Designated Entity Agreement. PJM

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<sup>577</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(j) (Acceptance of Designation) (3.1.0).

<sup>578</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(j) (Acceptance of Designation) (3.1.0).

<sup>579</sup> PJM July 22, 2013 Compliance Filing at 42-43.

<sup>580</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(j) (Acceptance of Designation) (3.1.0).

further proposes that the Designated Entity then will have 60 days (or other period as mutually agreed by the PJM and the Designated Entity) to submit to PJM the necessary letter of credit and an executed Designated Entity Agreement containing a mutually agreed upon development schedule.<sup>581</sup> PJM explains that this 60-day period provides PJM and the Designated Entity an opportunity to determine appropriate reasonable milestones that will ensure the completion of the transmission project in a timely fashion to meet system needs, and will enable more effective monitoring of the progress of the project.<sup>582</sup>

272. PJM proposes a further revision to address cases where the parties cannot mutually agree on a development schedule or some other term of the Designated Entity Agreement.<sup>583</sup> To retain its status as a Designated Entity, PJM proposes that the Designated Entity may request dispute resolution or request that the Designated Entity Agreement be filed unexecuted with the Commission within the 60-day (or other mutually agreed upon) period.<sup>584</sup> PJM asserts that these provisions are all necessary to ensure that the timelines are workable and practical given PJM's need to ensure smooth implementation of the new competitive solicitation process.<sup>585</sup>

273. PJM states that it anticipates developing the *pro forma* Designated Entity Agreement over the next several months and filing it with the Commission prior to the January 1, 2014, effective date for its Order No. 1000 compliance reforms.<sup>586</sup>

**(b) Protests/Comments**

274. LS Power continues to argue that modifying the definition of "Transmission Owner" solely for the purpose of Schedule 12 is insufficient to meet the requirements of Order No. 1000, and asserts that provisions of the OATT, Transmission Owners

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<sup>581</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(j) (Acceptance of Designation) (3.1.0).

<sup>582</sup> PJM July 22, 2013 Compliance Filing at 43.

<sup>583</sup> *Id.* at 44.

<sup>584</sup> PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(j) (Acceptance of Designation) (3.1.0).

<sup>585</sup> PJM July 22, 2013 Compliance Filing at 44.

<sup>586</sup> *Id.* at 45.

Agreement, and any other document relevant to a nonincumbent transmission developer's right to collect revenue requirements should be amended to provide the same certainty provided to PJM Transmission Owners. LS Power requests that the Commission reject PJM Transmission Owners July 22, 2013 Compliance Filing and mandate revisions consistent with those proposed in LS Power's protest.<sup>587</sup>

275. According to LS Power, PJM Transmission Owners' proposed revisions to Schedule 12 in the PJM Transmission Owners July 22, 2013 Compliance Filing are insufficient and confusing. LS Power states that the term "Transmission Owner" as it is applied within the context of "Required Transmission Enhancement," is unclear, since it is a defined term whose meaning is changed only in one OATT provision, thereby causing confusion. LS Power contends that having a definition of "Transmission Owner" for Schedule 12 that is inconsistent with the definition used throughout the remainder of the OATT is inappropriate.<sup>588</sup> Similarly, LS Power takes issue with the differing references to "Transmission Owner" in Schedules 6 and 12. LS Power explains that the "anomalous result of the divergent meaning of 'Transmission Owner' is that one could argue that PJM is only 'obligated' to collect on behalf of *incumbent* transmission owners."<sup>589</sup> Thus, LS Power maintains that the provisions of the OATT, the Transmission Owners Agreement, and any other document relevant to nonincumbent transmission developers' right to collect their revenue requirements should be amended to provide the same certainty that they can recover all Commission-approved costs, their allowed return on equity, and any Commission-approved incentives, in the same or similar manner and timing for recovering these revenues under Schedule 12 as the incumbent PJM Transmission Owners. For clarity throughout, LS Power suggests amendment of the OATT, including Schedule 12, the Transmission Owners Agreement, and other relevant documents to insert "Designated Entity" in each provision referencing Transmission Owners with regard to cost allocation or revenue recovery. Alternatively, LS Power suggests additional edits to Schedule 12 to capture the inclusion of nonincumbent transmission developers.<sup>590</sup>

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<sup>587</sup> LS Power, Protest, Docket No. ER13-90-002 at 4-10, 12 (filed Aug. 21, 2013) (LS Power Protest, Docket No. ER13-90-002).

<sup>588</sup> *See id.* at 4-6.

<sup>589</sup> *Id.* at 6-7 (emphasis added).

<sup>590</sup> *Id.* at 10. LS Power suggests revising Schedule 12, section (a)(4) as follows:

Nothing in the PJM Tariff or the [Transmission Owners Agreement] shall prevent an entity that undertakes to

(continued...)

276. In addition, LS Power contends that PJM did not address the Commission's directive in the First Compliance Order that PJM revise any provision of its OATT and Agreements that could purport to preclude the section 205 filing rights of nonincumbent utilities without their consent.<sup>591</sup> LS Power states that, because PJM Transmission Owners assert in their July 22, 2013 Compliance Filing that, in accordance with section 9.1 of the OATT and Article 7 of the Transmission Owners Agreement, they have the exclusive authority and responsibility to submit filings under section 205 in or relating to the transmission rate design under the PJM OATT, the Commission should require PJM to clarify that the transmission owners do not have exclusive section 205 rights.<sup>592</sup>

277. LS Power also asserts that the reference to the First Compliance Order serves no purpose and should be removed. LS Power argues that Order No. 1000 should be referenced to the extent any reference is appropriate. LS Power states that because the entire OATT is subject to Order No. 1000, such reference is unnecessary and potentially confusing.<sup>593</sup>

278. LS Power also reiterates that the filing requires inappropriate deference by PJM to incumbent transmission owners concerning cost allocation provisions that affect all transmission developers and consumers. LS Power states that in regions with an

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construct and own and/or finance a Required Transmission Enhancement . . . from recovering ~~the~~ all costs of such Required Transmission Enhancement through this Schedule 12 in the same manner and timing as a Transmission Owner. Such costs shall compensate such entity, including but not limited to a nonincumbent transmission developer, for all FERC-approved costs, return on equity and FERC-approved incentives, if any, under a FERC-approved rate related to such Regional Transmission Expansion Plan facilities.

<sup>591</sup> LS Power Protest, Docket No. ER13-198-002 at 4 (citing First Compliance Order, 142 FERC ¶ 61,214 at P 222). LS Power states that the issue of nonincumbent section 205 filing rights in compliance with *Atlantic City* is largely addressed through the supplemental compliance filing in Docket ER13-90-002 made by PJM Transmission Owners. LS Power has filed a separate protest to that filing. *See* LS Power Protest, Docket No. ER13-90-002; LS Power Protest, Docket No. ER13-198-002 at 4 n.5.

<sup>592</sup> LS Power Protest, Docket No. ER13-198-002 at 4 (citing PJM Transmission Owners July 22, 2013 Compliance Filing at 1-2).

<sup>593</sup> LS Power Protest, Docket No. ER13-90-002 at 4.

independent transmission provider, that transmission provider's OATT should be neutral when it comes to provisions that affect both incumbent and nonincumbent transmission developers, including in rate design, and provisions in an OATT giving deference to existing transmission owners should be limited. LS Power asserts that the independent transmission provider and all stakeholders should decide the appropriate cost allocation method for future transmission expansion projects.<sup>594</sup>

279. LS Power asserts that it remains unclear for incumbent transmission owners whether the terms of the Designated Entity Agreement control and supersede the terms of the Transmission Owners Agreement, once Designated Entities have executed a Designated Entity Agreement.<sup>595</sup> LS Power contends that PJM should clarify that all entities required to sign the Designated Entity Agreement are bound exclusively by it, as it would be improper to hold that only incumbent transmission owners are not bound by its provisions in situations of non-compliance with the terms.<sup>596</sup>

280. LS Power asserts that there are certain provisions of Schedule 6 that create the specter of bias that should be edited. Specifically, LS Power states that sections 1.6(a) and 1.7(a) of Schedule 6 should be revised to appropriately refer to the PJM Board designating a Transmission Owner *or Designated Entity* to construct enhancements or expansions, the term used to refer to the entity selected through the Order No. 1000 competitive process.<sup>597</sup> Moreover, LS Power asserts that Schedule 6, section 1.7(c), should be revised to obligate PJM to collect all charges established under Schedule 12 for Transmission Owners *or Designated Entities*.<sup>598</sup>

281. In addition, LS Power contends that the language of section 1.5.8(j) of Schedule 6 concerning the required letter of credit remains inappropriately vague.<sup>599</sup> LS Power argues that it makes no sense for a Designated Entity to provide a letter of credit in the amount of the difference between its bid and the next lowest bid as a means to prevent prospective transmission developers from erroneously and excessively underbidding a

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<sup>594</sup> *Id.* at 10-12.

<sup>595</sup> LS Power Protest, Docket No. ER13-198-002 at 11.

<sup>596</sup> *Id.*

<sup>597</sup> *Id.* at 5 (emphasis in original and denotes proposed new language).

<sup>598</sup> *Id.* at 6 (emphasis in original and denotes proposed new language).

<sup>599</sup> *Id.* at 11.

transmission project.<sup>600</sup> LS Power states that prospective transmission developers are not bidding on a specific transmission project determined by PJM, but rather are submitting project proposals to address violations. LS Power cites PJM's Artificial Island Request for Proposals,<sup>601</sup> noting that none of the 28 transmission projects submitted were for the same proposal.<sup>602</sup> Even assuming there was a next lowest bid for an identical project, LS Power contends that incremental costs are not ascertainable, because transmission developers do not bid firm costs.<sup>603</sup> LS Power asserts that there is no reason why the cost estimates and cost estimate differentials should be the basis for the required letter of credit given that PJM is independently reviewing the cost estimates when making its selection such that there is no incentive for a prospective transmission developer to underbid its proposed transmission project.<sup>604</sup>

282. Alternatively, LS Power recommends that a blanket requirement to post a letter of credit of three percent of the estimated cost of the project may be an appropriate way to deal with the issue.<sup>605</sup> Moreover, LS Power asserts that, to the extent that a letter of credit is required, all of the "subject to" conditions of the Transmission Owners Agreement that relieve incumbent transmission owners from their obligation to build<sup>606</sup>

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<sup>600</sup> *Id.* at 12 (citing First Compliance Order, 142 FERC ¶ 61,214 at P 314).

<sup>601</sup> Artificial Island is located in Salem County's Lower Alloways Creek Township, New Jersey, along the Delaware Bay, and both the Salem and Hope Creek Nuclear generating stations are located there. PJM states that Artificial Island is an area of the PJM system in southern New Jersey that has historically been stability constrained. PJM further states that historically, special operating procedures have been used to maintain stability in the area. The operating procedures have become increasingly difficult to implement while respecting other operational limits on the system. PJM determined that the Artificial Island Request for Proposals presents a good opportunity to implement a proposal window consistent with the revisions proposed in its October 25, 2012 Compliance Filing. PJM July 22, 2013 Compliance Filing at 4 & n.14.

<sup>602</sup> LS Power Protest, Docket No. ER13-198-002 at 12.

<sup>603</sup> *Id.* at 12-13.

<sup>604</sup> *Id.* at 13.

<sup>605</sup> *Id.* at 13-14.

<sup>606</sup> LS Power points to Transmission Owners Agreement, section 4.2.1, which states:

(continued...)

should apply to the Designated Entity Agreement; LS Power further contends that the only conditions that should permit drawing down on the letter of credit should relate to the material negligence of the Designated Entity.<sup>607</sup> Finally, LS Power maintains that these issues would be appropriate for a broader technical conference.<sup>608</sup>

(c) **Answers**

283. In their answer to LS Power's protest in Docket No. ER13-90-002, PJM Transmission Owners state that their July 22, 2013 Compliance Filing eliminates any obstacle in the PJM OATT or Transmission Owners Agreement to a nonincumbent transmission developer filing to recover its costs of constructing a PJM transmission project it has been designated to construct.<sup>609</sup> They state that they have revised the definition of "Transmission Owner" in Schedule 12 to make explicit that nothing in the PJM OATT or Transmission Owners Agreement will bar a nonincumbent transmission developer from filing to recover the cost of a project it is selected to build under Schedule

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Subject to: (i) the requirements of applicable law, government regulations and approvals, including, without limitation, requirements to obtain any necessary state or local siting, construction, and operating permits; (ii) the availability of required financing; (iii) the ability to acquire necessary right-of-way; (iv) the right to recover, pursuant to appropriate financing arrangements and tariffs or contracts, all reasonably incurred costs, plus a reasonable return on investment; and (v) other conditions or exceptions set forth in the Regional Transmission Expansion Planning Protocol, Parties designated as the appropriate entities to the PJM Region specified in the Regional Transmission Expansion Plan or required to expand or modify Transmission Facilities pursuant to the PJM Tariff shall construct and own or finance such facilities or enter into appropriate contracts to fulfill such obligations.

LS Power Protest, Docket No. ER13-198-002 at 14.

<sup>607</sup> *Id.*

<sup>608</sup> *Id.*

<sup>609</sup> PJM Transmission Owners Answer, Docket No. ER13-90-002, at 16-23 (filed Sept. 4, 2013) (PJM Transmission Owners Answer).

12.<sup>610</sup> They assert that LS Power ignores the clear and unambiguous language added to Schedule 12 and is pointing to extraneous provisions of the PJM OATT and Transmission Owners Agreement that might not apply to nonincumbent transmission developers. They further state that the plain meaning of the proposed language states that “nothing in the PJM OATT or the [Transmission Owners Agreement] shall prevent” LS Power or any other nonincumbent transmission developer from recovering the costs of any assigned Regional Transmission Enhancement under Schedule 12 of the PJM OATT.<sup>611</sup>

284. PJM Transmission Owners state that their July 22, 2013 Compliance Filing has addressed each of the sections of the PJM OATT that the Commission identified in the First Compliance Order and explained how those provisions do not deny nonincumbent transmission developers access to the cost recovery mechanisms of Schedule 12. They have also added language to Schedule 12 to make clear that no provision in the PJM OATT or Transmission Owners Agreement could prevent an entity that undertakes to construct, own and/or finance a Required Transmission Enhancement from recovering the costs of that project through Schedule 12.<sup>612</sup> PJM Transmission Owners state that, despite this clear and explicit language to the contrary, LS Power has mined the PJM OATT for tangential provisions that it reads out of context, ignoring the requirement that those provisions must be read in concert with Schedule 12, which governs Required Transmission Enhancement cost recovery and which guarantees nonincumbent transmission developers will be able to file to recover the costs of transmission projects that they are assigned to construct.<sup>613</sup>

285. They assert that other provisions in the PJM OATT and Operating Agreement, such as those identified by LS Power, describe the rights and obligations of PJM Transmission Owners as they apply to different aspects of the planning, operation, and administration of the PJM system that are not relevant to cost recovery under Schedule 12, and the PJM OATT and Operating Agreement may need to distinguish between incumbent and nonincumbent transmission owners, so that global changes to the definition of “transmission owner” may have unintended consequences. PJM Transmission Owners therefore assert that LS Power’s proposed changes to section 1.38C of the PJM OATT and section 1.7 of Schedule 6 to the PJM Operating Agreement are

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<sup>610</sup> *Id.* at 2-3.

<sup>611</sup> *Id.* at 17.

<sup>612</sup> *Id.* at 18.

<sup>613</sup> *Id.* at 19.

unnecessary and should be rejected. PJM Transmission Owners further state that, in many instances, LS Power's proposal to add the words "Designated Entity" to the PJM OATT and Operating Agreement in places where the words "Transmission Owner" also appear assumes that an entity that is not a PJM Transmission Owner when it is designated to construct a Required Transmission Enhancement will not become a PJM Transmission Owner when its facility goes into service and is integrated into the PJM Transmission System. However, PJM Transmission Owners state, every entity that owns transmission facilities integrated into the PJM Transmission System must become a PJM Transmission Owner and a party to the Transmission Owners Agreement.<sup>614</sup> Thus, PJM Transmission Owners assert, executing the Transmission Owners Agreement will put LS Power fully on equal footing with any incumbent PJM Transmission Owner with respect to cost recovery (and any other PJM Transmission Owner right and obligation), once any Required Transmission Enhancement that LS Power is designated to build goes into service, and it can begin recovering its costs.<sup>615</sup>

286. PJM Transmission Owners further state that LS Power continues to attack PJM Transmission Owners' exclusive authority to submit filings under section 205 of the FPA regarding the transmission rate design in PJM, although such arguments have been addressed and rejected on multiple occasions by the Commission. They note that the Commission found that only PJM Transmission Owners have the right to participate in the development of a proper cost allocation method for transmission facilities in PJM.<sup>616</sup> PJM Transmission Owners further state that, if LS Power is designated to construct a Regional Plan project, when that project is completed and the Transmission Owners Agreement is executed, it will be able to participate in the development of PJM transmission rate design on the same terms as any current incumbent transmission owner.<sup>617</sup>

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<sup>614</sup> *Id.* at 20 (citing PJM, Rate Schedules, Transmission Owners Agreement, Article 3, § 3.1 (Parties) (0.0.0)).

