

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**PJM Interconnection, L.L.C.**

:

**Docket No. ER20-2308-000**

**REQUEST FOR REHEARING  
OF THE JOINT STAKEHOLDERS**

On December 17, 2020, the Federal Energy Regulatory Commission (“FERC” or “Commission”) issued an order (“December 17 Order” or “Order”)<sup>1</sup> rejecting a proposal submitted by PJM Interconnection, L.L.C. (“PJM”), pursuant to section 205 of the Federal Power Act (“FPA”),<sup>2</sup> to revise Schedule 6 of the Amended and Restated Operating Agreement (“Operating Agreement”) to provide a structure for end-of-life (“EOL”) driven transmission projects to be reviewed and developed under PJM’s Regional Transmission Expansion Plan (“RTEP”) (the “PJM Stakeholder Proposal”).<sup>3</sup> Pursuant to section 313 of the FPA<sup>4</sup> and Rule 713 of the Rules of Practice and Procedure of the Commission,<sup>5</sup> the Joint Stakeholders<sup>6</sup> hereby seek rehearing of the December 17 Order, and request immediate approval of the PJM Stakeholder Proposal.

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,242 (2020) (hereinafter “December 17 Order” or “Order”).

<sup>2</sup> 16 U.S.C. § 824d.

<sup>3</sup> The PJM Stakeholder Proposal was sponsored by American Municipal Power, Inc. (“AMP”), Old Dominion Electric Cooperative (“ODEC”), and LSP Transmission Holding II LLC (“LS Power”) and approved by the PJM Members Committee on June 18, 2020. The PJM Stakeholder Proposal was developed through PJM’s Consensus Based Issue Resolution stakeholder process and was supported by a sector-weighted supermajority of PJM members. Pursuant to the PJM Operating Agreement, section 10.4(e), PJM filed these revisions on behalf of PJM Stakeholders.

<sup>4</sup> 16 U.S.C. § 825l.

<sup>5</sup> 18 C.F.R. § 385.713.

<sup>6</sup> The Joint Stakeholders are American Municipal Power, Inc. (“AMP”), Old Dominion Electric Cooperative (“ODEC”), the PJM Industrial Customer Coalition, Public Power Association of New Jersey, LSP Transmission Holdings II, LLC and Central Transmission, LLC (collectively “LS Power”), Maryland Office of People’s Counsel, Office of the People’s Counsel for the District of Columbia, Delaware Division of the Public Advocate, the Public Utilities Commission of Ohio’s Office of the Federal Energy Advocate, West Virginia Consumer Advocate, New Jersey Board of Public Utilities and Blue Ridge Power Agency.

Instead of engaging the merits of the PJM Stakeholder Proposal and evidence in support thereof, the December 17 Order articulated the threshold issue in this case as whether the PJM Transmission Owners<sup>7</sup> have transferred the planning responsibilities at issue in the PJM Stakeholder Proposal to PJM. Finding that “the PJM Transmission Owners retain the right to ‘maintain’ their transmission facilities, and generally reserve all rights not specifically granted to PJM,” the Commission summarily concluded that the PJM Stakeholder Proposal must be rejected.<sup>8</sup> The Commission’s conclusions reflect a legally unsupported reading of the PJM governing documents and legal precedent relied upon. Further, this conclusion effectively undoes all prior efforts to facilitate competitive markets. An independent RTO is a necessary prerequisite for competitive markets and best positions PJM to be the planning authority as the industry determines how best to plan for intermittent local and regional resources.

The PJM Transmission Owners transferred to PJM the responsibility to plan for transmission to address regional needs. The December 17 Order dismisses the PJM Stakeholder proposal by characterizing the filing as addressing “any transmission facilities that have reached the end of their useful lives.”<sup>9</sup> In doing so, the December 17 Order fundamentally mischaracterizes the PJM Stakeholder Proposal and ignores the fact that the evidence in the filing relates only to a limited subset of transmission assets. This is because the term “Transmission Facilities” is a defined term in the PJM Open Access Transmission Tariff (“Tariff”) and the PJM Operating Agreement. The defined term “Transmission Facilities” does not include all transmission assets

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<sup>7</sup> “PJM Transmission Owners” is used herein as a generic reference to all transmission owning signatories to the Consolidated Transmission Owners Agreement, PJM, Rate Schedule FERC No. 42 (“CTOA”). There are PJM Transmission Owners among the Joint Stakeholders.

<sup>8</sup> December 17 Order at P 51.

<sup>9</sup> *Id.* at P 54.

in PJM. Rather, it is a limited set of transmission assets that “(i) are within the PJM Region; (ii) meet the definition of transmission facilities pursuant to FERC's Uniform System of Accounts or have been classified as transmission facilities in a ruling by FERC addressing such facilities; and (iii) have been demonstrated to the satisfaction of the Office of the Interconnection to be integrated with the PJM Region transmission system and integrated into the planning and operation of the PJM Region to serve all of the power and transmission customers within the PJM Region.”<sup>10</sup> Thus, the Transmission Facilities at issue in the PJM Stakeholder Proposal – which the December 17 Order fails to recognize – are expressly limited to those that have been turned over to PJM for planning and operation and serve all customers in the PJM Region and are not limited to those that have only local impacts. The transmission assets that have not been turned over to PJM and continue to be operated and planned by individual, incumbent PJM Transmission Owners, of which there are many, were not addressed in the PJM Stakeholder Proposal.

The December 17 Order is arbitrary and capricious because:

- ) The Order’s determination that the PJM Transmission Owners’ transfer to PJM of regional planning responsibility did not include End of Life Projects on Transmission Facilities does not reflect reasoned decision-making;
- ) The Order applied the *Atlantic City Electric*<sup>11</sup> precedent too expansively to create an unsupported restriction on PJM’s rights and obligations under PJM governing documents;
- ) The Order fails to support its conclusion that PJM does not have authority to plan regional Transmission Facilities to replace aging infrastructure after the PJM Transmission Owner determines that those Transmission Facilities can no longer be prudently maintained;
- ) The Order errs through its misapplication of prior precedent to avoid ruling on the merits of the PJM Stakeholder Proposal; and
- ) The Order’s rejection of the PJM Stakeholder Proposal facilitates unjust and unreasonable rate outcomes by subjecting more regionally beneficial transmission

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<sup>10</sup> Operating Agreement, Definitions S-T.

<sup>11</sup> *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002) (“*Atlantic City Electric*”).

projects to local cost allocation.

For those reasons, and as demonstrated herein, the Joint Stakeholders request rehearing of the December 17 Order.