<sup>615</sup> *Id.*

<sup>616</sup> *Id.* at 21 (citing First Compliance Order, 142 FERC ¶ 61, 214 at P 447 and *Atlantic City*, 295 F.3d at 11 (holding that the Commission "lacks the [statutory] authority to require [PJM Transmission Owners] to cede their right under section 205 of the [FPA] to file changes in rate design with the Commission."); *PJM Interconnection, L.L.C.*, 109 FERC ¶ 61,012, at P 22 (2004) (upholding PJM Transmission Owners' exclusive rights to file joint transmission rates and rate design applicable to PJM)).

<sup>617</sup> PJM Transmission Owners Answer at 21.

287. PJM Transmission Owners also reply to LS Power's concerns regarding the language used in the changes made to Schedule 12, specifically, the inclusion of the phrase "In compliance with FERC's Order on Compliance Filing issued in PJM Interconnection, L.L.C., Docket No. ER13-198-000 *et al.*, on March 22, 2013." While LS Power considers this phrase unnecessary, PJM Transmission Owners state that their right to revise the PJM OATT to address cost allocation or rate design in PJM includes the right to select just and reasonable language appropriate to implement those revisions. PJM Transmission Owners state that they added this phrase to emphasize that they are addressing the Commission's directive in the First Compliance Order to ensure no provision in the PJM OATT or Transmission Owners Agreement will prevent a nonincumbent transmission developer from recovering its revenue requirement for a Required Transmission Enhancement, and LS Power provide no evidence to demonstrate that the inclusion of this phrase is inconsistent with the Commission's directives or unjust or unreasonable.<sup>618</sup> PJM Transmission Owners further argue that the language that LS Power seeks to insert at the end of the proposed language in Schedule 12, setting forth in greater detail the ability of nonincumbent transmission developers to recover costs, is superfluous and may have unintended consequences.<sup>619</sup>

288. PJM also addresses this issue in its answer in Docket No. ER13-198-002.<sup>620</sup> PJM states that LS Power has provided no basis for PJM to revisit an issue that PJM Transmission Owners already addressed in Docket No. ER13-90-002. PJM states that, while Section 9.1 of the PJM OATT appropriately reserves to Transmission Owners the exclusive rights to make certain section 205 filings, it does not impede the ability of a nonincumbent transmission developer to make a section 205 filing to recover the costs of a project prior to becoming a "Transmission Owner" as that term is used in the OATT outside Schedule 12.<sup>621</sup>

289. PJM states that Schedule 12, as amended by PJM Transmission Owners in their July 22, 2013 Compliance Filing, makes this clear, in that section (a)(i) of Schedule 12 provides that "[i]f a Transmission Owner is designated by the [Regional Plan] to construct and own and/or finance a Required Transmission Enhancement, such Transmission Owner may choose any of the following cost recovery mechanisms." PJM states that section (a)(iv) of Schedule 12 further provides that for the purposes of

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<sup>618</sup> *Id.* at 21-22.

<sup>619</sup> *Id.* at 22.

<sup>620</sup> *See* PJM Answer at 5-6.

<sup>621</sup> *Id.* at 6.

Schedule 12, nonincumbent transmission developers that do not yet qualify to execute the Transmission Owners Agreement are nonetheless “Transmission Owners” for the purpose of Schedule 12, and therefore can make a section 205 filing to recover their project costs as permitted by section (a)(i) of Schedule 12. Finally, PJM notes, section (a)(iv) of Schedule 12, as amended in PJM Transmission Owners July 22, 2013 Compliance Filing, clearly states that “nothing in the PJM Tariff nor the [Transmission Owners Agreement] shall prevent an entity that undertakes to construct and own and/or finance a Required Transmission Enhancement pursuant to a designation in the [Regional Plan] to construct and own and/or finance such Required Transmission Enhancement from recovering the costs of such Required Transmission Enhancement through this Schedule 12.” PJM states that, read together, these provisions unambiguously establish that a nonincumbent Designated Entity may recover project costs through Schedule 12 before it qualifies to execute the Transmission Owners Agreement and nothing in section 9.1 or any other part of the PJM OATT or Transmission Owners Agreement impedes that right, and thus there is no reason for PJM to further address this issue.<sup>622</sup>

290. PJM states that it does not object to LS Power’s proposal to add the term “Designated Entity” to sections 1.6(a) and 1.7(a) of Schedule 6 because this addition would clarify that those sections apply to a transmission owner, as well as a Designated Entity, in terms of who may be designated to construct a PJM Board approved expansion or enhancement selected in PJM’s regional transmission plan for purposes of cost allocation.<sup>623</sup> As to LS Power’s proposed revision to Schedule 6, section 1.7(c), PJM finds that such revision is unnecessary, as detailed in the PJM Transmission Owners Answer.<sup>624</sup> PJM further notes that section 1.7 of Schedule 6 is referenced in Schedule 12, which has the effect of applying that section to Transmission Owners as that term is proposed to be defined in Schedule 12 of the OATT. As a result, PJM argues that this application should alleviate LS Power’s concerns that section 1.7 does not apply to a

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<sup>622</sup> *Id.* at 5-6.

<sup>623</sup> *Id.* at 3.

<sup>624</sup> *Id.* at 4 (citing PJM Transmission Owners Answer at 20). PJM Transmission Owners state there that LS Power’s proposal to add the words “Designated Entity” to the PJM Tariff and Operating Agreement in places where the words “Transmission Owner” appear is unnecessary. PJM Transmission Owners note that every entity that is designated to construct a Required Transmission Enhancement will become a PJM Transmission Owner and execute the Transmission Owners Agreement when its facility is integrated into the PJM Transmission System, at which point that entity will be on an equal footing with all other PJM Transmission Owners with respect to cost recovery.

Designated Entity that has not yet executed the Transmission Owners Agreement, and that PJM is not obligated to collect the costs of a project on its behalf. Therefore, PJM requests that the Commission accept PJM's July 22, 2013 Compliance Filing without modification to section 1.7(c) of Schedule 6.<sup>625</sup>

291. PJM states that LS Power's challenge to the Designated Entity Agreement is premature and should be dismissed pending the filing of a *pro forma* agreement.<sup>626</sup> PJM states that it is currently developing the Designated Entity Agreement and that LS Power's concerns should be raised in the context of that stakeholder process. PJM further states that the proposed agreement may be challenged, if necessary, when such agreement is submitted to Commission for review.<sup>627</sup> Similarly, in response to LS Power, PJM Transmission Owners state that the Designated Entity Agreement cannot amend or supersede the Transmission Owners Agreement, which sets forth the rights and obligations of PJM Transmission Owners with respect to the facilities turned over to PJM for operational control.<sup>628</sup> Moreover, PJM Transmission Owners assert that there is no discrimination against nonincumbent transmission developers because they will become PJM Transmission Owners once their transmission facilities are integrated.<sup>629</sup>

292. PJM also states that the Commission did not require any further compliance on the letter of credit beyond clarifying whether the requirement applied to both an incumbent transmission owner and a nonincumbent transmission developer.<sup>630</sup> PJM further states that, due to opening the Artificial Island pilot during the 2013 Regional Plan, in the context of the stakeholder process PJM has been able to identify and work through issues that need further development, including the letter of credit, prior to implementation of the Order No. 1000 process on January 1, 2014.<sup>631</sup> PJM reiterates that LS Power's

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<sup>625</sup> PJM Answer at 4.

<sup>626</sup> *Id.* 14-15.

<sup>627</sup> *Id.*

<sup>628</sup> PJM Transmission Owners Answer at 23.

<sup>629</sup> *Id.*

<sup>630</sup> PJM Answer at 16.

<sup>631</sup> *Id.* at 17. In its answer, PJM states that the Artificial Island pilot was opened during the 2012 Regional Plan. *See id.* However, it appears that PJM meant to reference the 2013 Regional Plan since the proposal window for the Artificial Island pilot was

challenge to the proposed letter or credit is premature and should be dismissed pending stakeholder review and consensus regarding the details of the process and inclusion of that process in the PJM tariff or manuals, as appropriate.<sup>632</sup>

293. LS Power, in its October 2, 2013 response to PJM's answer, points to PJM's statement that it does not object to adding the term "Designated Entity" to Schedule 6, sections 1.6(a) and 1.7(a), but does object to making the same revision to section 1.7(c), on the basis that PJM Transmission Owners' edits to Schedule 12 should alleviate LS Power's concern. LS Power argues that this is not the case, however, because PJM Transmission Owners have proposed new language stating that the term "Transmission Owner" shall include entities that are not yet parties to the Transmission Owners Agreement "[f]or purposes of this Schedule 12 only," rather than "for purposes of this Schedule 12 or any other tariff provision referenced in this Schedule 12."<sup>633</sup> LS Power disagrees with PJM's statement that section 1.7(c) is specifically referenced in Schedule 12, and "thus the Schedule 12 definition of transmission owner applies to Schedule 6."<sup>634</sup> Rather, LS Power states, what is referenced is "section 1.7 generally, not section 1.7(c) specifically."<sup>635</sup> LS Power states that if the effect of this broad reference to section 1.7 is to apply all of that section to Transmission Owners for purposes of Schedule 12, then the same would be true of Section 1.7(a), which, LS Power claims, PJM has already conceded benefits from further clarification that it applies to "Designated Entities" as well as "transmission owners."<sup>636</sup>

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opened on April 29, 2013 and closed on June 28, 2013. Therefore, reference to the 2012 Regional Plan appears to be a typographical error in PJM's Answer.

<sup>632</sup> *Id.*

<sup>633</sup> LS Power, Answer, Docket No. ER13-198-002, at 2 (filed Oct. 2, 2013) (LS Power Answer) (citing PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (a)(iv) (Entities Not Yet Eligible to Become Transmission Owners) (5.1.0)).

<sup>634</sup> LS Power Answer at 2 (citing PJM Answer at 7 (stating that "[t]he effect of referencing Section 1.7 of Schedule 6 in Schedule 12 is to apply that section to Transmission Owners as that term is proposed to be defined in Schedule 12 of the Tariff.")).

<sup>635</sup> *Id.*

<sup>636</sup> *Id.* at 3.

294. LS Power additionally states that the entirety of Schedule 6 is also referenced in Schedule 12, and that therefore, if PJM's position were taken to its logical conclusion, because Schedule 6 is referenced in Schedule 12, every reference to "transmission owner" in Schedule 6 would be a reference to "transmission owner" as defined in Schedule 12—an approach that is contrary to PJM Transmission Owners' proposal that the term "Transmission Owner" should include existing Transmission Owners and non-Transmission Owners Agreement signatories solely for purposes of Schedule 12. LS Power reiterates its argument that having one meaning of "transmission owner" for purposes of section 1.7(c) of Schedule 6, and a different meaning of that term for all other sections of Schedule 6, is bad policy as well as bad law, and therefore "transmission owner" should have one meaning throughout the OATT and section 1.7(c) must be edited to make it clear it applies to "Designated Entities" as well as "Transmission Owners."<sup>637</sup>

**(d) Commission Determination**

295. We find that PJM Transmission Owners comply, subject to further compliance, with the Commission's directives in the First Compliance Order addressing nonincumbent transmission developers' eligibility to use the regional cost allocation method for a transmission facility selected in the regional transmission plan for purposes of cost allocation.

296. Schedule 12 of the PJM OATT governs transmission owners' recovery of the costs of constructing new transmission facilities. The Commission recognized in the First Compliance Order that PJM Transmission Owners intended to allow an entity that does not yet have transmission facilities in service in PJM (and is therefore not a party to the Transmission Owners Agreement), but that is designated under the Regional Plan to construct a transmission project, to begin recovering the costs of that transmission project, including construction work in progress, under Schedule 12.<sup>638</sup> PJM Transmission Owners indicated this intention by stating in Schedule 12 that:

For purposes of this Schedule 12 only, the term, "Transmission Owner," shall include any entity that undertakes to construct and own and/or finance a Required Transmission Enhancement pursuant to a designation in the [Regional Plan] to construct and own and/or finance such Required Transmission Enhancement, even if such entity is

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<sup>637</sup> *Id.* at 4.

<sup>638</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 327.

not yet eligible to become a party to the [Transmission Owners Agreement].<sup>639</sup>

297. However, because other parts of the OATT and other PJM Agreements contained definitions and provisions that might preclude nonincumbent transmission developers from filing for cost-based transmission rates prior to becoming a party to the Transmission Owners Agreement, the Commission required PJM and/or PJM Transmission Owners to either: (1) revise certain specific OATT and Transmission Owners Agreement provisions so as to enable a nonincumbent transmission developer to file related agreements on cost allocation under Schedule 12 and recover the costs of a transmission project in the Regional Plan, or (2) explain why those provisions discussed above do not prevent a nonincumbent transmission developer from doing so.<sup>640</sup> The Commission finds that, together with the proposed changes to Schedule 12, PJM Transmission Owners have provided that required explanation with regard to each of the OATT sections as to which the Commission had concerns.

298. We find that PJM Transmission Owners have sufficiently demonstrated that they do not intend to bar nonincumbent transmission developers from recovering the costs of transmission projects selected in the Regional Plan. They point to language that they have inserted into Schedule 12 in response to the Commission's directive to make this clear:

Entities Not Yet Eligible to Become Transmission Owners . .  
 . . In compliance with FERC's Order on Compliance Filing issued in *PJM Interconnection, L.L.C.*, Docket No. ER13-198-000 *et al.* on March 22, 2013, nothing in the PJM Tariff or the [Transmission Owners Agreement] shall prevent an entity that undertakes to construct and own and/or finance a Required Transmission Enhancement pursuant to a designation in the [Regional Plan] to construct and own and/or finance such Required Transmission Enhancement

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<sup>639</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 12 § (a)(iv) (Entities Not Yet Eligible to Become Transmission Owners) (5.1.0).

<sup>640</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 333.

from recovering the costs of such Required Transmission Enhancement through this Schedule 12.<sup>641]</sup>

299. The Commission agrees that this language makes clear that all entities, both incumbent transmission owners and nonincumbent transmission developers, may seek cost recovery under Schedule 12.<sup>642</sup>

300. We further find that the provision of section 9.1 of the PJM OATT, that “Transmission Owners shall have the exclusive and unilateral rights to file pursuant to Section 205 of the Federal Power Act . . . for any changes in or relating to the establishment and recovery of the Transmission Owners’ transmission revenue requirements” similarly will not prevent nonincumbent transmission developers from making filings under Schedule 12, because section 9.1 applies to incumbent transmission owners, but will not apply to the revenue requirements of nonincumbent transmission developers who do not yet have transmission facilities in service in PJM.<sup>643</sup> Additionally, we find that PJM Transmission Owners have addressed the Commission’s concern that Parts IV and V of the OATT do not allow cost-based recovery for interconnection customers that are not “Transmission Owners” as defined in section 1.45 of the OATT.<sup>644</sup>

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<sup>641</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 5, 7 (citing PJM, Intra-PJM Tariffs, OATT, Schedule 12 § (a)(iv) (Entities Not Yet Eligible to Become Transmission Owners) (5.1.0)).

<sup>642</sup> As discussed below, we require PJM Transmission Owners to remove the phrase “[i]n compliance with FERC’s Order on Compliance Filing issued in *PJM Interconnection, L.L.C.*, Docket No. ER13-198-000 *et al.*, on March 22, 2013” from section (a)(iv) of Schedule 12.

<sup>643</sup> See PJM Transmission Owners July 22, 2013 Compliance Filing at 7 (citing PJM, Intra-PJM Tariffs, OATT, § 9.1 (Rights of the Transmission Owners) (1.0.0) (“Transmission Owners shall have the exclusive and unilateral rights to file pursuant to Section 205 of the Federal Power Act and the FERC’s rules and regulations thereunder 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 Tariff, and such filing rights shall also encompass any provisions of the PJM Tariff governing the recovery of transmission-related costs incurred by the Transmission Owners.”)).

<sup>644</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 331 (footnotes omitted) (“[U]nder 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. Cost allocation for a project built by an

(continued...)

PJM Transmission Owners stated, and we agree, that these provisions do not limit any rights of an entity interconnecting to an incumbent transmission owner's facilities to submit filings to the Commission to recover its costs.<sup>645</sup>

301. Consistent with PJM Transmission Owners' revision to Schedule 12 clarifying that no provision of Schedule 12 or the Transmission Owners Agreement may prevent an entity designated to construct a Regional Plan project from recovering its costs under Schedule 12, we require PJM to make a similar affirmation in the Operating Agreement that nothing in Schedule 6 of the Operating Agreement shall prevent an entity that undertakes to construct and own and/or finance a Required Transmission Enhancement pursuant to a designation in the Regional Plan to construct and own and/or finance such Required Transmission Enhancement from recovering the costs of such Required Transmission Enhancement through Schedule 12. We direct PJM to submit, within 60 days of the date of issuance of this order, a further compliance filing to revise Schedule 6 of the Operating Agreement to include a statement that is consistent with PJM Transmission Owners' statement.

302. Finally, with regard to the question of whether Article 7, sections 7.1.1 and 7.1.3 of the Transmission Owners Agreement limit section 205 filing rights to signatories or "Parties" to the Transmission Owners Agreement (and whether section 7.1.3 limits those rights to parties that have zones),<sup>646</sup> the Commission finds that, as PJM Transmission Owners have stated, those provisions do not prevent a nonincumbent transmission developer from making a section 205 filing to recover its costs under Schedule 12. Such a filing would not establish or change the revenue requirements of a current transmission

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entity that is not a Party to the [Transmission Owners Agreement] is determined at the time the Interconnection Agreement is executed. 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.").