## **I. BACKGROUND**

Throughout this proceeding, the Joint Stakeholders have explained and detailed the context in which the PJM Stakeholder Proposal arose and why the proposal is critical for ensuring cost-effective regional planning for the Grid of the Future.<sup>12</sup> Yet, the December 17 Order fails to acknowledge the context in which the Joint Stakeholder Proposal arose and moreover, fails to engage the substantive issues revolving around EOL planning in PJM.

PJM stakeholders, including the Joint Stakeholders and key PJM States, have been attempting since at least 2015 to obtain additional clarity, transparency and accountability in the PJM transmission planning process, particularly for planning replacement transmission for aging infrastructure.<sup>13</sup> Such transparency and accountability are critical for reasons already determined by the Commission.<sup>14</sup> Further, the efforts to achieve such open, transparent and coordinated transmission planning for aging infrastructure in the PJM region is critical at this time because the main driver of transmission planning, development and construction for the foreseeable future in

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<sup>12</sup> See PJM Stakeholder Proposal, Docket No. ER20-2308, Attachment C (May 12 Stakeholder Letter); Comments in Support of the Joint Stakeholders at 1-26; Comments of LS Power at 2-13.

<sup>13</sup> In its comments, the Office of the Ohio Consumers' Counsel ("Ohio Consumers' Counsel") highlighted the increasing transmission costs in Ohio, which are attributable to increasing investment in Supplemental Projects, which are high voltage transmission facilities that are 100 percent cost allocated to the local zone and have no ability to regionally cost allocate their benefits. Comments in Support of Stakeholder Proposal by the Office of the Ohio Consumers' Counsel at 1-4 (July 23, 2020). It notes that in 2018, Ohio utilities planned investment in Supplemental Projects totaling \$1.5 billion and another \$785 million in 2019, without any federal or state regulatory oversight. *Id.* at 1. The Ohio Consumers' Counsel further noted that 75% of Supplemental Projects are end-of-life projects. *Id.* at 4.

<sup>14</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) ("Order No. 890").

the PJM region is replacing aging Transmission Facilities (colloquially referred to as “End of Life” or “EOL” projects).<sup>15</sup> In fact, PJM reported that “[t]wo-thirds of all system assets in PJM are more than 40 years old; over one-third are more than 50 years old.”<sup>16</sup>

In the fall of 2019, several stakeholders advanced an “End of Life” problem statement and issue charge from the PJM Planning Committee to the Markets and Reliability Committee (“MRC”). At the December 5, 2019 MRC meeting, by a vote of 3.83 (77% in support), the MRC authorized the creation of a special session of the MRC entitled *Transparency and End of Life Planning* for the purpose of giving all PJM stakeholders an opportunity to determine how projects addressing EOL facilities should be planned and to advance the discussion to the Commission for resolution. Over the course of the next five months, seven MRC special session meetings on Transparency and EOL Planning were held, in which stakeholders worked through PJM’s Consensus Based Issue Resolution process wherein two distinct solutions were ultimately developed: one from the PJM non-Transmission Owner members; and one developed by PJM staff. Although representatives of the PJM Transmission Owners attended the stakeholder meetings, they did not engage in the process. On May 7, 2020, as the stakeholders were closing in on solutions,<sup>17</sup> the Transmission Owners Agreement Administrative Committee (“TOA-AC”)

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<sup>15</sup> Cost Savings Offered by Competition in Electric Transmission Experience to Date and the Potential for Additional Customer Value at 43, available at: [https://brattlefiles.blob.core.windows.net/files/16726\\_cost\\_savings\\_offered\\_by\\_competition\\_in\\_electric\\_transmission.pdf](https://brattlefiles.blob.core.windows.net/files/16726_cost_savings_offered_by_competition_in_electric_transmission.pdf) (“Brattle Study”) (last accessed Jan. 16, 2021).

<sup>16</sup> See “*The Benefits of the PJM Transmission System*” PJM Interconnection at 5 (April 16, 2019), available at: <https://www.pjm.com/-/media/about-pjm/newsroom/fact-sheets/the-value-of-transmission.ashx> (last accessed Jan. 16, 2021).

<sup>17</sup> Unfortunately, throughout the process, in addition to supporting its own proposal, PJM continually misrepresented the stakeholders’ proposals, resulting in numerous presentations about what the proposals actually included. The mischaracterization of the stakeholder proposals was so severe that on May 12, 2020, Joint Stakeholders and others (collectively, “Stakeholders”) who supported the Stakeholder Package submitted a letter to the PJM Board of Managers (“PJM Board”) expressing concern and the need to ensure that the Board has “a complete . . . picture of [their] proposal and the law supporting it. PJM Stakeholder Proposal, Docket No. ER20-2308, Attachment C (May 12 Stakeholder Letter) at 2.

posted a 30-day consultation notice of intent to modify Tariff Attachment M-3 (the PJM Transmission Owners local planning procedures) to allow individual PJM Transmission Owners to unilaterally address EOL planning.<sup>18</sup>

The Joint Stakeholder Proposal, as well as a competing PJM-staff proposal, were initially presented at the May 21, 2020 MRC meeting. Following discussion, both proposals failed in sector-weighted votes, with the Joint Stakeholder Proposal receiving 3.23 in favor (65% in support; 67% required for approval) and the PJM-staff proposal receiving only 1.77 in favor (35% in support).<sup>19</sup> At the May 21, 2020 Members Committee meeting that followed the MRC, the Stakeholders clearly signaled their intent to bring the Joint Stakeholder Proposal back before the PJM stakeholders at the Members Committee the following month, on June 18, 2020, as it failed by just a few votes to reach the 2/3 supermajority threshold at the MRC.

Disregarding the ongoing stakeholder process, and ignoring the public position of the PJM Independent Market Monitor that the Joint Stakeholder Proposal was in the public interest,<sup>20</sup> PJM voluntarily filed on behalf of the PJM Transmission Owners, on June 12, 2020, a unilateral filing with the Commission to amend Attachment M-3 to the PJM Tariff (“Transmission Owner Proposal”).<sup>21</sup> In an effort to pre-empt the PJM Stakeholders Proposal, the PJM Transmission

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<sup>18</sup> Because the TOA-AC issued the notice without authorization through a vote as required by CTOA, certain PJM Transmission Owners asserted that the Notice was improper and ineffective to initiate the required 30 day consultation period. *See*, Motion to Dismiss Filing, Without Prejudice, and Suspend Procedural Schedule Until Ruling on Motion to Dismiss and Motion for Shortened Answer Period, filed June 18, 2020 in Docket No. ER20-2046-000.

<sup>19</sup> The PJM-staff proposal was generally only supported by most of the PJM Transmission Owners and FTR traders in the sector-weighted vote.

<sup>20</sup> Comments of the Independent Market Monitor for PJM at 2.