<sup>645</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 8-9.

<sup>646</sup> See PJM, Rate Schedules, Transmission Owners Agreement, Article 7, § 7.1 (Individual Transmission Owner Rates) (0.0.0).

owner, and would not modify any zonal rate that is based solely on the costs of an incumbent transmission owner's facilities.<sup>647</sup>

303. We will not require PJM or PJM Transmission Owners to revise additional OATT provisions as LS Power requests. In its protest, LS Power cites to section 1.38C of the OATT (containing the definition of "Required Transmission Enhancements") and section 1.7 of Schedule 6 to the PJM Operating Agreement (PJM Office of the Interconnection "shall be obligated to collect on behalf of the Transmission Owner(s) all charges established under Schedule 12 . . . in connection with facilities which the Office of the Interconnection designates one or more Transmission Owners to build") as possibly conflicting with nonincumbent transmission developers' recovery of their costs of developing transmission facilities under Schedule 12.<sup>648</sup> We find, however, that both of these sections speak to the rights and obligations of PJM Transmission Owners, but they do not, thereby, remove any rights or obligations from nonincumbent transmission developers, including the rights now granted to nonincumbent transmission developers under Schedule 12. In addition, we will not require PJM Transmission Owners to insert the term "Designated Entity" in each provision referencing incumbent transmission owners with regard to cost allocation or revenue recovery, as LS Power requests;<sup>649</sup> such change is unnecessary to accomplish the purpose of Schedule 12.

304. For similar reasons, we reject LS Power's arguments in its October 2, 2013 answer in Docket No. ER13-198-002. LS Power's arguments in its answer essentially recapitulate LS Power's original view that it disagrees with having one meaning of "transmission owner" in Schedule 12 and a different meaning elsewhere, which the Commission rejected when it accepted PJM's proposal in the First Compliance Order.<sup>650</sup> None of the OATT provisions that LS Power cites overcome the fact that PJM Transmission Owners have plainly stated in Schedule 12 that:

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<sup>647</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 9.

<sup>648</sup> LS Power Protest, Docket No. ER13-198-002 at 5-6.

<sup>649</sup> *Id.* at 7-8.

<sup>650</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 327 ("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 [Transmission Owners Agreement]), but that is designated under the [Regional Plan] to construct a transmission project, to begin recovering the costs of that transmission project . . . . We find that, in concept, PJM Transmission Owners' revisions to Schedule 12 are just and reasonable.").

nothing in the PJM Tariff or the [Transmission Owners Agreement] shall prevent an entity that undertakes to construct and own and/or finance a Required Transmission Enhancement pursuant to a designation in the [Regional Plan] to construct and own and/or finance such Required Transmission Enhancement from recovering the costs of such Required Transmission Enhancement through this Schedule 12.<sup>651]</sup>

We therefore reject LS Power's further arguments as to this question.

305. We agree with LS Power, however, that PJM Transmission Owners must remove certain language from its proposed revision to Schedule 12. LS Power asserts that the phrase "[i]n compliance with FERC's Order on Compliance Filing issued in PJM Interconnection, L.L.C., Docket No. ER13-198-000 *et al.*, on March 22, 2013" should be removed from Schedule 12, and we agree. This language could potentially cause confusion, if, for example, at some future time the Commission issues another order regarding Schedule 12(a)(iv). Were this to occur, the question might arise as to whether that new order partially or wholly supersedes the First Compliance Order's directives, and thus create unnecessary doubt as to the continued validity of Schedule 12, section (a)(iv). Accordingly, we direct PJM Transmission Owners to submit, within 60 days of the date of issuance of this order, a further compliance filing removing this phrase from Schedule 12, section (a)(iv). Finally, we note that LS Power is again raising, in its protest, the question of whether nonincumbent transmission owners should be permitted to participate with incumbent PJM Transmission Owners in making section 205 filings relating to future changes to cost allocation provisions.<sup>652</sup> The Commission addressed this question in the First Compliance Order,<sup>653</sup> LS Power sought rehearing of that

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<sup>651</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 5 (citing PJM, Intra-Tariffs, OATT, Schedule 12 § (a)(iv) (Entities Not Yet Eligible to Become Transmission Owners) (5.1.0)).

<sup>652</sup> LS Power Protest, Docket No. ER13-198-002 at 10-12.

<sup>653</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 447 ("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).").

determination, and as discussed above, the Commission denies rehearing.<sup>654</sup> We will not, therefore, address this question in the context of PJM's compliance with the First Compliance Order.

306. With regard to the Commission's directives regarding Designated Entities and the Designated Entity Agreement,<sup>655</sup> we find that PJM has complied with those directives other than filing the *pro forma* Designated Entity Agreement as discussed below.

307. Although PJM states that it anticipates developing its *pro forma* Designated Entity Agreement over the next several months and filing it with the Commission for review and acceptance prior to January 1, 2014, the effective date of its Order No. 1000 compliance reforms,<sup>656</sup> it has not done so.

308. We thus find that PJM has complied with the Commission's directives in the First Compliance Order, other than filing the *pro forma* Designated Entity Agreement. As noted above, in this order we are requiring PJM to file the *pro forma* Designated Entity Agreement within 60 days of the date of issuance of this order.<sup>657</sup>

309. We disagree with LS Power's suggestion that it remains unclear for incumbent transmission owners whether the terms of the Designated Entity Agreement control and supersede the terms of the Transmission Owners Agreement, once Designated Entities have executed a Designated Entity Agreement.<sup>658</sup> In its protest, LS Power points to section 1.5.8(k) of Schedule 6, which states that "[i]f the Designated Entity is the Transmission Owner(s) in the Zone(s) where the project is located, the Office of Interconnection shall seek recourse through the [Transmission Owners Agreement] or FERC, as appropriate," and asks the Commission to require PJM to clarify that all entities, incumbent and nonincumbent transmission developers alike, are required to sign the Designated Entity Agreement and are bound exclusively by that Agreement.<sup>659</sup> In response, PJM states in its answer that LS Power's concerns are already addressed by

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<sup>654</sup> *See supra* P 261

<sup>655</sup> First Compliance Order, 143 FERC ¶ 61,010 at PP 276-280.

<sup>656</sup> PJM July 22, 2013 Compliance Filing at 44-45.

<sup>657</sup> *See supra* P 307.

<sup>658</sup> LS Power Protest, Docket No. ER13-198-002 at 11.

<sup>659</sup> *Id.*

PJM's commitment that section 1.5.8(j) applies to both incumbent transmission owners and nonincumbent transmission developers and PJM's proposal of amendments to section 1.5.8(j) to reflect this clarification in the tariff language, and the fact that PJM is developing a *pro forma* Designated Entity Agreement which it will submit to the Commission for review and acceptance.<sup>660</sup> We agree that LS Power's concerns are premature. Once PJM files its *pro forma* Designated Entity Agreement, LS Power and other parties can raise any concerns that they may have regarding the actual provisions of the agreement, and the interaction of that agreement with the Transmission Owners Agreement.

310. We similarly reject LS Power's request for relief regarding the required letter of credit. LS Power contends that the language of section 1.5.8(j) of Schedule 6 concerning the required letter of credit remains inappropriately vague, and that a Designated Entity need not provide a letter of credit in the amount of the difference between its bid and the next lowest bid.<sup>661</sup> As PJM states in its answer, the Commission did not require any compliance actions related to the letter of credit requirement beyond clarifying whether the requirement applied to both an incumbent transmission owner and a nonincumbent transmission developer;<sup>662</sup> thus, the relief that LS Power is seeking goes beyond the scope of the compliance filing.

311. As to LS Power's further assertions that certain provisions of Schedule 6 create a specter of bias and therefore should be revised, we note that PJM does not object to LS Power's proposed revisions to sections 1.6(a) and 1.7(a). We further agree with PJM that these additions would clarify that these sections apply to a transmission owner, as well as a Designated Entity. We therefore direct PJM to submit, within 60 days of the date of issuance of this order, a further compliance filing incorporating these revisions in Schedule 6. Regarding LS Power's proposed clarification to section 1.7(c), we agree

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<sup>660</sup> PJM Answer at 15. PJM Transmission Owners additionally argue that the Designated Entity Agreement cannot amend or supersede the Transmission Owners Agreement, which sets forth the rights and obligations of the PJM Transmission Owners with respect to the facilities turned over to PJM for operational control, and that, because nonincumbent transmission developers will become PJM Transmission Owners at the time that they execute the Transmission Owners Agreement, there is no discrimination between the treatment of incumbent transmission owners and nonincumbent transmission developers. PJM Transmission Owners Answer at 23.

<sup>661</sup> LS Power Protest, Docket No. ER13-198-002 at 11-13 (citing First Compliance Order, 142 FERC ¶ 61,214 at P 314).

<sup>662</sup> PJM Answer at 16.

with PJM Parties that this revision is unnecessary. The revisions proposed by PJM Parties satisfy the Commission's concern as to the comparable treatment of both incumbent transmission owners and nonincumbent transmission developers, including the revisions proposed in Schedule 12. As detailed above, Part IV.B.2.f, above, Schedule 12 as revised by PJM Transmission Owners makes clear that nothing in the PJM OATT or Transmission Owners Agreement will bar a nonincumbent transmission developer from filing to recover the cost of a transmission project selected in the Regional Plan for the purposes of cost allocation.

### 3. Cost Allocation

312. Order No. 1000 required each public utility transmission provider to have in its OATT a method, or set of methods, for allocating the costs of any new transmission facility selected in the regional transmission plan for purposes of cost allocation.<sup>663</sup> Each public utility transmission provider must demonstrate that its cost allocation method satisfies six regional cost allocation principles.<sup>664</sup> In addition, while Order No. 1000 permitted participant funding, participant funding cannot be the regional cost allocation method.<sup>665</sup>

313. Regional Cost Allocation Principle 1 requires that the cost of transmission facilities 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. The cost allocation methods must clearly and definitively specify identifiable benefits and the class of beneficiaries, and the transmission facility costs allocated must be roughly commensurate with that benefit.<sup>666</sup>

314. Regional Cost Allocation Principle 2 requires that those that receive no benefit from transmission facilities, either at present or in a likely future scenario, not be involuntarily allocated any of the costs of those transmission facilities.<sup>667</sup>

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<sup>663</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 558, 690.

<sup>664</sup> *Id.* P 603.

<sup>665</sup> *Id.* P 723.

<sup>666</sup> *Id.* PP 625, 678.

<sup>667</sup> *Id.* P 637.

315. 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. 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.<sup>668</sup>

316. Regional Cost Allocation Principle 4 specifies that the regional cost allocation methods 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. In addition, each regional transmission planning process must identify consequences for other transmission planning regions, 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.<sup>669</sup>

317. 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.<sup>670</sup>

318. 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, but there can be only one cost allocation method for each type of transmission facility.<sup>671</sup> If a transmission planning region chooses to use a different cost allocation method for different types of transmission facilities, each cost allocation method must be determined in advance for each type of

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<sup>668</sup> *Id.* P 646.

<sup>669</sup> *Id.* P 657.

<sup>670</sup> *Id.* P 668.

<sup>671</sup> *Id.* PP 685-686.

facility.<sup>672</sup> A regional cost allocation method may include voting requirements for identified beneficiaries to vote on proposed transmission facilities.<sup>673</sup>

**i. 50/50 Hybrid Cost Allocation Method**

**(a) First Compliance Order**

319. In the First Compliance Order, the Commission found that PJM Transmission Owners' proposal to allocate one-half of a Regional or Necessary Lower Voltage Facilities<sup>674</sup> 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), subject to certain modifications, meets the requirements of Order No. 1000.<sup>675</sup> The Commission found that high-voltage transmission facilities have significant regional benefits that accrue to all members of the PJM transmission system, consistent with both Commission and court precedent. Specifically, the Commission found that an advantage of the postage-stamp 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, while also accounting for changes in system use over the lifetime of a high-voltage facility.<sup>676</sup> The Commission also found that a method that blends recognition of broad, regional benefits, as captured by the postage-method, with specifically identifiable benefits over time, as captured by the Solution-Based DFAX method for Reliability

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<sup>672</sup> *Id.* P 560.

<sup>673</sup> *Id.* P 689.

<sup>674</sup> Regional or Necessary Lower Voltage Facilities are defined as Required Transmission Enhancements included in the Regional Plan that (1) are transmission facilities that (a) are single-circuit 500 kV AC facilities; (b) are double-circuit 345 kV AC facilities; (c) are AC or DC shunt reactive resources connected to a facility from (a) or (b); or (d) are DC facilities that meet the necessary criteria discussed below, or (2) are lower voltage facilities that must be constructed or reinforced to support new Regional Facilities. PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(i) (Regional Facilities and Necessary Lower Voltage Facilities (5.0.0)).

<sup>675</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 412.

<sup>676</sup> *Id.* P 414.

Projects<sup>677</sup> and the change in load energy payments analysis used for Economic Projects,<sup>678</sup> satisfies Regional Cost Allocation Principles 1 and 2.<sup>679</sup> Furthermore, the Commission found that evenly apportioning the costs of Regional Facilities between these methods reasonably recognizes the benefits provided to both the overall PJM region and specific users of Regional Facilities.<sup>680</sup>

320. The Commission also found that the proposed hybrid cost allocation method is consistent with Regional Cost Allocation Principles 3, 5, and 6.<sup>681</sup> However, with respect to Regional Cost Allocation Principle 4, the Commission found that PJM Transmission Owners do not address whether PJM will identify the consequences of such a transmission facility selected in the regional transmission plan for the purpose of cost allocation on other transmission planning regions, as required by Order No. 1000.<sup>682</sup> The Commission also found that PJM Transmission Owners did 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.<sup>683</sup> As a result, the Commission required PJM Parties to: (1) revise the OATT to provide for identification of the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation on other planning regions; and (2) address whether the PJM region has agreed to bear the costs associated

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<sup>677</sup> Reliability Projects are defined as Required Transmission Enhancements included in the Regional Plan to address reliability violations or operational adequacy and performance issues. PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(i)(A)(2)(a) (Regional Facilities and Necessary Lower Voltage Facilities) (5.0.0)

<sup>678</sup> Economic Projects are defined as Required Transmission Enhancements included in the Regional Plan to relieve economic constraints. PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(i)(A)(2)(b) (Regional Facilities and Necessary Lower Voltage Facilities) (5.0.0).

<sup>679</sup> First Compliance Order, 142 FERC ¶ 61,214 at PP 413-416.

<sup>680</sup> *Id.* P 420.

<sup>681</sup> *Id.* PP 421, 423-424.

<sup>682</sup> *Id.* P 422 (referencing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 657).

<sup>683</sup> *Id.*

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.<sup>684</sup>

321. The Commission rejected arguments that it should not permit PJM to change to a different cost allocation method once the Commission had decided that a 100 percent postage-stamp method is just and reasonable. The Commission concluded that such arguments fail to recognize that the Commission expressly anticipated that PJM might implement a different cost allocation method as part of its Order No. 1000 compliance process.<sup>685</sup> On the contrary, the Commission stated that all parties have been on notice that as part of the Order No. 1000 compliance process, PJM Parties might propose, and the Commission may accept, a different cost allocation method than that was accepted in the Order on Remand.<sup>686</sup>

(b) **Requests for Rehearing or Clarification**

(1) **Summary of Requests for Rehearing or Clarification**

322. Ohio Commission asserts that applying the postage-stamp cost allocation method to 50 percent of the costs of a high-voltage regional transmission facility is inconsistent with the Seventh Circuit's *Illinois Commerce Commission* decision.<sup>687</sup> According to Ohio Commission, the postage-stamp method allocates costs to customers who do not directly or meaningfully benefit from a new high-capacity transmission project, contrary to the ruling in *Illinois Commerce Commission 2009*. For this reason, Ohio Commission seeks rehearing of the First Compliance Order and proposes adoption of the Solution-Based DFAX method for the entirety of the costs of new high-capacity Regional Facilities.<sup>688</sup>

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<sup>684</sup> *Id.* PP 422, 426.

<sup>685</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 432 (citing *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230, at P 2 (2012) (Order on Remand)).

<sup>686</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 433.

<sup>687</sup> Ohio Commission, Request for Rehearing, Docket Nos. ER13-198-001, ER13-195-001, ER13-90-001, at 4-5 (filed Apr. 17, 2013) (Ohio Commission Request for Rehearing) (citing *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470 (7th Cir. 2009) (*Illinois Commerce Commission 2009*)).

<sup>688</sup> Ohio Commission Request for Rehearing at 5.

323. Ohio Commission argues that the Commission failed to quantify the benefits that are allocated through the postage-stamp method. It asserts that, in the First Compliance Order, the Commission stated that “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,” and then cited cases to support that position.<sup>689</sup> Ohio Commission asserts that the cases cited by the Commission are not on point, since they predate both *Illinois Commerce Commission 2009* and much of the growth in PJM to its current size and diversity.<sup>690</sup> Ohio Commission states that, rather than demonstrating tangible benefits, the Commission stated that the postage-stamp method captures “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.”<sup>691</sup> According to Ohio Commission, however, these are general benefits of RTO membership, not specific benefits provided by a particular transmission project.<sup>692</sup>

324. In addition, Ohio Commission states that the Commission acknowledged that, due to the convergence of locational marginal prices (LMP) as a result of new high-voltage transmission facilities, Ohio customers will in essence pay twice (once for the new transmission facility that does not benefit them, and then for the resulting higher LMPs), but then summarily dismissed this point by referring to unquantifiable, broad, regional benefits as the justification for approving PJM’s postage-stamp method. Ohio Commission therefore asserts that the Commission’s decision to apply the postage-stamp method to a portion of the costs of Regional Facilities results in an unjustifiable cost shift and subsidy that is unjust and unreasonable, and should be reversed.<sup>693</sup>

325. Ohio Commission urges the Commission to adopt the Solution-Based DFAX method for the costs associated with all new transmission projects, including Regional

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<sup>689</sup> *Id.* at 5-6 (quoting First Compliance Order, 142 FERC ¶ 61,214 at P 414).

<sup>690</sup> Ohio Commission Request for Rehearing at 6 (“FERC provides no quantifiable analysis to demonstrate how a Regional Facility built in eastern PJM . . . will have any benefit to those customers located in western PJM [potentially 781 miles away].”).

<sup>691</sup> Ohio Commission Request for Rehearing at 7 (citing Compliance Order, 142 FERC ¶ 61,214 at P 414).

<sup>692</sup> *Id.* (quoting First Compliance Order, 142 FERC ¶ 61,214 at P 444).

<sup>693</sup> *Id.*

Facilities.<sup>694</sup> Ohio Commission notes that the Commission stated that the postage-stamp method accounts for “changes in system use over the lifetime of a high-voltage facility” and that “users who might benefit in the future as usage of the project changes over time” are accounted for through the postage-stamp method.<sup>695</sup> However, Ohio Commission asserts that the Commission also stated that the Solution-Based DFAX method has those same attributes.<sup>696</sup> Ohio Commission considers these two positions inconsistent, and states that the Solution-Based DFAX method would calculate the use of a new transmission facility by load in each zone and be updated annually to account for changes in use due to modification of the grid, whereas the postage-stamp method does not identify any specific benefits.<sup>697</sup>

## (2) Commission Determination

326. We deny Ohio Commission’s request for rehearing and continue to find that 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) meets the requirements of Order No. 1000. By recognizing the benefits provided to both the overall PJM region and specific users of Regional Facilities, PJM Transmission Owners’ hybrid cost allocation method ensures that costs are allocated in a manner that is roughly commensurate with benefits received and that costs are not allocated to entities with trivial or no benefits, as required by Cost Allocation Principles 1 and 2.

327. We disagree with Ohio Commission’s general assertion that allocating one-half of a Regional or Necessary Lower Voltage Facility’s costs through the use of a postage-stamp cost allocation method is incompatible with the ruling in *Illinois Commerce Commission 2009*,<sup>698</sup> as well as its assertion that the Commission failed to quantify the benefits of the high-voltage facilities whose costs are partially allocated via a postage stamp method. As noted in the First Compliance Order, in finding that “transmission system enhancements benefit all members of an integrated transmission system,” the

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<sup>694</sup> *Id.* at 8-9.

<sup>695</sup> *Id.* at 8 (quoting First Compliance Order, 142 FERC ¶ 61,214 at PP 414, 420).

<sup>696</sup> *Id.* (citing First Compliance Order, 142 FERC ¶ 61,214 at PP 413, 427).

<sup>697</sup> *Id.* at 9 (citing First Compliance Order, 142 FERC ¶ 61,214 at P 348).

<sup>698</sup> *See Illinois Commerce Commission 2009*, 576 F.3d 470 (7th Cir. 2009).

Commission relied on submissions by PJM Transmission Owners stating that “this method . . . captures the full spectrum of benefits associated with high-voltage facilities, including . . . improved reliability, reduced congestion, reduced power losses, greater carrying capacity, reduced operating reserve requirements, and improved access to generation . . . [and] accounts for changes in system use over the lifetime of a high-voltage facility.”<sup>699</sup> We continue to find that these benefits support PJM Transmission Owners’ proposal to allocate one-half of the costs for high-voltage facilities through the use of a postage stamp method.

328. Ohio Commission’s assertions regarding the use of a postage-stamp cost allocation are also inconsistent with the Seventh Circuit’s more recent decision on MISO’s multi-value project (MVP) cost allocation method.<sup>700</sup> In its decision, the Seventh Circuit made clear that, in allocating costs on the basis of benefits, the Commission is not required to rely on exact calculations when such exactitude is unavailable.<sup>701</sup> In approving a postage-stamp cost allocation method for MVPs, the Seventh Circuit pointed to the eligibility criteria for MVPs that, by definition, ensured that MVPs would provide benefits to the region (i.e., MVPs must consist of high-voltage transmission lines and assist MISO members to meet state renewable energy requirements, fix reliability problems, or provide economic benefits in multiple pricing zones).<sup>702</sup> But at the same time, the court acknowledged that “[n]one of these eligibility criteria ensures that every utility in MISO’s vast region will benefit from every MVP project, let alone in exact proportion to its share of the MVP tariff.”<sup>703</sup> As the court stated, it was insufficient for a challenger to argue that “MISO’s and FERC’s attempt to match the costs and the benefits of the MVP program is crude; if crude is all that is possible, it will have to suffice.”<sup>704</sup>

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<sup>699</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 414, 414 n.718 (*citing* PJM Transmission Owners October 11, 2012 Compliance Filing, Docket No. ER13-90-000, Ex. PTO-2, at 13 (Joint Testimony of Michelle Henry and Frank Richardson)).

<sup>700</sup> *Ill. Commerce Comm’n v. FERC*, 721 F.3d 764 (7th Cir. 2013), *cert. denied sub nom. Schuette v. FERC*, 82 U.S.L.W. 3240 (U.S. Feb. 24, 2014) (No. 13-443), & *Hoosier Rural Energy Coop. Inc. v. FERC*, 82 U.S.L.W. 3240 (U.S. Feb. 24, 2014) (No. 13-445) (*Illinois Commerce Commission 2013*).

<sup>701</sup> *Illinois Commerce Commission 2013*, 721 F.3d at 775.

<sup>702</sup> *Illinois Commerce Commission 2013*, 721 F.3d at 774.

<sup>703</sup> *Id.*

<sup>704</sup> *Id.* at 775.

329. The Regional Plan development process provides for the identification of primary and secondary benefits of transmission solutions that are proposed for selection in the regional transmission plan for purposes of cost allocation. As proposed in its October 25, 2012 Compliance Filing, after PJM's proposal period closes, PJM will post the list of proposed transmission projects on its website, and evaluate the proposed solutions based on the following criteria: (1) the extent to which a posted violation, system condition, or economic constraint is addressed; (2) whether the relative benefits (including savings from reduced production costs, load energy payments, system capacity costs, and load capacity payments) meet a benefit to 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; and (iv) the potential risk and delay associated with obtaining necessary and timely regulatory approvals.<sup>705</sup> After PJM evaluates the transmission solutions using the aforementioned criteria,<sup>706</sup> the Transmission Expansion Advisory Committee will review the proposed transmission solutions. Following review by the Transmission Expansion Advisory Committee, PJM "determine[s] which more efficient or cost-effective enhancements and expansions shall be included in the recommended plan. . . . [and submits] the recommended plan to the PJM Board for approval."<sup>707</sup> Thus, when a project is selected for purposes of cost

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<sup>705</sup> PJM October 25, 2012 Compliance Filing at 68; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8(e) (Criteria for Considering Inclusion of a Project in the Recommended Plan) (3.0.0). In the First Compliance Order, the Commission found that PJM's evaluation process is generally consistent with the requirements of Order No. 1000. The Commission required PJM, among other things, to provide additional detail in its OATT regarding the other factors described in criterion 4 and to explain the circumstances, if any, under which a proposed transmission solution's cost-effectiveness would not be applicable in PJM's evaluation. PJM First Compliance Order, 142 FERC ¶ 61,214 at PP 312-313.

<sup>706</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 301.

<sup>707</sup> PJM October 25, 2012 Compliance Filing at 67-68; *see also* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§ 1.5.6(a) ("The Office of the Interconnection shall be responsible for the development of the [Regional Plan] . . . through an open and collaborative process with opportunity for meaningful participation through the [Transmission Expansion Advisory Committee] and the Subregional RTEP Committee"), 1.5.6(e) ("[T]he Office of the Interconnection shall prepare a recommended enhancement and expansion plan . . . for review by the [Transmission Expansion Advisory Committee]. Following review by the [Transmission Expansion Advisory

(continued...)

allocation in the PJM regional transmission planning process, that selection is a recognition that the project provides regional benefits. Therefore, it is appropriate to allocate the costs of that project on a broad regional basis, as discussed by the court in *Illinois Commerce Commission 2013* with regard to the MISO MVP process. PJM's 50/50 hybrid regional cost allocation method accomplishes this purpose.<sup>708</sup>

330. We disagree with Ohio Commission that convergence of LMPs results in an unjustifiable cost shift pursuant to the application of a postage-stamp cost allocation method. As we discuss above, it is reasonable to consider broad, difficult to quantify regional benefits when allocating the costs of a transmission project that provides benefits to load throughout a region. The fact that LMPs converge signals that the grid is reliable and robust and that regional benefits will accrue to the market as a whole.<sup>709</sup> Thus, converging LMPs do not prevent parties from receiving the broad, regional benefits associated with high-voltage transmission facilities. We therefore reaffirm that the use of a hybrid cost allocation method appropriately allocates to customers a share of the costs of new transmission facilities that is roughly commensurate with benefits received in addition to potential constraint relief.<sup>710</sup>

(c) **Compliance**

(1) **Summary of PJM Parties' Compliance Filing(s)**

331. With respect to the Commission's compliance requirement in the First Compliance Order regarding Regional Cost Allocation Principle 4,<sup>711</sup> PJM Transmission Owners

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Committee], the Office of the Interconnection shall determine, which enhancements and expansions . . . shall be included in the recommended plan. . . . The Office of the Interconnection also shall invite interested parties to submit comments on the plan to the [Transmission Expansion Advisory Committee] and to the Office of the Interconnection before submitting the recommended plan to the PJM Board for approval.”).

<sup>708</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 414.

<sup>709</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 415.

<sup>710</sup> *Id.* P 420 (“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.”).

<sup>711</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 422.

explain that at the time of the PJM Transmission Owners October 11, 2012 Compliance Filing, the only agreement in place under which PJM had agreed to share costs of an upgrade located in another region was the Joint Operating Agreement between Midcontinent Independent System Operator, Inc. (MISO) and PJM (PJM-MISO Joint Operating Agreement). PJM Transmission Owners explain that Schedule 12 of the OATT already contains language addressing the cost allocation of transmission projects constructed pursuant to the PJM-MISO Joint Operating Agreement. Specifically, PJM Transmission Owners state that for transmission projects constructed in PJM, such projects are treated as Required Transmission Enhancements as if they had been developed under the Regional Plan, and MISO is considered a Responsible Customer<sup>712</sup> to be allocated an appropriate share of the costs of those projects in accordance with the cost allocation principles of Schedule 12. Further, PJM Transmission Owners state the costs assigned to MISO are borne among MISO customers in accordance with the cost allocation rules in effect in MISO.<sup>713</sup> Conversely, PJM Transmission Owners assert, costs assigned to PJM under the PJM-MISO Joint Operating Agreement for projects constructed in MISO are allocated among PJM Responsible Customers in accordance with the principles of Schedule 12, collected by PJM through Transmission Enhancement Charges,<sup>714</sup> and remitted to MISO to be distributed to appropriate entities in accordance with MISO's rules and agreements.<sup>715</sup> PJM Transmission Owners state that the PJM Transmission Owners October 11, 2012 Compliance Filing did not change this treatment of PJM-MISO Joint Operating Agreement transmission projects, although they would have been affected by other changes in that filing generally applicable to Regional Plan projects.<sup>716</sup>

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<sup>712</sup> Responsible Customers are defined as transmission service customers and Merchant Transmission Facility owners that will be subject to Transmission Enhancement Charges. *See* PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(viii) (FERC Filing) (5.0.0).

<sup>713</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 10.

<sup>714</sup> Transmission Enhancement Charges are charges established by Transmission Owners to recover the costs of Required Transmission Enhancements. *See* PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (a)(i) (Establishment of Transmission Enhancement Charges by Transmission Owners and Entities That Will Become Transmission Owners) (5.0.0).

<sup>715</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 10.

<sup>716</sup> *Id.*

332. PJM Transmission Owners propose a new Schedule 12-Appendix B in which each of the agreements between PJM and another region, as submitted in the July 10, 2013 compliance filings regarding interregional transmission planning, are listed and future agreements which result in interregional cost allocation will be listed (Appendix B Agreements). Additionally, PJM Transmission Owners propose to revise the definition of “Required Transmission Enhancements” in the OATT to include projects constructed in other regions pursuant to Appendix B Agreements.<sup>717</sup> PJM Transmission Owners state that transmission projects developed pursuant to the Appendix B Agreements are considered Required Transmission Enhancements under the Regional Plan for purposes of Schedule 12, consistent with the allocation of costs of transmission projects constructed pursuant to the PJM-MISO Joint Operating Agreement.<sup>718</sup> PJM Transmission Owners propose revisions to section (b)(ix) of Schedule 12 to clarify that, for costs allocated to regions other than PJM, customers in the other regions shall be considered the Responsible Customers.<sup>719</sup> PJM Transmission Owners also propose revisions to section (d)(2) of Schedule 12 to apply the current provision for crediting revenue to MISO for interregional projects, to all regions with Appendix B Agreements.<sup>720</sup>

333. In addition, PJM Transmission Owners propose to revise Schedule 12 to state that: (1) the revenue requirement with respect to a Required Transmission Enhancement constructed pursuant to an Appendix B Agreement in another region will be governed by the tariffs and agreements in effect in such region, and (2) charges to recover the costs of such Required Transmission Enhancements for which PJM is responsible will be determined in accordance with Schedule 12.<sup>721</sup> PJM Transmission Owners further

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<sup>717</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 11; *see also* PJM, Intra-PJM Tariffs, OATT, Definitions (R-S), § 1.38C (Required Transmission Enhancement) (4.1.0).

<sup>718</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 11-12.

<sup>719</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(ix) (Regions With Which PJM Has Entered Into an Agreement Listed in Schedule 12-Appendix B) (5.1.0).

<sup>720</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (d)(2) (Recovery of Transmission Enhancement Charges) (5.1.0).

<sup>721</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 11-12; *see also* PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (a)(ii) (Establishment of Transmission Enhancement Charges With Respect to Required Transmission Enhancements Constructed by Entities in Another Region) (5.1.0).

propose to revise Schedule 12 to provide that, other than with respect to a Required Transmission Enhancement constructed pursuant to an Appendix B Agreement, PJM will not bear responsibility for the costs of required transmission upgrades constructed in another region as a consequence of a Required Transmission Enhancement selected in the Regional Plan.<sup>722</sup> PJM Transmission Owners state that this revision is in accordance with Regional Cost Allocation Principle 4.<sup>723</sup> Finally, PJM Transmission Owners propose to revise Schedule 12 to remove language limiting Required Transmission Enhancements to facilities that meet the definition of “Transmission Facilities” under Section 1.27 of the Transmission Owners Agreement. This revision was made to eliminate the requirement that transmission facilities must be “within the PJM Region” and “integrated with the Transmission System of the PJM Region” and to keep the definition consistent with an Appendix B Agreement.<sup>724</sup>

334. PJM states that its agreements with the New York Independent System Operator, Inc. (NYISO) and MISO, together with the proposed tariff language the Southeastern Regional Transmission Planning (SERTP) Transmission Providers<sup>725</sup> submitted with its Order No. 1000 interregional compliance filings: (1) provide a process through which PJM will identify potential consequences of a Regional Plan transmission facility on another transmission planning region, and (2) address whether PJM has agreed to pay for costs for required upgrades in another transmission planning region.<sup>726</sup> With regard to NYISO, PJM states that the NYISO-PJM Joint Operating Agreement provides for the coordination of transmission planning studies regarding reliability transmission projects located solely within one region, and requires that PJM and NYISO will coordinate to share their respective regional baseline reliability analyses at the same time they share it

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<sup>722</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 11; *see also* PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (a)(ii) (Establishment of Transmission Enhancement Charges With Respect to Required Transmission Enhancements Constructed by Entities in Another Region) (5.1.0).

<sup>723</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 11.

<sup>724</sup> *Id.* at 12 n.42; *see also* PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(i) (Regional Facilities and Necessary Lower Voltage Facilities) (5.1.0).

<sup>725</sup> The SERTP Transmission Providers are: Duke Energy Carolinas, LLC and Duke Energy Progress, Inc.; Kentucky Utilities Company and Louisville Gas and Electric Company; Ohio Valley Electric Corporation, including its wholly owned subsidiary Indiana-Kentucky Electric Corporation; and Southern Company Services, Inc.