<sup>21</sup> The PJM TOAC-AC passed the Transmission Owner’s 205 Proposal on June 10, 2020. PJM elected to make the discretionary filing just two days later asking for Commission action in 60 days even though the PJM Members Committee vote was scheduled just days later. Under the CTOA Article 7.3.2, “For purposes of administrative convenience, at the request of the Transmission Owners, PJM may, but shall not be required to, make the Section 205 filings with the FERC on behalf of the Transmission Owners.”

Owners' filing came just one day after the official posting of the Members Committee agenda showing the Joint Stakeholder Proposal up for final vote at the Members Committee days later on June 18, 2020. The PJM Transmission Owner Proposal was for the purported purpose to: "(1) identify and include Asset Management Projects within the existing planning procedures of Attachment M-3 of the PJM Tariff, and (2) include procedures for the identification and planning for end-of-life needs (EOL Needs)."<sup>22</sup>

In accordance with PJM stakeholder process rules, and in reaction to the PJM Transmission Owners' direct circumvention of the stakeholder process, the Stakeholders brought their proposal to the June 18, 2020 Members Committee meeting, where, by a 69% sector-weighted supermajority vote, the Members Committee voted to approve the stakeholder proposal to modify the PJM Operating Agreement regarding planning of transmission projects to replace Transmission Facilities under PJM's control after those Transmission Facilities have reached the end of their operational lives.<sup>23</sup> On July 2, 2020, PJM submitted in Docket No. ER20-2308-000, the Joint Stakeholder Proposal.<sup>24</sup> Without the knowledge or consent of the PJM Members who supported the Joint Stakeholder Proposal, PJM requested an effective date of January 1, 2021 instead of the normal sixty day effective date, ensuring Commission action on the Transmission Owner Proposal

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<sup>22</sup> *PJM Interconnection, L.L.C. et al.*, 172 FERC ¶ 61,136 (2020) at P 1. The Commission noted that "EOL Need" was defined in the PJM Transmission Owner filing as a "need to replace a transmission line . . . which the Transmission Owner has determined to be near the end of its useful life." *Id.* fn 4.

<sup>23</sup> Ninety-four Members supported the Joint Stakeholder Proposal, with "yes" votes coming from each of PJM's five sectors. In all but one sector, the transmission owner sector, the Joint Stakeholder Proposal received a majority (fifty-one percent or greater) support, and in three of the five sectors Member support exceeded eighty percent. PJM Interconnection, L.L.C., June 18, 2020 Members Committee, Voting Report, [MasterVotingReport \(pjm.com\)](#) (last accessed Jan. 16, 2021).

<sup>24</sup> *PJM Interconnection, L.L.C.*, FERC Docket ER20-2308-000 (July 2, 2020).

before the effective date of the Stakeholder Proposal. On August 11, 2020, the Commission accepted the PJM Transmission Owner Proposal.<sup>25</sup>

Unlike the PJM Transmission Owner Proposal to expand local planning (and thus local cost allocation) under the Tariff,<sup>26</sup> the PJM Stakeholder Proposal<sup>27</sup> was developed by a diverse cross-section of PJM stakeholders as a modest change to the current PJM RTEP Protocol to clarify that PJM is the entity responsible for planning new transmission to replace Transmission Facilities (which by definition, have been turned over to PJM for planning and operational control) at the end of their operational lives and to add much needed transparency to the planning process. The primary change that would be effectuated by the PJM Stakeholder Proposal is to ensure that any necessary replacements for 40- to 60-year-old Transmission Facilities are regionally planned by PJM to address the needs of the region in a holistic manner. The Joint Stakeholders agree with the PJM Board Reliability Committee's position that "...PJM may be in the best position to determine the more cost-effective regional solution to replace a retired facility."<sup>28</sup>

To be clear, replacing aging Transmission Facilities is a regional planning issue and their replacement has regional impacts. In 2018, there were \$6.5 billion in Supplemental Projects and just \$2.0 billion in regionally planned projects.<sup>29</sup> The largest driver of all transmission planning, including Supplemental Projects, in 2018 was EOL asset conditions. The statistics for 2019 were

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<sup>25</sup> *PJM Interconnection, L.L.C. et al.*, 172 FERC ¶ 61,136 (2020).

<sup>26</sup> As discussed below, the PJM Transmission Owner Proposal also has the effect of gutting Order No. 1000.

<sup>27</sup> The Joint Stakeholder Proposal became known as the PJM Stakeholder Proposal.

<sup>28</sup> See the October 4, 2019 Letter to the PJM Members Committee from Dean Oskvig, Chair-Board Reliability Committee (available at: <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20191004-pjm-board-reliability-committee-chair-dean-oskvig-regarding-supplemental-projects.ashx?la=en>).

<sup>29</sup> PJM Stakeholder Proposal, Docket No. ER20-2308, Attachment C (May 12 Stakeholder Letter) at 1; see also RTEP at pp. 5, 40 (Feb. 28, 2019 PJM Presentation), available at [2018-rtep-book-1.ashx \(pjm.com\)](https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/2018-rtep-book-1.ashx) (last accessed Jan. 16, 2021).



equally EOL-driven and transmission owner-planned based on individual PJM Transmission Owner preference or rate base needs rather than regional needs.<sup>30</sup> The sheer volume of EOL Projects demonstrates that they have more than just a local impact. The Joint Stakeholders recognized the regional nature of planning transmission replacements for aging infrastructure and the reasonableness of having PJM plan EOL Projects, after an EOL Notification was provided by the Transmission Owner, through the regional RTEP with submission of an affidavit of Messrs. Pfeifenberger and Hagerty of the Brattle Group in support of the PJM Stakeholder Proposal. Specifically, Messrs. Pfeifenberger and Hagerty concluded:

Given the age of PJM's existing transmission grid, the accelerating level of Supplemental Projects that are being planned and built—over \$20 billion since 2014—and the unaddressed \$6-12 billion of public policy transmission needs that are emerging throughout the PJM region (as discussed above), **it is both critical and urgent that EOL decisions of transmission facilities become part and parcel of PJM's regional transmission planning effort.** The opportunity cost of any further delays of doing so, and instead continuing to spend billions of dollars on locally-planned EOL Projects without regional coordination, would be very large. Every existing transmission line and substation that keeps being replaced outside the PJM regional planning process potentially is a missed opportunity to implement a more regionally-optimized transmission solution that utilizes the existing right of way more efficiently and provides higher value in terms of its reliability, operational performance, market-efficiency, public policy, and overall multi-driver benefits.<sup>31</sup>

In the December 17 Order, the Commission did not address, let alone engage, this evidence.

The PJM Stakeholder Proposal is consistent with PJM's regional planning authority and does not infringe on or conflict with the PJM Transmission Owners' retained rights. The PJM Stakeholder Proposal is fully consistent with the CTOA. The CTOA delegates to PJM the obligation for regional planning while Sections 4.5 and 5.2 of the CTOA preserve to the PJM

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

<sup>31</sup> LS Power Comments, Attachment X, Brattle Affidavit at 11 [emphasis in original].

Transmission Owners the right to maintain and retire their existing Transmission Facilities. The PJM Stakeholder Proposal takes no issue with the Transmission Owners' reservation of those rights. However, once maintenance ends, transmission planning begins.

By virtue of the Members Committee vote, the PJM stakeholders clearly believe that the PJM Transmission System<sup>32</sup> should be developed with an eye toward the future, rather than simply rebuilding the grid of the past. As the independent regional transmission organization ("RTO"), PJM must be able to combine planning drivers for new Transmission Facilities, namely public policy projects, with aging infrastructure replacement projects, to plan the Grid of the Future through a robust and transparent regional planning process. FERC has long recognized the benefits of having transmission planned on a regional basis, rather than on a transmission owner-by-transmission owner basis, including the benefits of having an optimized planning process capable of addressing the multiple needs across transmission-owner zones with consolidated solutions that are more efficient and cost-effective than planning that merely addresses needs on an individualized basis. These regional benefits have driven FERC to incent transmission owners to join RTOs, including incentives paid by load tied to such participation. As recognized in prior Commission Orders, a well-planned and constructed regional transmission system is critical to the success of wholesale markets and fundamental to the notion of an RTO.<sup>33</sup>

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<sup>32</sup> The PJM Open Access Transmission Tariff ("Tariff") defines "Transmission System" as "the facilities controlled or operated by the Transmission Provider within the PJM Region that are used to provide transmission service under Tariff, Part II and Part III." *See* Tariff at Section I(1).

<sup>33</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Pub. Utils.*, Order No. 1000, 136 FERC 61,051 at P 42 (finding that Order No. 1000's reforms will "enhance the ability of the transmission grid to support wholesale power markets and, in turn, ensure that Commission-jurisdictional transmission services are provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential); *South Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 68-69 (D.C. Cir. 2014) (affirming Order No. 1000 and FERC's conclusions that an open, transparent transmission plan that considers all transmission needs is more effective and will lower costs for consumers; *see also* 18 CFR § 35.34(k)(7) (requirements for RTO planning); *Public Util. Dist. No. 1 v. FERC*, 272 F.3d 607, 612 (D.C. Cir. 2001).

The December 17 Order, in interpreting the CTOA, concludes that planning for new, regional Transmission Facilities to replace existing Transmission Facilities – that have been turned over to PJM’s planning and operational control after a Transmission Owner has determined that it can no longer be maintained and cannot be retired without replacement – cannot be regional planning because it amounts to “maintenance” of those existing Transmission Facilities. This conclusion is not supported by the actual language of the PJM governing documents, *Atlantic City*, the California orders, Order No. 890, Order No. 1000, Order No. 2000, any other precedent or logic. The Commission’s decision, unless reversed, will lay the foundation for a balkanized, piecemeal, and opaque transmission planning process that prevents transmission competition and its associated price-lowering benefits for consumers.<sup>34</sup> It will neuter and immobilize the RTO, which is “responsible for planning, and for directing or arranging, necessary transmission expansions, additions, and upgrades that will enable it to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with the appropriate state authorities.”<sup>35</sup> Such localized isolated planning is inapposite to the will of the supermajority of the PJM membership and will cost all customers in the PJM footprint billions of dollars in unnecessary costs. The December 17 Order is arbitrary and capricious, and its outcome is unjust and unreasonable. Rehearing is warranted.

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<sup>34</sup> The Brattle Affidavit explains how reliance on local planning of EOL projects leads to higher costs and less efficient projects that fail to meet the changing needs of the PJM region, particularly the changes driven by expanding renewable generation. Comments of LS Power, Exhibit 1. Several commenters expressed that the projects needed following the retirement of existing Transmission Facilities should be subject to competition. *See, e.g.*, Comments of the New Jersey Board of Public Utilities at 6-7 in Docket No. ER20-2308-000 (filed July 23, 2020); Comments in Support of Stakeholder Proposal by the Office of the Ohio Consumers’ Counsel at 2, 6 in Docket No. ER20-2308-000 (filed July 23, 2020); Comments of the Public Utilities Commission of Ohio’s Office of the Federal Energy Advocate at 5-8 Comments of the Independent Market Monitor for PJM at 8-9 in Docket No. ER20-2308-000 (July 23, 2020).

<sup>35</sup> 18 CFR § 35.34(k)(7); *see Public Util. Dist. No. 1 v. FERC*, 272 F.3d 607, 612 (D.C. Cir. 2001) (“the RTO must have planning and expansion authority”).

## **II. STATEMENT OF ISSUES/SPECIFICATIONS OF ERRORS**

The Joint Stakeholders respectfully submit that the December 17 Order is arbitrary and capricious, does not reflect reasoned decision-making, is insufficiently supported, and results in a transmission planning outcome that is unjust, unreasonable, unduly discriminatory, and preferential. Due to the specific errors identified herein and the Order's general failure to engage arguments and evidence contrary to the Transmission Owners' reading of the CTOA, the Order should be modified on rehearing and the PJM Stakeholder Proposal should be approved.

In compliance with Rules 713(c)(1) and (2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.713(c)(1), 385.713(c)(2)(2020), the Protesting Parties respectfully provide the following specifications of error and statement of issues:

1. Whether the December 17 Order is arbitrary and capricious because it determined that the PJM Transmission Owners' transfer to PJM of the responsibility to prepare a Regional Transmission Expansion Plan under the Regional Transmission Expansion Planning Protocol is not broad enough to encompass planning responsibility for EOL Projects? Answer: Yes. *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,242 (2020). *Iberdrola Renewables v. FERC*, 597 F.3d 1299, 1304 (2010) ("If a contract is not ambiguous, extrinsic evidence cannot be used as an aid to interpretation." *Consol. Gas Transmission Corp. v. FERC*, 771 F.2d 1536, 1544 (D.C.Cir.1985). "[I]f the intent of the parties on the particular issue is clearly expressed in the document, 'that is the end of the matter.'" *Nat'l Fuel Gas Supply Corp. v. FERC*, 811 F.2d 1563, 1572 (D.C.Cir.1987) (quoting *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)). *Nor Am Gas Transmission*, 148 F.3d 1158, 1165 (1998)(quoting *KN Energy Inc. v. FERC*, 968 F.2d 1295, 1303 (D.C. Cir. 1992)("It is the duty of a reviewing court to make sure that an agency 'engage[s] the arguments raised before it.');" *Atl. City Elec., et al v. FERC*, 295 F.3d 1 (D.C. Cir. 2002); *Reg'l Transmission Organs.*, Order No. 2000, 89 FERC 61,284, at P 485, *order on reh'g*, Order No. 2000-A, *aff'd sub nom.*, *Pub. Util. Dist. No. 1 of Snohomish City, Wash. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001); *Midwest Indep. Transmission, Sys. Operator, Inc.*, 115 FERC ¶ 61,108, at P 22 (2006) (quoting *Columbia Gas Transmission Corp.*, 27 FERC ¶ 61,089 at 61,166 (1984)); *S. California Edison Co. Local Transmission Planning Within the California Indep. Sys. Operator Corp.*, 164 FERC ¶ 61,160, at P 10 (2018); *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981-982 (2005) ("Unexplained inconsistency is . . . a reason for holding an interpretation to be an arbitrary and capricious change from agency practice under the Administrative Procedure Act.") (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 436 U.S. 29, 46-57 (1983)); *United Mun. Distribs. Group v. FERC*, 732 F.2d 202, 210 (D.C. Cir. 1984) ("[A]n agency must conform to its prior

practice and decisions or explain the reason for its departure from such precedent.”); *Panhandle Eastern Pipe Line Co. v. FERC*, 196 F.3d 1273, 1275 (D.C. Cir. 1999) (“As we have repeatedly reminded FERC, if it wishes to depart from its prior policies, it must explain the reasons for its departure.”); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970) (“[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.”).

2. Whether the Commission erred in applying *Atlantic City Electric* too expansively to create an unsupported restriction on PJM’s rights and obligations under PJM governing documents? Answer: Yes. *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,242 (2020). *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 at 8 (D.C. Cir. 2002); *South Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014); *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520 (D.C. Cir. 2010); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004); *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *New Eng. Power Generators Ass’n v. FERC*, 881 F.3d 202 (D.C. Cir. 2018) (the Commission must reach its conclusion through decision-making that is “reasoned, principled, and based upon the record”).
3. Did the Commission err in misapplying precedent to avoid ruling on the merits of the PJM Stakeholder Proposal? Specifically, did the Commission err in determining that its conclusion (that PJM does not have authority to plan regional Transmission Facilities to replace aging infrastructure after the PJM Transmission Owner determines that it can no longer maintain such Transmission Facilities) is consistent with precedent? Answer: Yes. *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,242 (2020). *California Pub. Utils. Comm’n v. Pac. Gas and Elec. Co.*, 164 FERC ¶ 61,161 (2018), *order on reh’g*, 168 FERC ¶ 61,171 (2019); *S. California Edison Co.*, 164 FERC ¶ 61,161 (2018), *order on reh’g*, 168 FERC ¶ 61,170 (2019); *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) (“Order No. 890”); *Reg’l Transmission Organs.*, Order No. 2000, 89 FERC ¶ 61,284, at P 485, *order on reh’g*, Order No. 2000-A, (2000), *aff’d sub nom.*, *Pub. Util. Dist. No. 1. Of Snohomish Cty., Wash. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)); *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011) (Order No. 1000), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom.* *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014). *Monongahela Power Co., et al.*, 162 FERC ¶ 61,129 (2018), *order on rehearing and compliance*, 164 FERC ¶ 61,217 (2018). See *PSEG Energy Res. & Trade LLC v. FERC*, 665 F.3d 203, 208, 209-10 (D.C. Cir. 2011) (“Among other things, [a]n agency’s ‘failure to respond meaningfully’ to objections raised by a party renders its decision arbitrary and capricious” quoting *Motor Vehicle Mfrs. Ass’n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Canadian Ass’n of Petroleum Producers v. FERC*, 254 F.3d 289, 299

(D.C.Cir. 2001).

4. Whether the December 17 Order is arbitrary and capricious by violating cost causation principles? Answer: Yes. *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,242 (2020); 5 U.S.C. § 706(2); *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156 (1962); *New England Power Generators Ass’n v. FERC*, 881 F.3d 202 (D.C. Cir. 2018); *Emera Maine v. FERC*, 854 F.3d 662 (D.C. Cir. 2017); *West Deptford Energy, LLC v. FERC*, 766 F.3d 10 (D.C. Cir. 2014).

### III. ARGUMENT

#### A. **The Commission Failed To Engage In Reasoned Decision-Making In Determining That PJM Lacks Authority To Regionally Plan For Transmission Facilities When Existing Transmission Facilities Can No Longer Be Relied Upon. (Specification of Error #1)**

In the December 17 Order, the Commission asserts that in determining whether to accept the PJM Stakeholder Proposal as just and reasonable, “the threshold issue is whether the PJM Transmission Owners have transferred the planning responsibilities at issue in this proceeding to PJM.”<sup>36</sup> Without reviewing the merits of the PJM Stakeholder Proposal, the Commission concludes that because “the PJM Transmission Owners retain the right to ‘maintain’ their transmission facilities,”<sup>37</sup> they have also retained the right to determine what will be built when those Transmission Facilities can no longer maintained. The December 17 Order mistakenly (and without any justification or supporting evidence) equates the PJM Transmission Owners’ right to “‘maintain’ their transmission facilities” with a unilateral right to determine what Transmission Facilities will be planned when the Transmission Facilities turned over to PJM’s operational control and planning may no longer be maintained and must be replaced. The December 17 Order’s resulting holding that PJM does not have authority to plan regional Transmission Facilities

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<sup>36</sup> December 17 Order at P 51.

<sup>37</sup> *Id.*

and, thus, PJM and its members do not have authority to amend the RTEP Protocol provisions of the PJM Operating Agreement is arbitrary and capricious, does not reflect reasoned decision-making, is insufficiently supported, and results in a transmission planning outcome that is unjust, unreasonable, unduly discriminatory, and preferential.

As the Commission recognizes, the “PJM Transmission Owners and PJM signed the CTOA to memorialize the division of responsibility between the PJM Transmission Owners and PJM.”<sup>38</sup> However, the December 17 Order ignores the words that the parties chose to memorialize their division of responsibility. The CTOA is a filed rate schedule. It is not ambiguous. As such, the Commission cannot simply assert that the PJM Transmission Owners’ retention of the right to “‘maintain’ their transmission facilities” amounts to a unilateral right to determine what Transmission Facilities will be planned when the Transmission Facilities turned over to PJM’s planning and operational control may no longer be maintained and must be retired.