<sup>726</sup> PJM July 22, 2013 Compliance Filing at 51-52.

with their stakeholders. Each RTO is responsible for identifying potential negative impacts to the reliability of its system based on analysis provided by its neighboring region, and the two regions will discuss and coordinate special studies required by such impacts (including sharing necessary technical information and coordinating the timing and conduct of such studies). Each region will be responsible for its own study costs as well as costs of addressing the impacts on each other's respective system.<sup>727</sup> With regard to MISO, PJM states that while the PJM-MISO Joint Operating Agreement provides for allocation of costs of network upgrades associated with impacts on its neighboring region due to generation or merchant transmission interconnections or long-term firm delivery service requests, the PJM-MISO Joint Operating Agreement does not provide for cost allocation for upgrades that may be required on a neighboring region's system due to impacts as a result of a Regional Plan upgrade.<sup>728</sup> PJM further states that Schedule 6-A of the PJM Operating Agreement, as it proposed in Docket No. ER13-1936-000, provides that, at least annually, PJM and the SERTP Transmission Providers will share power flow models and data used in their respective regional transmission planning processes to jointly evaluate each other's systems. With regard to an allocation of costs for upgrades that may be required on a neighboring region's system due to impacts as a result of a Regional Plan upgrade, Schedule 6-A does not provide for any allocation of costs for upgrades to a neighboring transmission provider's system in SERTP.<sup>729</sup>

## (2) Commission Determination

335. We find that PJM Parties have complied with the Commission's directives in the First Compliance Order. PJM Parties have provided sufficient explanation regarding how agreements with neighboring transmission planning regions will allow for the identification of impacts of Required Transmission Enhancements on other transmission planning regions. PJM Parties have further explained that PJM has not agreed to bear the costs of required upgrades in other transmission planning regions, with the exception of certain transmission facilities subject to interregional coordination agreements between

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<sup>727</sup> *Id.* at 53 (citing PJM, Interregional Agreements, NYISO-PJM Joint Operating Agreement (NYISO-PJM Joint Operating Agreement). § 35.10.7.1, .2, .3(a)-(d)). PJM further states that it and NYISO submitted mutually-agreed-to changes to the NYISO/PJM Joint Operating Agreement to add these requirements as part of their respective Order No. 1000 interregional compliance filings. *Id.*

<sup>728</sup> *Id.* at 52.

<sup>729</sup> *Id.* at 54.

PJM and neighboring transmission planning regions.<sup>730</sup> For such transmission facilities, allocating the costs in a manner similar to Required Transmission Enhancements, as proposed by PJM Transmission Owners, is consistent with Order No. 1000.<sup>731</sup>

ii. **Use of Solution-Based versus Violation-Based DFAX Cost Allocation Method**

(a) **First Compliance Order**

336. In the First Compliance Order, the Commission accepted PJM Transmission Owners' proposed Solution-Based DFAX method, noting that it is an improvement over the Violation-Based DFAX method, particularly when applied to high-voltage transmission facilities.<sup>732</sup> The Commission stated that since the Solution-Based DFAX method considers usage of a new transmission facility rather than impact on a constraint, the Solution-Based DFAX method, in contrast to the Violation-Based DFAX method, may reasonably be applied to a transmission facility that resolves multiple violations and may be conducted iteratively to account for changes in system topology.<sup>733</sup>

337. However, the Commission found that the proposed Schedule 12 provided no detail regarding how DFAX values and usage of transmission facilities will be utilized to calculate assignments of cost responsibility. Further, the Commission found that for the proposed revisions to Schedule 12 to be just and reasonable, revised Schedule 12 must contain a provision similar to that included in the version of Schedule 12 it superseded, which detailed how a zone's or merchant transmission facility's usage was used to derive assignments under the Violation-Based DFAX method.<sup>734</sup> The Commission therefore

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<sup>730</sup> PJM, Interregional Agreements, Joint Operating Agreement between the Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C. (MISO-PJM Joint Operating Agreement); NYISO-PJM Joint Operating Agreement, § 35.10.7.1, .2, .3(a)–(d).

<sup>731</sup> Consideration of other aspects of interregional coordination is outside the scope of this proceeding.

<sup>732</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 427.

<sup>733</sup> *Id.*

<sup>734</sup> *Id.* P 428.

directed PJM Parties to submit revised OATT provisions explaining how the Solution-Based DFAX method is used to calculate assignments of cost responsibility.<sup>735</sup>

**(b) Summary of PJM Parties' Compliance Filing(s)**

338. PJM Transmission Owners propose to revise proposed subsection (b)(iii)(B) of Schedule 12 to provide additional detail describing the steps PJM uses to allocate the costs of a transmission project under the Solution-Based DFAX method.<sup>736</sup> PJM Transmission Owners also propose to reorganize subsections (b)(iii)(A) through (D) of Schedule 12 as new subsections (b)(iii)(A) and (B) to clarify the description of the DFAX method and remove duplication.<sup>737</sup> Specifically, PJM Transmission Owners explain that new subsection (A) describes various factors and modeling practices that are to be employed in performing the Solution-based DFAX analysis, while new subsection (B) describes the sequential steps of conducting the Solution-based DFAX analysis to allocate the costs of the proposed projects.<sup>738</sup>

339. Additionally, PJM Transmission Owners propose to use a new term “Responsible Zone” for the purposes of subsection (b)(iii) of Schedule 12, which PJM Transmission Owners explain will, except in instances where it is important to distinguish between Zones<sup>739</sup> and Merchant Transmission Facilities,<sup>740</sup> replace the term “Zone and[/or] Merchant Transmission Facility” to make the section easier to follow.<sup>741</sup>

340. PJM Transmission Owners proposed to delete old subsection (b)(iii)(A)(2), which states that distribution factors are determined based on the aggregate load within a Zone or, in the case of a Merchant Transmission Facility, the point of withdrawal associated

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<sup>735</sup> *Id.*

<sup>736</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 12.

<sup>737</sup> *Id.*

<sup>738</sup> *Id.* at 12-13.

<sup>739</sup> Zones are defined as areas within PJM, as defined in Attachment J of the PJM OATT.

<sup>740</sup> *See supra* note 568 for a definition of Merchant Transmission Facilities.

<sup>741</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 13.

with Firm Transmission Withdrawal Rights over such Merchant Transmission Facility, arguing that it is duplicated entirely by subsection (b)(iii)(A)(3).<sup>742</sup> PJM Transmission Owners state that subsections (A)(4) and (A)(5) were formerly subsections (C) and (D), respectively, and were moved since both subsections set forth criteria and/or factors in performing the Solution-based DFAX analysis. Specifically, PJM Transmission Owners state that new subsection (b)(iii)(A) also: (1) establishes how the term, “zonal peak load,” which is used in the Solution-Based DFAX calculation in subsection (B) will be applied with respect to existing Merchant Transmission Facilities or those not yet in service; (2) sets criteria and/or factors in performing the Solution-based DFAX analysis; and (3) establishes the distribution factor threshold of 0.01 for DFAX cost assignment purposes.<sup>743</sup>

341. PJM Transmission Owners state that proposed subsection (b)(iii)(B) describes how PJM will apply the Solution-based DFAX method to allocate the costs of a particular transmission project. PJM Transmission Owners explain that steps 1, 4, and 5 were found in the former subsection (b)(iii)(B), but steps 2 and 3 are new and provide additional detail to comply with the First Compliance Order.<sup>744</sup> PJM Transmission Owners state that, as described by witness Steven R. Herling, under step 1, PJM calculates distribution factors in each direction of use of the relevant Required Transmission Enhancement and establishes the use by each Responsible Zone by multiplying that Responsible Zone’s distribution factor by that Responsible Zone’s peak load. Additionally, PJM Transmission Owners state that under step 2, the relative use by

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<sup>742</sup> *Id.* Former subsection (b)(iii)(A)(3), renumbered as current subsection (b)(iii)(A)(2), provides:

The calculation of distribution factors shall be determined using linear matrix algebra, such that distribution factors represent the ratio of (i) a change in megawatt flow on a Required Transmission Enhancement to (ii) a change in megawatts transferred to aggregate load within a Zone or, in the case of a Merchant Transmission Facility, the point of withdrawal associated with Firm Transmission Withdrawal Rights over such Merchant Transmission Facility.

PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(iii)(A)(2) (DFAX Analysis for Reliability Projects) (5.1.0).

<sup>743</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 13.

<sup>744</sup> *Id.*

each Responsible Zone for each direction of use is determined by comparing each Responsible Zone's use to the total use in the same direction as the Responsible Zone. Further, PJM Transmission Owners state that under step 3, the relative use of the Required Transmission Enhancement in each direction is determined using a production cost model to determine the total use of the Required Transmission Enhancement in each direction of use over the course of the year, and then reducing total directional use to a percentage use in each direction. PJM Transmission Owners state that under step 4, the relative use in each direction determined in step 2 is multiplied by the percentage use in each direction of the Required Transmission Enhancement determined in step 3. Finally, PJM Transmission Owners state that under step 5, the results of the calculation in step 4 determine the relative cost responsibility of each Responsible Zone for the Required Transmission Enhancement.<sup>745</sup>

(c) **Commission Determination**

342. We find that PJM Transmission Owners' proposed revisions comply with the Commission's directives in the First Compliance Order. The additional language makes clear how the distribution factors are used to calculate cost responsibility consistent with PJM Transmission Owners' prior explanation through witness testimony.<sup>746</sup> We further find the reorganization of the relevant sections to be within the scope of the compliance directive, and just and reasonable.

iii. **Voltage and Other Requirements for Regional Cost Allocation**

(a) **First Compliance Order**

343. In the First Compliance Order, the Commission found that there is substantial evidence in the PJM Transmission Owners October 11, 2012 Compliance Filing and

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<sup>745</sup> *Id.* at 13-14; PJM Transmission Owners, Filing, Docket No. ER13-90-000, Ex. PTO-1 (Declaration of Steven R. Herling), at 5, 9 (filed Oct. 11, 2012) (PJM Transmission Owners October 11, 2012 Compliance Filing); *see also* PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(iii)(B) (DFAX Analysis for Reliability Projects) (5.1.0).

<sup>746</sup> PJM Transmission Owners October 11, 2012 Compliance Filing, Herling Declaration at 11.

previous filings to demonstrate the comparable capabilities and purposes of double-circuit 345 kV transmission facilities and 500 kV transmission facilities.<sup>747</sup>

344. However, the Commission found that the PJM Transmission Owners October 11, 2012 Compliance Filing may discriminate against direct current (DC) transmission facilities for the purpose of qualification as Regional Facilities.<sup>748</sup> The Commission found that the criteria that PJM Transmission Owners proposed to use to determine whether a DC or alternating current (AC) transmission facility qualifies as a Regional Facility do not ensure comparable treatment of AC and DC transmission facilities.<sup>749</sup> Accordingly, the Commission required PJM Parties to establish criteria for qualification as a Regional Facility that consider DC and AC transmission facilities in a comparable manner.<sup>750</sup>

**(b) Summary of PJM Parties' Compliance Filing(s)**

345. In their July 22, 2013 Compliance Filing, PJM Transmission Owners propose revised criteria that, they assert, classify DC facilities, like AC facilities, as Regional Facilities based on the voltage of the Required Transmission Enhancement. Specifically, PJM Transmission Owners state that they propose to establish minimum voltage thresholds for DC transmission facilities to qualify as Regional Facilities.<sup>751</sup> PJM Transmission Owners state that their proposed minimum voltage thresholds for DC Required Transmission Enhancements to qualify as Regional Facilities: (1) distinguish between projects that constitute a single circuit (defined for DC facilities as both conductors of a bipole facility, as well as any AC/DC converter terminal) and those that comprise two circuits, similar to the criteria for AC Required Transmission Enhancements; and (2) are equivalent, from the standpoint of power-carrying capability, to the corresponding voltage thresholds for AC Required Transmission Enhancements.<sup>752</sup>

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<sup>747</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 435.

<sup>748</sup> *Id.* P 439.

<sup>749</sup> *Id.*

<sup>750</sup> *Id.* PP 439-440.

<sup>751</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 14.

<sup>752</sup> *Id.*

346. PJM Transmission Owners state that they used basic, long-recognized electric engineering principles to determine the voltage levels at which DC transmission facilities would provide the same power transfer capacity that AC transmission facilities would provide at the minimum voltage criteria for those facilities (i.e., 500 kV for single-circuit transmission facilities and 345 kV for double-circuit transmission facilities). PJM Transmission Owners explain that, in making this determination, they considered that the voltage threshold for AC facilities are stated in terms of the voltage between the three conductors or phases that make up three-phase AC facilities, while the voltage of bipole DC facilities is stated as the phase-to-neutral voltage of each of the two conductors or poles that make up the DC facility. PJM Transmission Owners assert that using this method yields the following proposed minimum criteria: (1) single circuit DC transmission facilities will qualify as Regional Facilities if they consist of two poles and operate at a voltage of  $\pm 433$  kV DC or above; and (2) double-circuit DC transmission facilities will qualify as Regional Facilities if both circuits originate and terminate at the same substations or switching stations and each circuit consists of two poles and operates at a voltage of  $\pm 298$  kV DC or above.<sup>753</sup> Accordingly, PJM Transmission Owners propose using these thresholds as the minimum criteria for the designation of DC Required Transmission Enhancements as Regional Facilities.<sup>754</sup> PJM Transmission Owners assert that the revised criteria considers DC and AC facilities in a comparable manner and, by using bright-line voltage-based cutoffs for qualification as a Regional Facility, the proposed criteria satisfy Order No. 1000's requirement that cost allocation be established according to *ex ante* criteria and not depend on case-by-case evaluations.<sup>755</sup> In addition, PJM Transmission Owners propose to apply the same cost allocation principles for double-circuit 345 kV AC transmission facilities to double-circuit DC transmission facilities.

(c) **Protests/Comments**

347. Atlantic Grid argues that PJM Transmission Owners' eligibility criteria are based on a single comparative metric that assumes that the thermal capacity of a line is the sole determinant of the regional benefits provided by the line. Atlantic Grid states that Order No. 890-A recognized that treating different technologies the same may not be

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<sup>753</sup> *Id.* at 15; *see also* PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(i)(D) (Regional Facilities and Necessary Lower Voltage Facilities) (5.1.0).

<sup>754</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 15.

<sup>755</sup> *Id.* at 15-16.

appropriate in all circumstances.<sup>756</sup> Atlantic Grid states that by using this single metric, PJM Transmission Owners ignore differences that allow high-voltage DC (HVDC) lines to provide equivalent or superior grid benefits at lower nominal carrying capacities. Atlantic Grid asserts that a simple voltage translation from AC to HVDC fails to consider the various operational and economic benefits of HVDC lines, and fails to treat HVDC and AC lines comparably in terms of eligibility for regional cost allocation.<sup>757</sup>

348. Atlantic Grid states that, while the Order on Remand identified a variety of factors in addition to carrying capacity to evaluate whether a particular transmission facility provides region-wide benefits, PJM Transmission Owners' proposal does not compare AC or HVDC lines against any of these factors. Atlantic Grid submits that carrying capacity and voltage are meaningful under Commission precedent only to the extent that AC voltage can be translated into qualitative grid-wide benefits, and are irrelevant if an HVDC line below the equivalent voltage threshold is a suitable substitute for a 500 kV AC facility, as determined by PJM in the case of the Mid-Atlantic Power Pathway (MAPP).<sup>758</sup>

349. In addition, Atlantic Grid asserts that PJM Transmission Owners' eligibility criteria are based on a distorted snapshot of actual system performance. As explained by Atlantic Grid and its witness Canhelas, the "surge impedance loading" (SIL) rating of a line, which signifies the load-carrying capability of the line under normal operating conditions, may limit the load-carrying capability of an AC line when it is below its maximum thermal rating, due to grid operator concerns regarding reactive power and line control. In contrast, Atlantic Grid states that HVDC lines follow different principles, and can operate closer to their maximum thermal rating.<sup>759</sup> Furthermore, Atlantic Grid argues that HVDC lines provide different grid benefits from those expected under a simple voltage translation. Examples of these benefits, according to Atlantic Grid, include: not contributing to existing AC short circuit problems, being able to reverse power flows on

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<sup>756</sup> Atlantic Grid Protest, Docket No. ER13-90-002 at 9 nn.20-21 (citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at PP 215-216) (filed Aug. 21, 2013) (Atlantic Grid Protest)

<sup>757</sup> *Id.* at 10-11.

<sup>758</sup> *Id.* at 11 (citing Order on Remand, 138 FERC ¶ 61,230 at PP 59-60, 64, 77, 86, 88-89, 91-98, 112, 117).

<sup>759</sup> Atlantic Grid Protest, Ex. AWC-4 at 4-5.

short notice, immunity from cascading power outages, and ability to provide black-start and enhanced load restoration capability.<sup>760</sup>

350. Specifically with regard to its proposed New Jersey Energy Link,<sup>761</sup> Atlantic Grid submits the results of a power flow study performed by Siemens PTI allegedly showing wide-spread beneficial grid impacts. Atlantic Grid states that the New Jersey Energy Link will relieve overloads in northern New Jersey, mitigate overloads caused by contingencies, and relieve transmission corridors used to deliver power to New York City – a benefit Atlantic Grid argues will be of greater importance given expected generation retirements in New York. Atlantic Grid further states that sensitivity analysis showed that the New Jersey Energy Link will relieve loading of transmission lines in a widespread area, including 500 kV lines in Pennsylvania, Maryland, and New Jersey, and other lines in western Pennsylvania.<sup>762</sup>

351. Atlantic Grid argues that PJM Transmission Owners' criteria do not recognize the above benefits, but instead would bar HVDC lines such as those that Atlantic Grid is developing from regional cost allocation. Atlantic Grid notes that this is contrary to PJM's integration of HVDC technology into the MAPP project, as well as international practices. Atlantic Grid argues that excluding HVDC facilities using a voltage conversion test that ignores other performance characteristics is inconsistent with the Commission's comparability test, and is therefore unjust and unreasonable and unduly discriminatory.<sup>763</sup>

352. Atlantic Grid also argues that PJM Transmission Owners' proposal will result in fewer HVDC projects being built because the costs of such projects cannot be fairly allocated to all project beneficiaries. Atlantic Grid also asserts that if customers benefit from HVDC projects who do not bear the costs of such projects, such free ridership will undercut the Commission's goal in Order No. 1000 that costs allocated to customers be at least "roughly commensurate" with the benefits they receive.<sup>764</sup>

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<sup>760</sup> Atlantic Grid Protest at 12-13.