When interpreting a tariff, the Commission has stated that:

In construing what a tariff means, certain general principles apply. One looks first to the four corners of the entire tariff, considers the entire instrument as a whole, *giving effect so far as possible to every word, clause and sentence, and attributes to the words used the meaning which is generally used, understood, and accepted.*<sup>39</sup>

**1. The CTOA’s References To PJM’s Obligation For Regional Planning Are Broad Enough To Include EOL Planning.**

Applying the Commission’s rule here requires the Commission to apply the plain meaning to the terms used in the CTOA. Doing so unmistakably reveals that the CTOA specifically

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<sup>38</sup> December 17 Order at P 53.

<sup>39</sup> *Midwest Indep. Transmission, Sys. Operator, Inc.*, 115 FERC ¶ 61,108, at P 22 (2006)(quoting *Columbia Gas Transmission Corp.*, 27 FERC ¶ 61,089 at 61,166 (1984)) (emphasis added).

transferred “the administration of the tariff and *regional transmission planning* and operations to [PJM].”<sup>40</sup> Under the CTOA, the PJM Transmission Owners agreed to:

*transfer to PJM, pursuant to [the CTOA] and in accordance with the Operating Agreement, the responsibility to prepare a Regional Transmission Expansion Plan and to provide information reasonably requested by PJM to prepare the Regional Transmission Expansion Plan...*<sup>41</sup>

As recognized by PJM in this proceeding, the PJM Transmission Owners transferred to PJM the responsibility to prepare a regional plan, the RTEP.<sup>42</sup> The RTEP is “the plan prepared by PJM pursuant to Operating Agreement, Schedule 6 for the enhancement and expansion of the Transmission System in order to meet the demands for firm transmission service in the PJM Region.”<sup>43</sup> The PJM Operating Agreement, Schedule 6, states as its purpose:

*This Regional Transmission Expansion Planning Protocol shall govern the process by which the Members shall rely upon the [PJM] Office of the Interconnection to prepare a plan for the enhancement and expansion of the Transmission Facilities in order to meet the demands for firm transmission service, and to support competition, in the PJM Region. The [RTEP]...shall enable the transmission needs in the PJM Region to be met on a reliable, economic and environmentally acceptable basis.*<sup>44</sup>

PJM Members rely on PJM to plan new transmission that expands or enhances the transmission grid. PJM Members rely on PJM to meet the PJM Region’s transmission needs in a reliable, economic basis, and consistent with state policy requirements. EOL Transmission Projects may expand or enhance the transmission grid, and subjecting those projects to competition and regional planning by PJM is in accordance with the express terms in Schedule 6 of the PJM Operating

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<sup>40</sup> 295 F. 3d at 6 (emphasis added). The Court further explained that the CTOA “established procedures for changes to rate design and other tariff terms for transmission service.” *Id.* The Court did not find that the transmission owners retained any express degree of authority over regional transmission planning.

<sup>41</sup> CTOA, PJM, Rate Schedule FERC No. 42, Section 4.1.1 (Planning Information) (emphasis added).

<sup>42</sup> See PJM Comments at 9 (citing CTOA, Section 4.1.4).

<sup>43</sup> CTOA, PJM, Rate Schedule FERC No. 42, Section 1.22 (Definitions).

<sup>44</sup> PJM Operating Agreement, Schedule 6, Section 1.1 (Purpose and Objectives).



Agreement.<sup>45</sup> Therefore, PJM has both the right and the obligation to plan new transmission that expands and enhances the transmission grid, and to require information, such as EOL notifications from the PJM Transmission Owners, in order to responsibly and economically plan for the region.<sup>46</sup>

Furthermore, CTOA Section 6.3.4 provides that PJM shall: “Conduct its planning for the expansion and enhancement of transmission facilities based on a planning horizon of at least ten years, or such longer period as may be required by the PJM Tariff or Operating Agreement, including the Regional Transmission Expansion Planning Protocol.”<sup>47</sup> Thus, the PJM Transmission Owners transferred to PJM the responsibility to prepare the RTEP<sup>48</sup> which is “the plan prepared by PJM pursuant to Operating Agreement, Schedule 6 for the enhancement and expansion of the Transmission System in order to meet the demands for firm transmission service in the PJM Region.”<sup>49</sup> The RTEP is defined in the CTOA as having “the meaning defined in the PJM Tariff.”<sup>50</sup> The Tariff defines the RTEP as follows: “the plan prepared by the Office of the Interconnection pursuant to Operating Agreement, Schedule 6 for the enhancement and expansion of the Transmission System in order to meet the demands for firm transmission service in the PJM Region.”<sup>51</sup> “Transmission System” is defined in the Tariff as: “the facilities controlled or operated

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<sup>45</sup> *Id.*

<sup>46</sup> See PJM Stakeholder Filing, Docket No. ER20-2308, Transmittal Letter at 3, fn. 28, 10, 12-15, Attachment A (Redlined Revisions to PJM Operating Agreement). Moreover, a failure to allow competitive bidding for EOL Projects that expand or enhance the transmission grid is a failure to economically plan, and a failure to promote competition with respect to, transmission facilities, which is inconsistent with Schedule 6 of the PJM Operating Agreement.

<sup>47</sup> CTOA Section 6.3.4.

<sup>48</sup> See PJM Comments at 9 (citing CTOA, Section 4.1.4).

<sup>49</sup> CTOA, PJM, Rate Schedule FERC No. 42, Section 1.22 (Definitions).

<sup>50</sup> *Id.*

<sup>51</sup> PJM Tariff, Section 1 (Definitions).

by the Transmission Provider within the PJM Region that are used to provide transmission service under Tariff, Part II and Part III.”<sup>52</sup>

These provisions of the CTOA, relying on the Tariff and Operating Agreement, establish that PJM has full authority to plan expansions or enhancements related to all Transmission Facilities under its planning and operational control as set forth in Schedule 6. There is no restriction in the scope of either of these provisions to limit PJM’s planning of the Transmission Facilities needed to provide firm transmission service when existing facilities are no longer capable of providing that service because they have reached the end of operational life.

As discussed below, there are no specific or general reservations of rights to the PJM Transmission Owners in the CTOA that override either the transfer of planning responsibility for regional Transmission Facilities to PJM or the authority of PJM and the PJM members to modify PJM’s planning responsibilities set forth in the Operating Agreement. A holistic reading of PJM’s governing documents – the CTOA, the PJM Tariff, and the PJM Operating Agreement – confirms that PJM is far from prohibited from planning EOL facilities under the CTOA. Instead, PJM’s governing documents require PJM to engage in cost-effective regional planning to support competition in the PJM region.<sup>53</sup> Because the December 17 Order’s interpretation of the CTOA’s transfer and retention of planning rights is unsupported and does not reflect reasoned decision-making, rehearing is warranted.

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<sup>52</sup> *Id.*

<sup>53</sup> See PJM Operating Agreement, Schedule 6, Section 1.1 (Purpose and Objectives).

## 2. The PJM Transmission Owners' Retained Rights Do Not Include Replacement Decisions For Transmission Facilities.

The Commission twice asserts that the PJM Transmission Owners “generally reserve all rights not specifically granted to PJM” and concludes that PJM does not have the authority to plan Transmission Facilities to replace aging infrastructure.<sup>54</sup> However, the Commission has committed the logical fallacy of circular reasoning, or “begging the question,” where the conclusion simply assumes the answer. The Commission’s “proof” in its circular argument is not a conclusion that is logically drawn from the premises of the argument or found in any straightforward reading of the PJM governing documents. Instead, the Commission’s conclusion is derived from a premise [the PJM Transmission Owners retain the right to plan regional Transmission Facilities after they determine existing Transmission Facilities can no longer be maintained] that assumes the conclusion [PJM does not have the authority to plan regional Transmission Facilities after they determine existing Transmission Facilities can no longer be maintained]. However, a simple reading of the plain language of the PJM governing documents demonstrates the fallacy of the Commission’s conclusion.

While PJM has regional planning responsibility, the PJM Transmission Owners retain rights under Sections 4.5 and 5.2 of the CTOA to make decisions to maintain and retire their existing Transmission Facilities.<sup>55</sup> Out of the word “maintain,” the December 17 Order wrings out a broad right for an individual PJM Transmission Owner to *replace* existing Transmission Facilities in perpetuity once they can no longer be maintained. The Commission inexplicably concludes that:

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<sup>54</sup> December 17 Order at PP 51, 53.

<sup>55</sup> See Joint Stakeholder Proposal at 1; see Section 205 Filing, Attachment A (Redlined Revisions to PJM Operating Agreement).

**a replacement project** does not fall under regional transmission planning under the PJM Operating Agreement as it **relates solely to maintenance of existing facilities**, and it does not ‘expand’ or ‘enhance’ the PJM grid as the CTOA requires for transmission planning responsibilities transferred to PJM.<sup>56</sup>

The Commission’s conclusion defies reasoned decision-making.

As the Commission recognized in Paragraph 54 of the December 17 Order, “the proposed revisions in this filing address transmission projects to replace any transmission facilities that have reached the end of their useful lives . . . .” Replacement is not encompassed in maintenance or retirement decisions retained by Transmission Owners. Indeed, in Paragraph 54, the Commission quotes PJM as referring to EOL planning as “replacement decisions.”<sup>57</sup> Replacement decisions by their nature are grid enhancing transmission planning decisions. They are neither maintenance nor retirement. The common definition of maintain does not include replacement.<sup>58</sup> Maintenance is the process of preservation and continuation. When the maintenance button lights up on the dashboard in a car, the car owner examines the work and repairs necessary to continue safely driving that car. Replacement of the vehicle is not maintenance because maintenance requires preservation and continuation of the existing vehicle, not the purchase of a new vehicle.<sup>59</sup>

The Commission next attempts to support its illogical assertions about maintenance by describing the “replacement of facilities” as “part of the continuum of maintenance as the transmission owner weighs the ongoing costs of repair compared with the costs of retiring and

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<sup>56</sup> December 17 Order at P 54 (emphasis added).

<sup>57</sup> December 17 Order at P 54.

<sup>58</sup> See [Maintain | Definition of Maintain by Merriam-Webster \(merriam-webster.com\)](https://www.merriam-webster.com/dictionary/maintain).

<sup>59</sup> In this regard, reference to Transmission Facilities replacement as an “asset management” decision with respect to existing assets is a misnomer. Decisions regarding maintenance or retirement are asset management decisions. Determination of replacement Transmission Facilities is a new asset acquisition decision and has no connection to “management” of the existing asset. The Commission’s accounting rules confirm this fact.

replacing the equipment.”<sup>60</sup> The Commission implies that because “replacement of facilities” is part of this “continuum of maintenance,” replacement cannot be separated from maintenance. Again, the Commission’s interpretation must be read into the PJM governing documents, which actually provide something very different. The CTOA specifically and separately reserves the rights to maintain and to retire to the PJM Transmission Owners – but nowhere does the CTOA reserve the right to *replace*. Thus, even if the Commission is correct that “replacement” is at one end of the maintenance continuum, the CTOA presents a classic example of the principle *expressio unius est exclusio alterius*. The CTOA’s express inclusion of maintenance and retirement as part of the “continuum of maintenance” excludes other parts of the continuum, like replacement. Thus, the CTOA’s failure to express “replacement” shows that the Transmission Owners did not reserve that part of the continuum.

The PJM Transmission Owners simply did not retain the right to “replace” their existing transmission assets in perpetuity in the CTOA or otherwise – particularly those that they turned over to PJM’s planning and operational control. The December 17 Order’s grant of perpetual rebuilding of existing Transmission Facilities is antithetical to regional planning. Allowing perpetual rebuilding of yesterday’s grid without any centralized planning is also antithetical to any efforts to build the grid needed for today and into the future.<sup>61</sup> The December 17 Order simply ignored the plain language of the PJM governing documents, failed to engage the arguments of the Joint Stakeholders, and avoided its obligation for reasoned decision-making.

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<sup>60</sup> December 17 Order at fn 97.

<sup>61</sup> See, LS Power Comments, Brattle Affidavit at 3 noting that failure to include EOL planning in PJM’s regional planning criteria results in inefficiencies and missed opportunities that can never be recovered.

**3. The Commission erred by treating “Transmission Facilities” and “transmission facilities” as the same things.**

In reaching its conclusion, the Commission erred by referencing lower case “transmission facilities” when the PJM Stakeholder Proposal applies only to “Transmission Facilities,” a defined term in PJM that means a different set of assets than “transmission facilities.” Specifically, the Commission avers that the PJM Stakeholder Proposal includes revisions to the PJM Operating Agreement to “address transmission projects to replace any *transmission facilities* that have reached the end of their useful lives, which goes beyond the scope of planning responsibilities delegated to PJM in the PJM Operating Agreement.”<sup>62</sup> That is simply incorrect.

The PJM Operating Agreement defines “Transmission Facility” as “facilities that: (i) are within the PJM Region; (ii) meet the definition of transmission facilities pursuant to FERC’s Uniform System of Accounts or have been classified as transmission facilities in a ruling by FERC addressing such facilities; and (iii) have been demonstrated to the satisfaction of the Office of the Interconnection to be **integrated with the PJM Region transmission system and integrated into the planning and operation of the PJM Region to serve all of the power and transmission customers within the PJM Region.**”<sup>63</sup> There is a plethora of lower case “transmission facilities” that the PJM Transmission Owners have not integrated into the planning and operation of the PJM Region, as they serve only local needs and are generally lower voltage and limited to a single transmission zone. Those lower case “transmission facilities” are not at issue in the PJM Stakeholder Proposal. Thus, the Commission’s statement that the PJM Stakeholder Proposal includes revisions to the PJM Operating Agreement to “address transmission projects to replace

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<sup>62</sup> December 17 Order at P 54 [emphasis added].