<sup>761</sup> The New Jersey Energy Link is a  $\pm$  320 kV HVDC line between the Cardiff substation in southern New Jersey and the Hudson substation in northern New Jersey. *See* Atlantic Grid Protest at 13.

<sup>762</sup> Atlantic Grid Protest at 13-14.

<sup>763</sup> *Id.* at 14.

<sup>764</sup> *Id.* at 14-15.

353. Atlantic Grid states that the differences in performance characteristics between HVDC technology and AC lines may raise technical issues well suited for resolution through a technical conference. Atlantic Grid therefore suggests that the Commission reject PJM Transmission Owners' proposal and convene a technical conference, followed by additional briefings.<sup>765</sup>

354. Atlantic Grid also argues that PJM Transmission Owners have usurped PJM's sole authority to "be responsible for planning, and for directing or arranging, as necessary, transmission expansions, additions, and upgrades that will enable it to provide efficient, reliable and nondiscriminatory transmission service. . . ."<sup>766</sup>

(d) **Answers**

355. In response to Atlantic Grid's protest, PJM Transmission Owners state that Atlantic Grid has not shown that the criteria proposed in their July 22, 2013 Compliance Filing fails to afford comparable treatment to DC Regional Facilities, or that it is an unreasonable basis on which to determine when such facilities provide sufficient region-wide benefits to be eligible for regional cost allocation.<sup>767</sup>

356. PJM Transmission Owners disagree with Atlantic Grid's contention that by proposing minimum voltage thresholds for a DC transmission facility to be eligible for regional cost allocation, PJM Transmission Owners have "usurped" PJM's authority to determine which transmission projects it selects in the Regional Plan because they propose to exclude  $\pm$  320 kV HVDC lines.<sup>768</sup> PJM Transmission Owners state that the eligibility of a transmission project – whether DC or AC – for selection in Regional Plan as a Required Transmission Enhancement is determined under PJM's planning process and is not based on the facility's voltage. Rather, they state, their proposed voltage criteria determine only *which* regional cost allocation method applies to a transmission project, not whether the project will be selected in the Regional Plan and have its costs allocated under PJM's OATT.<sup>769</sup>

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<sup>765</sup> *Id.* at 15.

<sup>766</sup> *Id.* at 1-2 (citing 18 C.F.R. § 35.34(k)(7)(2013)).

<sup>767</sup> PJM Transmission Owners Answer at 4-16.

<sup>768</sup> *Id.* at 4 (citing Atlantic Grid Protest at 1-2).

<sup>769</sup> *Id.* (emphasis in original).

357. PJM Transmission Owners state that under the PJM OATT and the Transmission Owners Agreement, they retain the right to submit filings with respect to regional cost allocation, without “usurping” PJM’s authority over regional transmission planning. They also state that Atlantic Grid is improperly seeking to use this issue to reargue the question of PJM Transmission Owners’ authority to make regional cost allocation filings.<sup>770</sup> PJM Transmission Owners further state that, although Atlantic Grid argues that fewer beneficial DC transmission projects will be built because the costs of such projects cannot be allocated to all project beneficiaries, in fact, cost allocation is not a factor that PJM considers in identifying Required Transmission Enhancements.<sup>771</sup>

358. PJM Transmission Owners further disagree with Atlantic Grid’s argument that they are changing PJM’s existing practice for the cost allocation of DC facilities.<sup>772</sup> They state that the PJM OATT did not contain separate criteria for applying its cost allocation methods to DC facilities before PJM Transmission Owners proposed such criteria in the October 11, 2012 Compliance Filing, and therefore there is no “existing test” for the allocation of DC facilities’ costs in the PJM OATT.<sup>773</sup> PJM Transmission Owners state that the Commission only required them to propose criteria for classification of DC facilities that provide comparable treatment to the criteria applicable to AC facilities.<sup>774</sup>

359. PJM Transmission Owners further state that Atlantic Grid’s objections to a bright-line voltage criterion for regional facilities are unfounded.<sup>775</sup> They note that Atlantic Grid contends that PJM Transmission Owners’ criteria do not treat DC lines comparably to AC lines because those criteria do not capture certain qualitative benefits of DC lines. However, PJM Transmission Owners argue, Atlantic Grid does not propose alternative criteria for DC projects to qualify for regional cost allocation, but instead argues no bright-line test is appropriate for that purpose. PJM Transmission Owners state that this is a departure from Atlantic Grid’s prior acknowledgement that a voltage-based threshold can appropriately be applied to DC facilities, and that, until now, Atlantic Grid only

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<sup>770</sup> *Id.* at 5.

<sup>771</sup> *Id.* at 5-6.

<sup>772</sup> *Id.* at 6 (citing Atlantic Grid Protest at 2, 5).

<sup>773</sup> *Id.*

<sup>774</sup> *Id.* at 7.

<sup>775</sup> *Id.*

challenged what that threshold should be.<sup>776</sup> PJM Transmission Owners state that Atlantic Grid is changing its position simply because its latest proposed project might not qualify as a Regional Facility under the revised criteria.<sup>777</sup>

360. With regard to Atlantic Grid's arguments about the additional benefits provided by DC lines, PJM Transmission Owners acknowledge that AC and DC lines have different characteristics and benefits, but state that these differences do not exclusively favor DC lines. PJM Transmission Owners cite to the declaration of their witness, Steven Naumann, as to the relative usefulness of AC and DC lines in resolving transient stability problems and loading relief issues if an element trips in the network.<sup>778</sup> PJM Transmission Owners further state that Atlantic Grid's assertion that DC lines have the ability to interrupt cascading outages does not recognize that certain outages are contributed to by, or occur on, DC lines, or that protective systems built into the AC grid contributed to stopping some of those cascading outages.<sup>779</sup> PJM Transmission Owners state that not all benefits and disadvantages of the two technologies are uniform or quantifiable, and therefore, PJM Transmission Owners determined that a cost allocation method derived from those benefits that are quantifiable and are common to both technologies is a meaningful and transparent approach. They state that transmitted power is a quantifiable feature common to both AC and DC facilities, and can therefore serve as a comparable basis for classifying them for cost allocation purposes. PJM Transmission Owners further state that Atlantic Grid has not shown that this criterion fails to afford comparable treatment to DC Regional Facilities or that it is an unreasonable basis to determine when the region-wide benefits of a transmission facility are sufficient to consider them in cost allocation.<sup>780</sup>

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<sup>776</sup> *Id.* at 7-8 (citing Atlantic Grid Protest at 12-16).

<sup>777</sup> *Id.* at 8.

<sup>778</sup> *Id.* at 9 & Attachment 1 (Declaration of Steven Naumann). Mr. Naumann testifies that an AC line will provide superior performance to resolve a transient stability problem quickly, whereas DC lines will perform better to resolve longer-term damping problems, up to a DC line's full loading level.

<sup>779</sup> *Id.* at 10.

<sup>780</sup> *Id.* at 11.

361. PJM Transmission Owners state that Atlantic Grid's new argument – that the proposal fails to take into account the SIL rating of a line – is misleading.<sup>781</sup> They state that a SIL rating for a DC facility is meaningless because whereas the load carrying capability of an AC line is a function of length, the load carrying capability of a DC line is generally independent of length; thus, it cannot serve as the basis for classification of DC facilities for cost allocation. PJM Transmission Owners state that Atlantic Grid ignores line length when it provides its “typical” line load-carrying capability comparison. Further, they state that it is not the case that grid operators seek to avoid overloading a line by operating close to the SIL rating; rather, they state, other factors affect loading such as the presence of reactive compensation, line length, and the type of line limit.<sup>782</sup> PJM Transmission Owners note that AC and DC lines would only become comparable at line lengths of around 260 miles using the line-length dependent load-carrying capability criteria, but most new transmission projects in PJM involve uninterrupted circuits significantly shorter than 260 miles. PJM Transmission Owners state that this indicates that the load-carrying capability of a 500 kV AC line (and a double-circuit 345 kV line) is significantly greater than that of a  $\pm 320$  kV DC line in most cases, including the capability of Atlantic Grid's proposed New Jersey Energy Link project, which would connect terminals that are about 120 miles apart.

362. PJM Transmission Owners also note that the use of SIL values as a criterion does not take into account the use of reactive resources and the fact that the loading of an AC line often exceeds the SIL for an overhead line but is lower than the SIL for an underground cable to avoid overheating.<sup>783</sup> They further note that recent technological improvements in AC line designs could change the line length at which DC lines become comparable to these new AC lines to lengths that are well above 400 miles.<sup>784</sup> PJM Transmission Owners therefore assert that Atlantic Grid's arguments do not establish that

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<sup>781</sup> *Id.* at 12 (citing Atlantic Grid Protest at 12). Atlantic Grid states that the SIL for a typical 500 kV AC line that may have a maximum thermal rating of 3,000 MW would be closer to just 1,000 MW, and grid operators avoid overloading an AC line by operating it close to the SIL rating because doing so requires significantly more reactive power and makes the line harder to control. Atlantic Grid states that a DC line can be operated much closer to its maximum thermal rating without adverse grid impacts, and ascribes a 1,100 MW ‘HVDC MW’ rating to a  $\pm 320$  kV DC line.

<sup>782</sup> *Id.* (citing Atlantic Grid Protest at 12-13 & Ex. AWC-4 (Affidavit of Andre P. Canelhas)).

<sup>783</sup> *Id.* at 13-14.

<sup>784</sup> *Id.* at 13-14 & Attachment 1 (Declaration of Steven Naumann) at 6-7).

the proposed voltage thresholds for DC facilities are not comparable to the corresponding criteria the Commission accepted for AC facilities. They further assert that criteria based on SIL values would not present a comparable and workable alternative to the proposed voltage-based thresholds.<sup>785</sup>

363. Finally, PJM Transmission Owners assert that Atlantic Grid's power flow analysis does not support regional cost allocation for the New Jersey Energy Link. They state that Atlantic Grid alleges that this project will provide widespread beneficial grid impacts, but based on Atlantic Grid's description, these benefits are the relief from line loadings that will primarily benefit New Jersey and parts of Maryland and Pennsylvania. PJM Transmission Owners state that Atlantic Grid also fails to recognize that the Solution-based DFAX method applicable to lower-voltage facilities and partly to Regional Facilities allocates a transmission project's costs to the zones whose customers use the facilities and receive the very types of benefits that Atlantic Grid describes; thus, because Atlantic Grid's analysis does not show significant benefits to customers in other zones, it does not render inappropriate the use of the Solution-based DFAX approach to allocate the costs of the New Jersey Energy Link if it is selected in the Regional Plan.<sup>786</sup> PJM Transmission Owners further assert that, if they had proposed classification criteria based on the specific benefits that each transmission developer claims that its transmission project has, as Atlantic Grid now suggests, such a proposal would have violated the Commission's directive in the First Compliance Order to develop criteria that treat DC facilities comparably to AC facilities, as well as Order No. 1000's requirement that regional cost allocation methods be established in advance, so that transmission developers and all affected parties can determine up front how a project's costs will be allocated.<sup>787</sup>

364. In its September 19, 2013 reply to PJM Transmission Owners' response, Atlantic Grid states that the Commission required both PJM and PJM Transmission Owners to establish criteria for a transmission facility to qualify as a Regional Facility that would treat AC and DC facilities in a comparable manner, and PJM Transmission Owners have provided no justification for excluding PJM from their filing to define new eligibility criteria.<sup>788</sup> Atlantic Grid asserts that PJM Transmission Owners have failed to show any

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<sup>785</sup> *Id.* at 14-15 (citing *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,057 (2013); *Sw. Power Pool*, 131 FERC ¶ 61,252, at P 62 (2010)).

<sup>786</sup> *Id.* at 15.

<sup>787</sup> *Id.* at 16.

<sup>788</sup> Atlantic Grid Answer, Docket No. ER13-90-002 at 1 (filed Sept. 19, 2013) (Atlantic Grid Answer, Docket No. ER13-90-002).

reason to compel PJM to change its practice, so as to exclude the kinds of HVDC facilities that PJM previously deemed to be eligible for regional cost allocation, as previously explained by PJM's witness Herling. According to Atlantic Grid, PJM Transmission Owners' failure to address this point discredits their proposal.<sup>789</sup>

365. Atlantic Grid states that PJM Transmission Owners have already acknowledged that the Commission's regulations and the PJM OATT make PJM responsible for selecting transmission projects for the Regional Plan; however, according to Atlantic Grid, PJM Transmission Owners offer no explanation for excluding PJM from any role in developing the criteria for whether HVDC lines are eligible for selection in the Regional Plan.<sup>790</sup> Atlantic Grid states that, while PJM Transmission Owners claim that their proposal does not determine which transmission projects are eligible for selection in the Regional Plan, but only which transmission projects are eligible for regional cost allocation, this is a distinction without a difference, since, as the Commission stated in Order No. 1000, "there is a fundamental link between cost allocation and planning, as it is through the planning process that benefits, which are central to cost allocation, can be assessed."<sup>791</sup> Atlantic Grid asserts that PJM Transmission Owners' filing nullifies this fundamental link, without addressing PJM's witness Herling's affidavit, in which he stated that PJM treats  $\pm 320$  kV HVDC lines as the equivalent of 500 kV AC lines for transmission planning and cost allocation purposes. Atlantic Grid contends that, if PJM did not in fact follow this practice, it would have been forced to allocate the  $\pm 320$  kV HVDC segment of the MAPP project in a manner that is not comparable to the 500 kV AC portion of that line, which would have been unduly discriminatory. Atlantic Grid states that Mr. Herling's testimony showed that PJM believed that such a result would have been inconsistent with PJM's filed OATT.<sup>792</sup>

366. Atlantic Grid states that PJM Transmission Owners' "selective" use of voltage criteria to tilt the playing field in favor of AC technologies over HVDC technologies demonstrates why the Commission correctly directed PJM to be involved in the compliance filing. It urges the Commission to consider PJM's practice of determining the comparability of AC and HVDC lines, which Atlantic Grid states is a simple conversion, so that, if PJM were to choose a  $\pm 320$  kV HVDC line in place of a 500 kV AC line, there would be no plausible argument for excluding the HVDC line from

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<sup>789</sup> *Id.*

<sup>790</sup> *Id.* at 3 (citing PJM Transmission Owners Answer at 6, 45).

<sup>791</sup> *Id.* at 4 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 558).

<sup>792</sup> *Id.* at 5.

regional cost allocation. Atlantic Grid further states that, in response to the Commission's directive, PJM Transmission Owners abandoned their prior proposal and developed a new proposal that produces the same result – i.e., disadvantaging HVDC lines. Atlantic Grid states that treating cost allocation plans separately from transmission planning “simply invites . . . gamesmanship,” and urges the Commission not to accept a cost allocation method that precludes the use of innovative transmission solutions, such as those using HVDC technology.<sup>793</sup>

367. Atlantic Grid states that PJM Transmission Owners also make new technical and factual claims about the nature of AC and HVDC lines, but those new arguments are flawed. Atlantic Grid states that PJM Transmission Owners' witness testifies that the new criteria rest on unstated material assumptions that favor AC technology, and that do not compare AC lines to HVDC lines on a technology-neutral basis – but in fact, Atlantic Grid states that witness Naumann's testimony shows that PJM Transmission Owners' test actually compares two different forms of power on AC lines—real and reactive power (provided by a different technology owned by a third party)—to only the real power capability of HVDC lines. Atlantic Grid states that PJM Transmission Owners assume optimal AC line configurations and ignore factors that can unfavorably affect AC performance. Atlantic Grid asserts that PJM Transmission Owners have therefore failed to contradict Atlantic Grid's showing that their proposed OATT will violate the Commission's comparability standard. Thus, Atlantic Grid asks the Commission to either reject PJM Transmission Owners' proposed eligibility criteria and reaffirm PJM's pre-existing method, or to convene a technical conference to address the dispute and require PJM to address this issue.<sup>794</sup>

368. Atlantic Grid states that the Commission in its First Compliance Order required PJM Transmission Owners and PJM to submit eligibility criteria for HVDC lines that treated them comparably to AC lines, and “the transmission provider's consideration of solutions should be technology neutral.”<sup>795</sup> Atlantic Grid states that PJM Transmission Owners state that their use of voltage as a quantifiable common feature treats AC and HVDC lines comparably, but that the testimony of PJM Transmission Owners' witness, Mr. Naumann, shows that this is not the case.<sup>796</sup> Atlantic Grid argues that Mr. Naumann's testimony shows that the underlying assumptions behind PJM Transmission

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<sup>793</sup> *Id.* at 9.

<sup>794</sup> *Id.* at 2.

<sup>795</sup> *Id.* at 5 (citing First Compliance Order, 142 FERC ¶ 61,214 at P 440).

<sup>796</sup> *Id.* at 6.

Owners' plan includes AC lines of optimal length, enhanced by supplemental reactive power technologies that may not be owned by the AC line owner or developer. Atlantic Grid asserts that PJM's claims that this is how PJM models their system do not justify giving developers of AC lines the benefits of third-party grid enhancements when the filing disregards PJM's Regional Plan practices concerning HVDC lines.<sup>797</sup> Furthermore, Atlantic Grid witness Canelhas states that, assuming carrying capacity is what should be measured for cost allocation purposes, the only fair way to compare AC and HVDC lines is a stand-alone comparison of real power carrying capability. However, witness Canelhas asserts that PJM Transmission Owners' test compares the real power carrying capability of HVDC lines to the combined real and reactive power carrying capabilities of AC lines, which is not an "apples to apples" comparison. Atlantic Grid states that the test PJM used to include HVDC lines in the Regional Plan was much simpler and did not suffer the same infirmity.<sup>798</sup>

369. Atlantic Grid states that PJM Transmission Owners' argument for discounting the effect of SIL fails for a variety of reasons. First, Atlantic Grid argues that treating reactive power as a cost-free benefit for AC transmission lines is not a technologically neutral comparison and therefore fails the comparability test. Second, Atlantic Grid asserts that many variables can impact the benefits analysis on a case-by-case basis, as shown by the testimony of Mr. Naumann. Atlantic Grid states that Mr. Naumann concedes that  $\pm 320$  kV HVDC lines can provide regional benefits equivalent or superior to 500 kV AC lines, depending on the circumstances and assumptions underpinning the analysis. However, Atlantic Grid argues that a test that values some variables (such as line length and voltage support) while ignoring others (such as terminal voltage, load and power factor, and sending-end capability to provide MW and MVAR for line stability) arbitrarily excludes HVDC applications from regional cost allocation despite at least some of these applications being regionally beneficial. Finally, Atlantic Grid states that Mr. Naumann's "St. Clair curves" simply show that AC and HVDC lines operate on different principles, and that voltage falls off exponentially with distance for AC lines absent supplemental reactive power compensation. Atlantic Grid asserts that this shows that HVDC lines are clearly superior using a voltage test that does not depend on corrective intervention of reactive power sources.<sup>799</sup>

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<sup>797</sup> *Id.* (citing PJM Transmission Owners Answer at 9 & Attachment 1 (Declaration of Steven Naumann) at 7).

<sup>798</sup> *Id.* at 6-7 & Ex. AWC-7 (Rebuttal Affidavit of Andre P. Canelhas) at 3.

<sup>799</sup> *Id.* at 7-8 (citing PJM Transmission Owners Answer, Attachment 1 (Declaration of Steven Naumann) at 6-7 and Atlantic Grid Answer, Docket No. ER13-90-002, Canelhas Rebuttal Aff. at 5).

370. Atlantic Grid states that, for these reasons, the Commission should reject PJM Transmission Owners' proposal, reaffirm PJM's existing method, and require PJM to include that method in its tariff. In the alternative, Atlantic Grid contends that the Commission should direct PJM to propose a method that it would apply on a case-by-case basis during the transmission planning process to determine comparability based on the planned use of the facilities, and should convene a technical conference to resolve this issue.<sup>800</sup>

(e) **Commission Determination**

371. We find that PJM Transmission Owners' proposed criteria for DC transmission facilities comply, subject to a further compliance filing, with the Commission's directives in the First Compliance Order. In general, we find that PJM Transmission Owners' proposed direct voltage comparison based on an assumption of equivalent power carrying capability is an appropriate means to consider DC transmission facilities for qualification as Regional Facilities on a basis comparable to AC transmission facilities.

372. We disagree with Atlantic Grid's assertion that a DC transmission facility that does not qualify as a Regional Facility is excluded from regional cost allocation. Such transmission facilities may qualify as Lower Voltage Facilities, in which case they would be eligible for the regional cost allocation methods associated with such projects.<sup>801</sup>

373. We reject Atlantic Grid's argument that PJM Transmission Owners have not justified excluding PJM from their compliance filing. As we discuss above, PJM Transmission Owners have the exclusive right to make section 205 filings related to transmission rate design.<sup>802</sup> We find it sufficient that PJM Transmission Owners consulted with PJM and stakeholders, including allowing the submission of written comments.<sup>803</sup>

374. We find that PJM's prior consideration of a DC link for MAPP does not establish a generic threshold for qualification of DC transmission facilities as Regional Facilities,

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<sup>800</sup> *Id.* at 10.

<sup>801</sup> For Lower Voltage Facilities, the full cost of such projects is allocated using Solution-Based DFAX (for Reliability Projects) or the change in load energy payment analysis (for Economic Projects).

<sup>802</sup> *See supra* Part IV.B.2.f.

<sup>803</sup> PJM Transmission Owners July 22, 2013 Compliance Filing at 1 n.2.

as Atlantic Grid suggests. PJM's determination that the DC portion of MAPP qualified as a Regional Facility was based primarily on a case specific direct comparison of the pole-to-pole voltage of the DC line to the phase-to-phase AC voltage threshold. Atlantic Grid has previously stated, and the Commission has previously agreed, that comparing dissimilar values such as the pole-to-ground voltage of a DC line to the phase-to-phase voltage of an AC facility is inappropriate.<sup>804</sup> Comparing the pole-to-pole voltage of a DC transmission facility to the AC voltage threshold is similarly inappropriate, and we will not consider doing so here.<sup>805</sup> Furthermore, the DC link in question in MAPP consisted of only twelve miles of triple-circuit  $\pm$  320 kV DC transmission lines which were proposed to replace submarine 500 kV AC facilities. Not only is this not a reasonable collection of evidence to establish a policy towards evaluation of all DC transmission lines, but under PJM Transmission Owners' proposal these facilities would have in fact qualified as Regional Facilities as well.

375. We also disagree with Atlantic Grid that PJM Transmission Owners have usurped the planning authority of PJM. While there is a fundamental link between transmission planning and cost allocation, there is no merit to Atlantic Grid's claim that the proposed cost allocation method will dictate which DC facilities are eligible for selection in the Regional Plan. As stated above, a DC facility that does not qualify as a Regional Facility may still be selected in the Regional Plan and receive regional cost allocation (just under a different method) as a Lower Voltage Facility.

376. We will not require PJM Transmission Owners to evaluate the relative benefits of DC transmission facilities in a manner similar to the Order on Remand.<sup>806</sup> The determination of the regional benefits of 500 kV and above facilities in the Order on Remand was based on a substantial and well-developed record. In contrast, no party, including Atlantic Grid, has submitted comparable evidence for DC transmission

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<sup>804</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 439 n.745 (citing Atlantic Grid Answer, Docket No. ER13-90-002, Ex. AWC-1 (Affidavit of Dr. Mohamed M. El-Gasseir, Ph.D.) at 8-9).

<sup>805</sup> We do, however, address concerns that PJM Transmission Owners' criteria may discriminate against lower voltage DC components of Regional Facilities.

<sup>806</sup> See Atlantic Grid Protest, Docket No. ER13-198-002 at 7 (citing Order on Remand, 138 FERC ¶ 61,230 at PP 59-60, 64, 77, 86, 88- 89, 91-98, 112, 117 (“[The PJM Transmission Owners’] proposed [cost allocation] method [ ] ignores entirely the benefits analysis that underpinned the Commission’s decision to establish 500 kV AC as a reasonable threshold for region-wide cost allocation.”)).

facilities.<sup>807</sup> Under similar circumstances regarding double-circuit 345 kV AC facilities, the Commission found a demonstration of comparable purpose and capability to be sufficient to infer similar regional benefits, specifically referring to transfer capability in both cases.<sup>808</sup> We find it reasonable for PJM Transmission Owners to base their analysis here on transfer capability as well.

377. Similarly, there is no substantial evidence demonstrating that the additional categories of benefits suggested by Atlantic Grid would be significant and widespread enough to justify qualification as Regional Facilities for DC transmission facilities below PJM Transmission Owners' proposed threshold, and we do not require PJM Transmission Owners to evaluate the potential for such benefits.

378. We reject Atlantic Grid's argument that PJM Transmission Owners' proposed criteria distort actual system performance in favor of AC transmission facilities. We agree with PJM Transmission Owners that SIL is not representative of actual performance of Regional Facilities in PJM when considering factors such as typical line length and reactive compensation. We disagree with Atlantic Grid that consideration of reactive compensation for AC transmission facilities is inappropriate. Supplemental reactive compensation is an integral component of the design of long-distance AC transmission facilities, and it is reasonable that the criteria account for actual performance using a realistic configuration. Contrary to the claim of Atlantic Grid, this reactive compensation is not necessarily cost-free, as there is no consideration of cost in the analysis. To the extent that an AC transmission facility requires additional reactive compensation beyond that provided by being part of a robust, integrated regional transmission network, PJM will consider this when selecting a transmission project in the Regional Plan.

379. We do not find Atlantic Grid's submitted power flow analysis persuasive. The Commission's focus in this compliance proceeding is on whether PJM's cost allocation methods comply with the requirements of Order No. 1000, rather than how a specific proposed facility should be analyzed.<sup>809</sup> Atlantic Grid's analysis of its specific facility

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<sup>807</sup> As discussed below, we find that the study provided by Atlantic Grid does not provide a reasonable showing of regional benefits to justify their classification as Regional Facilities.

<sup>808</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 435.

<sup>809</sup> We note, however, that it appears that Atlantic Grid's analysis was conducted by lowering generation in PSEG North to achieve imports equal to the Capacity Emergency Transfer Objective, then modeling the New Jersey Energy Link as a 1,000 MW generator and determining which overloads were mitigated. However, in this

(continued...)

does not explain why the cost allocation method for Lower Voltage Facilities is insufficient to ensure the costs of the New Jersey Energy Link and other similar DC transmission facilities are allocated in a manner commensurate with the benefits provided. Should Atlantic Grid have concerns regarding how its specific facility is evaluated in PJM's regional transmission planning process, it may file a complaint or seek other relief.

380. We also do not require, as Atlantic Grid suggests, that PJM propose a regional cost allocation method for DC facilities qualifying as a Regional Facility, that would be applied on a case-by-case basis where comparability between AC and DC facilities can be determined based on the planned use of the facilities. The Commission did not require this sort of analysis for AC Regional Facilities, and Atlantic Grid has not highlighted any characteristic unique to DC transmission facilities that would require such a case-by-case determination.

381. We decline to schedule a technical conference as Atlantic Grid suggests. As we have found PJM Transmission Owners' proposal to be just and reasonable, there is no need for such proceedings.

382. We do, however, find that PJM Transmission Owners' proposed criteria do not fully ensure comparable treatment of AC and DC facilities. First, Schedule 12, subsection (b)(i) states that only AC transmission facilities may qualify as a Necessary Lower Voltage Facility. As Atlantic Grid notes, this can result in a DC facility that is an integral component of a Regional Facility nevertheless being subject to a different cost allocation method.<sup>810</sup> Second, Schedule 12, subsection (b)(i)(B)(1) continues to exclude transformers connected to DC Regional Facilities with low side phase-to-phase voltage ratings of less than 345 kV from qualification as Regional Facilities. Accordingly, we direct PJM Transmission Owners to submit, within 60 days of the date of issuance of this

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instance generation in PSEG North was maintained at 70 percent of capacity. Assuming total generation in PSEG North of 2,700 MW, this leaves 810 MW of available generation. Atlantic Grid does not explain how the New Jersey Energy Link resolves violations that could not be mitigated simply by increasing generation output in PSEG North. The identified overloads mitigated and congestion relieved by the New Jersey Energy Link are confined to a relatively localized geographic area, while beneficiaries of unloaded transmission facilities in adjacent states would be adequately identified by the Solution-Based DFAX.

<sup>810</sup> We reiterate that this does not mean that such facilities are equivalent to Regional Facilities. Rather, such facilities are equivalent to other facilities needed to support Regional Facilities (i.e., Necessary Lower Voltage Facilities).

order, a further compliance filing that: (1) specifies that DC facilities that operate below  $\pm 433$  kV DC (or  $\pm 298$  kV DC for double-circuit DC Required Transmission Enhancements) that must be constructed or strengthened to support new Regional Facilities may qualify as a Necessary Lower Voltage Facility; and (2) removes the 345 kV low side phase-to-phase voltage threshold for transformers connected to DC Regional Facilities.

iv. **Cost Allocation for Public Policy Projects/Multi-Driver Approach**

(a) **First Compliance Order**

383. In the First Compliance Order, the Commission accepted PJM Transmission Owners' proposal to apply the cost allocation methods for Reliability and Economic Projects to transmission facilities that also address public policy requirements.<sup>811</sup> The Commission stated that Order No. 1000 does not explicitly require a separate and unique cost allocation method for reliability, economic, and public policy projects.<sup>812</sup> The Commission explained that because it 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.<sup>813</sup> Thus, the Commission concluded 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.<sup>814</sup> Additionally, the Commission found 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 mandate as a secondary benefit, and did not require PJM to divide such a project based on purpose.<sup>815</sup>

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<sup>811</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 441.

<sup>812</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 685 (Principle 6)).

<sup>813</sup> *Id.*

<sup>814</sup> *Id.*

<sup>815</sup> *Id.* P 442.

384. The Commission also accepted PJM Transmission Owners' proposed cost allocation method for projects approved through the State Agreement Approach. The Commission noted that the State Agreement Approach is a voluntary approach to project selection and cost allocation.<sup>816</sup> The Commission further noted that 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.<sup>817</sup> Finally, the Commission declined to alter the process for submitting a cost allocation filing for State Agreement Approach transmission projects. Specifically, the Commission did not find it necessary to impose additional criteria to define when a state may file under a section 206 filing.<sup>818</sup>

**(b) Requests for Rehearing or Clarification**

385. Atlantic Grid requests clarification or rehearing of the Commission's finding that the costs of transmission projects addressing public policy requirements are appropriately allocated pursuant to PJM's proposed regional cost allocation method. Atlantic Grid asserts that Order No. 1000 requires the costs of any element of a transmission project selected in the regional transmission plan for purposes of cost allocation that serves a public policy function to be allocated to those who receive a public policy benefit.<sup>819</sup> AWEA questions how allocating the cost of a transmission project addressing a federal public policy requirement on the basis of reliability or market efficiency benefits complies with Order No. 1000.<sup>820</sup> AWEA further asserts that it is unclear how PJM will allocate such costs according to the "secondary benefit" of serving public policy.<sup>821</sup>

386. Atlantic Grid and AWEA also argue that, in accepting PJM's regional cost allocation method, the Commission implicitly assumed, without support in the record, that public policy benefits will be distributed roughly commensurate with reliability or

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<sup>816</sup> *Id.* P 444.

<sup>817</sup> *Id.*

<sup>818</sup> *Id.* P 446.

<sup>819</sup> Atlantic Grid Request at 3-4 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 109).

<sup>820</sup> AWEA Request at 3.

<sup>821</sup> *Id.* at 5 (referring to First Compliance Order, 142 FERC ¶ 61,214 at P 442).

market efficiency benefits.<sup>822</sup> Atlantic Grid further contends that PJM lacks a regional cost allocation method for transmission projects to address public policy requirements because such projects are unlikely to be selected in the Regional Plan as reliability or market efficiency projects.<sup>823</sup> Finally, Atlantic Grid argues that PJM's regional cost allocation method does not satisfy Regional Cost Allocation Principle 5, which Atlantic Grid states requires transparency and documentation to support decisions to select transmission projects in the regional transmission plan for purposes of cost allocation, because PJM has not specified "how it will use public policy requirements in setting project selection criteria for cost allocation purposes."<sup>824</sup>

387. Atlantic Grid asks the Commission to clarify that public policy requirements, as defined in Order No. 1000 and the PJM OATT, are not limited to federal public policy mandates.<sup>825</sup> Atlantic Grid argues that it is unclear why the Commission limited regional cost allocations based on benefits from public policy mandates to those arising under federal law and, given the definitions in the PJM OATT, how such a limitation could be applied.<sup>826</sup> Atlantic Grid and AWEA state that the Commission should clarify that it did not intend to limit region-wide cost allocations to those projects that arise solely from federal public policy requirements.<sup>827</sup>

388. Finally, Atlantic Grid and AWEA argue that, given the lack of project selection criteria, the Commission must clarify how PJM's regional transmission planning process provides a clear understanding of who will be required to pay for a transmission facility

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<sup>822</sup> Atlantic Grid Request at 14; AWEA Request at 6.

<sup>823</sup> Atlantic Grid Request at 14-15.

<sup>824</sup> *Id.* at 8-10.

<sup>825</sup> *Id.* at 12.

<sup>826</sup> *Id.* Atlantic Grid does not cite the specific language in the First Compliance Order for which it requests clarification, but Atlantic Grid's concern appears to be based on the statement in the First Compliance Order that "[w]e 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." First Compliance Order, 142 FERC ¶ 61,214 at P 442.

<sup>827</sup> Atlantic Grid Request at 12; AWEA Request at 5.

selected in the regional transmission plan for purposes of cost allocation.<sup>828</sup> Atlantic Grid asserts that, without details for including public policy projects in the Regional Plan, there is no clear *ex ante* understanding of who will pay for a facility selected in the regional transmission plan for purposes of cost allocation.<sup>829</sup> Thus, Atlantic Grid requests that the Commission grant rehearing “to make PJM’s cost allocation plan for public policy projects contingent on PJM providing acceptable minimum ‘detail’ to inform market participants about the standards that will apply to the selection process.”<sup>830</sup>

(c) **Commission Determination**

389. We deny requests for rehearing and clarification. We affirm the finding in the First Compliance Order that PJM “does not need a separate regional cost allocation method for transmission projects that address transmission needs driven by public policy requirements.”<sup>831</sup>

390. We disagree with arguments that the record does not support a finding that the benefits of transmission projects that meet transmission needs driven by public policy requirements will be roughly commensurate with reliability or market efficiency benefits. Atlantic Grid and AWEA appear to argue that PJM’s regional transmission planning process will result in identification of transmission needs driven by public policy requirements that are not identified through the evaluation of reliability or economic criteria. This is not the case. To the extent that a transmission enhancement or expansion supporting public policy requirements may provide public policy benefits, the benefits will be accounted for by the mitigation of a reliability violation or economic constraint.<sup>832</sup> Accordingly, PJM’s cost allocation methods will ensure that the costs of transmission projects that meet transmission needs driven by public policy requirements will be

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<sup>828</sup> Atlantic Grid Request at 10; AWEA Request at 4.

<sup>829</sup> Atlantic Grid Request at 15.

<sup>830</sup> *Id.*

<sup>831</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 441.

<sup>832</sup> For an example of how PJM will use the scenario-based planning process to evaluate the reliability or economic impacts of public policy, *see* PJM, 2013 RTEP – Input Data, Assumptions and Scope, at 53 (June 18, 2013) (PJM 2013 RTEP White Paper), *available at* <http://www.pjm.com/sitecore%20modules/web/~-/media/documents/reports/rtep-plan-documents/2013-rtep-process-white-paper.ashx>.

roughly commensurate with benefits received in the same manner as any other reliability or market efficiency benefits.

391. We also disagree with Atlantic Grid's assertion that PJM lacks a cost allocation method for transmission projects to address public policy requirements due to the low probability of such projects being accepted as reliability or market efficiency projects. As we state above, PJM's scenario-based regional transmission planning process adequately considers the impact of public policy requirements on regional transmission needs through the evaluation and selection of the more efficient or cost-effective set of reliability and market efficiency projects.<sup>833</sup> Accordingly, the cost allocation method for such transmission projects is sufficient.

392. We disagree with Atlantic Grid that PJM's proposal is inconsistent with Cost Allocation Principle 5.<sup>834</sup> As the Commission stated in the First Compliance Order, it is enough for compliance with Cost Allocation Principle 5 that the OATT contain sufficient detail to allow a stakeholder to reproduce the results of the postage-stamp method, change in load energy payments analysis, or Solution-Based DFAX analysis.<sup>835</sup> Atlantic Grid's interpretation of Cost Allocation Principle 5 incorrectly expands its applicability to the evaluation and selection process.

393. We find Atlantic Grid and AWEA's requests for clarification concerning federal public policy mandates to be unnecessary. In the First Compliance Order, the Commission addressed Ohio Commission's request that was specifically targeted towards transmission needs driven by federal public policy.<sup>836</sup> In responding to Ohio Commission, the Commission's determination did not limit the scope of allowed public policy requirements or transmission projects eligible for regional cost allocation to federal public policy mandates. Rather, the Commission found it reasonable for PJM to allocate, as part of a reliability or market efficiency project, the cost of a project that addresses public policy requirements, including federal or state public policy mandates.<sup>837</sup>

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<sup>833</sup> See *supra* Part IV.B.1.c.i.

<sup>834</sup> See *supra* Part IV.B.3 for a description of Cost Allocation Principle 5.

<sup>835</sup> First Compliance Order, 142 FERC ¶ 61,214 at P 422.

<sup>836</sup> *Id.* P 442.

<sup>837</sup> *Id.* PP 441-442.

394. We decline to require additional detail about the standards that will apply to the selection process, as requested by Atlantic Grid and AWEA. A transmission project that meets transmission needs driven by public policy requirements may be selected as either a reliability or market efficiency project, dependent on the outcome of PJM's scenario-based planning process. PJM provides a clear *ex ante* cost allocation method for both categories of transmission projects. In this way, PJM's regional transmission planning process provides a clear understanding of which entities will be allocated the costs for a transmission project selected in the regional transmission plan for purposes of cost allocation.

The Commission orders:

(A) The requests for rehearing and clarification are hereby denied in part and granted in part, as discussed in the body of this order.

(B) PJM Parties' respective compliance filings are hereby accepted, effective on the dates proposed, subject to further compliance filings, as discussed in the body of this order.

(C) PJM Parties' are hereby directed to submit further compliance filings, within 60 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission. Commissioner Norris is dissenting in part and concurring in part with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix A: Abbreviated Names of Parties Seeking Rehearing**

**The following tables contain the abbreviated names of parties seeking rehearing that are used in this Order on Compliance Filings.**

**Parties Seeking Rehearing****Rehearing of Commission First Compliance Order on PJM October 25 Filing  
Docket No. ER13-198-001**

<b>Abbreviation</b>	<b>Intervenor(s)</b>
Atlantic Grid	Atlantic Grid Operations A LLC
AWEA	American Wind Energy Association and Mid-Atlantic Renewable Energy Coalition
Illinois Commission	Illinois Commerce Commission
Indiana Commission	Indiana Utility Regulatory Commission
LS Power <sup>838</sup>	LSP Transmission and LS Power Transmission Holdings, LLC
NARUC <sup>839</sup>	National Association of Regulatory Utility Commissioners
North Carolina Agencies	North Carolina Utilities Commission and Public Staff of the North Carolina Utilities Commission
PJM	PJM Interconnection, L.L.C.
Ohio Commission	Public Utilities Commission of Ohio

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<sup>838</sup> LS Power filed a notice of errata to its request for rehearing on April 23, 2013.

<sup>839</sup> NARUC also filed a motion to intervene out of time together with its request for rehearing out of time.

The Sustainable FERC Project

The Sustainable FERC Project

**Rehearing of Commission First Compliance Order on Indicated PJM  
Transmission Owners October 25 Filing  
Docket No. ER13-195-001**

<b>Abbreviation</b>	<b>Intervenor(s)</b>
Atlantic Grid	Atlantic Grid Operations A LLC
AWEA	American Wind Energy Association and Mid-Atlantic Renewable Energy Coalition
Illinois Commission	Illinois Commerce Commission
Indiana Commission	Indiana Utility Regulatory Commission
Indicated PJM Transmission Owners	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

LS Power<sup>840</sup>

LSP Transmission and LS Power  
Transmission Holdings, LLC

NARUC<sup>841</sup>

National Association of Regulatory  
Utility Commissioners

North Carolina Agencies

North Carolina Utilities Commission  
and Public Staff of the North Carolina  
Utilities Commission

PJM

PJM Interconnection, L.L.C.

Ohio Commission

Public Utilities Commission of Ohio

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<sup>840</sup> LS Power filed a notice of errata to its request for rehearing on April 23, 2013.

<sup>841</sup> NARUC also filed a motion to intervene out of time.

**Rehearing of Commission First Compliance Order on PJM Transmission  
Owners October 11, 2012 Compliance Filing  
Docket No. ER13-90-001**

<b>Abbreviation</b>	<b>Intervenor(s)</b>
Atlantic Grid	Atlantic Grid Operations A LLC
AWEA	American Wind Energy Association and Mid-Atlantic Renewable Energy Coalition
Illinois Commission	Illinois Commerce Commission
Indiana Commission	Indiana Utility Regulatory Commission
LS Power <sup>842</sup>	LSP Transmission and LS Power Transmission Holdings, LLC
NARUC <sup>843*</sup>	National Association of Regulatory Utility Commissioners
North Carolina Agencies	North Carolina Utilities Commission and Public Staff of the North Carolina Utilities Commission
PJM	PJM Interconnection, L.L.C.
Ohio Commission	Public Utilities Commission of Ohio
* out-of-time	

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<sup>842</sup> LS Power filed a notice of errata to its request for rehearing on April 23, 2013.

<sup>843</sup> NARUC also filed a motion to intervene out of time.

**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 July 22, 2013 Compliance Filing**  
**Docket No. ER13-198-002**

<b>Abbreviation</b>	<b>Commenters</b>
Exelon	Exelon Corporation
Indiana Commission +	Indiana Utility Regulatory Commission
LS Power +	LS Power Transmission, LLC
Maryland Commission	Maryland Public Service Commission
+ protests	

**PJM Transmission Owners July 22, 2013 Compliance Filing**  
**Docket No. ER13-90-002**

<b>Abbreviation</b>	<b>Commenters</b>
Atlantic Grid +	Atlantic Grid Operations A, LLC
LS Power +	LS Power Transmission, LLC and LSP Transmission Holdings, LLC
+ protests	

**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 July 22, 2013 Compliance Filing  
Docket No. ER13-198-002**

<b>Abbreviation</b>	<b>Commenters</b>
Atlantic Grid <sup>844</sup>	Atlantic Grid Operations A, LLC
Exelon	Exelon Corporation
Indiana Commission	Indiana Utility Regulatory Commission
PJM <sup>845</sup>	PJM Interconnection, LLC

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<sup>844</sup> Atlantic Grid filed a reply in support of PJM's September 5, 2013 answer as it pertains to Exelon's comments in Docket No. ER13-198-002 (filed Aug. 19, 2013) September 30, 2013.

<sup>845</sup> PJM filed an answer to comments and protests on September 5, 2013.

**PJM Transmission Owners July 22, 2013 Compliance Filing**  
**Docket No. ER13-90-002**

<b>Abbreviation</b>	<b>Commenters</b>
Atlantic Grid <sup>846</sup>	Atlantic Grid Operations A, LLC
PJM Transmission Owners <sup>847</sup>	PJM Transmission Owners

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<sup>846</sup> Atlantic Grid filed a reply to the PJM Transmission Owners September 4, 2013 answer on September 19, 2013.

<sup>847</sup> PJM Transmission Owners filed an answer protests on September 4, 2013.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	Docket Nos. ER13-198-001 ER13-198-002
Indicated PJM Transmission Owners	ER13-195-001
PJM Interconnection, L.L.C.	ER13-90-001
Public Service Electric and Gas Company	ER13-90-002

(Issued May 15, 2014)

NORRIS, Commissioner, *dissenting in part and concurring in part*:

I dissent from today's order because it represents a step backward from the Commission's efforts under Order No. 1000 to increase competition for transmission development. In my view, establishing reforms for the regional transmission planning process to ensure that non-incumbent transmission developers can participate on a level playing field with incumbent transmission owners was essential in order to promote increased competition. Today's order approves practices within the PJM transmission planning process that unreasonably tilt the playing field in favor of incumbents, thereby undermining the ability to identify the more efficient or cost-effective transmission solutions. In short, the non-incumbent measures adopted by this order fail to promote the development of more efficient or cost-effective transmission facilities in a manner that ensures just and reasonable rates.

I believe that the non-incumbent reforms adopted in Order No. 1000 held the promise of providing real benefits to consumers by increasing competition for transmission development. In the first round of Order No. 1000 compliance filings, the Commission made significant progress with respect to these objectives. Unfortunately today's order, together with the MISO and South Carolina Order No. 1000 compliance orders that the Commission is issuing concurrently, reverse course, undo a good deal of the progress that has been made thus far, and serve to unreasonably protect incumbent transmission owners.

While there are many examples of innovative incumbent transmission developers, others may lack innovation and may be more interested in preserving the status quo to insulate themselves from competition. Today's order protects incumbents rather than promotes competition. This concerns me because no single entity, whether incumbent or non-incumbent,

has a lock on ideas for better transmission and non-transmission alternatives. Clearly, incumbents already are well-positioned through their knowledge of the system, including issues related to reliability and congestion. Today's order gives incumbents a further advantage over non-incumbents by limiting non-incumbents' participation in the planning process. Moreover, if incumbents are unable to come up with a better solution for transmission needs, I am concerned that the reason could be a lack of innovation or a conflict of interest. Through today's order, we are allowing consumers to bear the burden of these potential shortcomings.

Specifically, today's order grants rehearing to allow PJM's regional transmission planning process to effectively exclude non-incumbents from participating due to a consideration of state law. This order has taken a significant step backward with respect to the policy goals of Order No. 1000. It essentially serves only to protect the interests of the traditional incumbent transmission developers, by limiting opportunities for non-incumbents to compete in the regional planning process for projects that meet regional transmission needs.

I cannot support the unjustified departure from Order No. 1000 that allows the PJM regional transmission planning process to automatically exclude non-incumbents from being designated to develop a transmission project due to consideration of state law. In short, this change in policy will effectively exclude non-incumbents from participating more broadly in the planning process. Such a change in policy is not justified by the record in this case, is entirely inconsistent with the express language of Order No. 1000, and undermines the policy goals of Order No. 1000.

I believe the Commission correctly determined in the first PJM compliance order that state law cannot be used to effectively exclude non-incumbents from participating in the planning process.<sup>1</sup> From a policy perspective, providing an open and fair opportunity for all stakeholders, including non-incumbents, to participate fully in the regional transmission planning process will ensure that the planning process provides complete transparency regarding all reasonable alternatives that would be available to meet identified transmission needs.

Ensuring wider participation in the regional transmission planning process increases competition, which in turn would result in a regional transmission plan that identifies more efficient or cost-effective transmission solutions. Indeed, Order No. 1000-A states that a goal of its reforms is to provide more information and options for stakeholders and state regulators to consider, in order to ensure that they are able to make the best decision regarding how to meet their transmission needs.<sup>2</sup> A key objective of the regional transmission planning process under Order No. 1000 is to produce a transmission plan that includes more efficient or cost-effective

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 120 (2013).

<sup>2</sup> Order No. 1000-A, 139 FERC ¶ 61,132, at P 190 (2012).

transmission projects so that the region's transmission providers, in consultation with stakeholders and the relevant regulatory authorities, can decide whether to move forward and realize the benefits from such transmission projects. Yet, this order proposes to restrict the set of transmission proposals that could be submitted by non-incumbents and considered in the planning process at the outset, based on the potential for conflicts with state or local laws.

Today's order justifies exclusion of non-incumbents as a threshold matter because of the assertion that inefficiencies in process could result. We should not use claims of inefficiency of process as justification for introducing measures in the regional transmission planning process that will reduce competition by limiting the subset of transmission proposals that can be considered. I am more concerned that we promote a transmission planning process that results in transmission solutions that increase competition, and provide real consumer benefits by lowering costs. Limiting the set of projects and developers that can even be considered in the planning process is inconsistent with that goal and results in unjust and unreasonable rates. Concerns about an inefficient planning process can, and should be, mitigated by the fact that transmission developers who submit bids will fully fund the competitive bidding process and will not submit bids for projects that are unlikely to succeed.

The effective exclusion of non-incumbents based on a consideration of state law is also wholly inconsistent with the express language of the final rule. In Order No. 1000-A, the Commission stated

[I]t would be an impermissible barrier to entry to require, as part of the qualification criteria, that a transmission developer demonstrate that it either has, or can obtain, state approvals necessary ... to be eligible to propose a transmission facility.<sup>3</sup>

Yet, that in effect is what today's order does. I simply cannot reconcile this language with today's order. Moreover, Order No. 1000-A also contemplates a process in which a transmission project that is selected for cost allocation must set forth a timeline under which it will achieve the necessary state approvals for constructing a project, and allows for a re-evaluation process if a developer is unable to meet its proposed timeline. The order justified this approach by finding that it increases the number of projects evaluated and selected to meet regional needs, and provides non-incumbents the opportunity to propose a transmission facility while it seeks to comply with state laws or regulations. This discussion would be meaningless if the Commission had intended to effectively exclude non-incumbents from participating in the regional transmission planning process based on a consideration of state law.<sup>4</sup>

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<sup>3</sup> Order No. 1000-A, 139 FERC ¶ 61,132, at P 441 (2012).

<sup>4</sup> Numerous parties point to language from the final rule that nothing in Order No. 1000 "is intended to preempt or otherwise conflict with state authority over siting, permitting, and

(continued...)

The non-incumbent reforms within Order No. 1000 were part of an overall package of reforms within the final rule that set our country on a path for increased and robust transmission development, based on an open and competitive process that would result in more efficient or cost-effective transmission solutions. Unfortunately, today's order strays far from Order No. 1000's original path that would have allowed non-incumbents to actively participate and compete in the transmission planning process, and instead has followed a divergent path that I cannot support.<sup>5</sup>

For these reasons, I respectfully dissent in part and concur in part.

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John R. Norris, Commissioner

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construction of transmission facilities ... .” Order No. 1000-A, 139 FERC ¶ 61,132 at P 186. In my view, allowing non-incumbents to participate in the regional transmission planning process without consideration of potential state law restrictions does not infringe upon the state's authority over siting, permitting and construction of transmission facilities. Rather, this language simply acknowledges state jurisdiction over siting, permitting, and construction of transmission facilities. Using this language to exclude non-incumbents denies states and other stakeholders the opportunity to have all essential information regarding the more efficient or cost-effective transmission facilities.

<sup>5</sup> I support the determination regarding the application of the *Mobile-Sierra* presumption to the PJM Transmission Owners Agreement. But, as a policy matter, it is my view that the Commission should not conduct a discretionary analysis to determine whether to grant *Mobile-Sierra* protection. Therefore, I concur, in part, in this order.