<sup>63</sup> PJM Operating Agreement, Section 1 (Definitions) [emphasis added].

*any transmission facilities* that have reached the end of their useful lives, which goes beyond the scope of planning responsibilities delegated to PJM in the PJM Operating Agreement” is factually and legally incorrect.<sup>64</sup> The PJM Joint Stakeholder Proposal pertains only to “Transmission Facilities,” which are integrated into the planning and operation of the PJM Region to serve all transmission customers within the PJM Region. The PJM Stakeholder Proposal does not address local facilities or those over which the Transmission Owners have retained planning and operational authority.

**4. A review of the merits of the Joint Stakeholder Proposal demonstrates that it respects the rights and obligations of the PJM Transmission Owners.**

The PJM Stakeholder Proposal builds upon the rights and obligations that were transferred to PJM and does not interfere with the PJM Transmission Owners’ rights under Sections 4.5 and 5.2 of the CTOA to make decisions to maintain and retire transmission assets. Rather, it respects those rights.<sup>65</sup> The PJM Stakeholder Proposal does not interfere with or supplant, in any way, the PJM Transmission Owners’ obligations to undertake routine transmission or substation equipment maintenance and repair activities. While a PJM Transmission Owner may retain authority over the decision to retire an existing asset,<sup>66</sup> PJM retains the authority to determine whether a

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<sup>64</sup> December 17 Order at P 54 [emphasis added].

<sup>65</sup> See PJM Stakeholder Proposal at 1; see Section 205 Filing, Attachment A (Redlined Revisions to PJM Operating Agreement). Note specifically the mandatory Transmission Owner-driven role in each definition of EOL Condition, EOL Criteria, EOL Look-ahead Program, and EOL Notification proposed, as well as in the proposed Section 1.5.4(b) where “Each Transmission Owner shall provide to the Office of the Interconnection and the Transmission Expansion Advisory Committee...”

<sup>66</sup> See CTOA, Sections 4.4 (requiring PJM Transmission Owners to provide PJM with “reasonable advance notice” prior to taking a facility out of service), 5.2 (providing PJM Transmission Owners with the right to sell, dispose, or retire a facility).

replacement of a Transmission Facility under PJM’s operational and planning control, if needed, is a local project or a regional project subject to regional planning.<sup>67</sup>

Consistent with the CTOA, the PJM Stakeholder Proposal recognizes that requirements for PJM regional planning, including EOL Projects, may occur through amendments and improvements to the PJM Operating Agreement.<sup>68</sup> Critically, the CTOA places no restrictions on PJM’s regional planning mandate or the ability of stakeholders to clarify and further define the scope of PJM’s regional planning.<sup>69</sup>

### **5. The Commission erred in rendering “enhance” meaningless.**

In approving the PJM Transmission Owner Proposal, that modified the PJM Tariff Section M-3 to address “asset management projects,” the Commission essentially narrowed PJM’s planning authority to “expansions and enhancements” that involve more than an “incidental increase in transmission capacity.”<sup>70</sup> In the December 17 Order, the Commission further narrows PJM’s regional planning authority only to “expansions that involve more than an incidental increase in transmission capacity.”<sup>71</sup> The Commission achieves this end by reading “expansion or enhancement” too narrowly, resulting in “enhancement” being meaningless and read out of the

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<sup>67</sup> See CTOA Section 4.1.4; see *Atlantic City Electric*, 295 F. 3d at 6; 18 CFR § 35.34(k)(7); see *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163 at PP 121, 140 (2008) (explaining PJM’s duty to evaluate and determine whether local reinforcements will be categorized as PJM RTEP projects or as local supplemental projects). In that order, the Commission also explained that the RTO/ISO (and not the respective transmission owner) is ultimately responsible for complying with Order No. 890’s nine planning principles and for ensuring that transmission-owning members develop plans through a process that adheres to the requirements of Order No. 890. *Id.* at P 122.

<sup>68</sup> See Supporting Comments of the Joint Stakeholders, Docket No. ER20-2308 at 1, 3-4, 7-8, 12-14, 47-48 (explaining the power of the PJM Members Committee to enact Operating Agreement changes and the obligation of PJM to submit those changes to FERC).

<sup>69</sup> *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254, 1263 (D.C. Cir. 2018) (“*ODEC v. FERC*”) (explaining that PJM and the Transmission Owners have the authority to amend “the Tariff, the Operating Agreement, or PJM’s own planning criteria to address any problem of prodigal spending, to establish appropriate end-of-life planning criteria, or otherwise to limit regional cost sharing—as long as any amendment respects the cost-causation principle”).

<sup>70</sup> August 2020 Order, 172 FERC ¶ 61,136 at P 83-84.

<sup>71</sup> December 17 Order at P 54.



Operating Agreement. The Commission focuses on new facilities that provide only an incidental increase in transmission capacity as not being an “expansion” but ignores the fact that replacing a 40-, 50-, or 80-year-old Transmission Facility that is fully depreciated with a new Transmission Facility that will be in transmission rates for decades is, in every sense of the word, an enhancement.

Although it is possible to argue that replacement decisions do not automatically “expand” the grid, there is no question that they “enhance” the grid. “Enhance” means to heighten or increase, especially “to increase or improve in value, quality, desirability, or attractiveness.”<sup>72</sup> Replacing aging infrastructure with new infrastructure that has a 40-50 year operational life fits the definition of enhance.

PJM has shared the same understanding that replacing aging infrastructure enhances the Transmission System, stating:

Aging Infrastructure: **These days**, instead of expanding the grid to accommodate more and more customer demand, **transmission investment tends to be focused on aging infrastructure (some approaching 90 years old) and upgrades to ensure reliability, improve transfer capability, and comply with local load-serving criteria. *These system enhancements*** help avoid equipment failure and blackouts, and often, projects identified to solve one issue help address other system needs as well.<sup>73</sup>

These system enhancements are an expansion or enhancement as referenced in the CTOA and are fully within the scope of regional planning.

Furthermore, planning replacement of existing Transmission Facilities is a critical “enhancement” decision, as the aging grid is now functioning in a world that is significantly

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<sup>72</sup> Merriam-Webster Online Dictionary, available at: <https://www.merriam-webster.com/dictionary/enhance>.

<sup>73</sup> Regional Transmission Expansion Planning: Planning the Future of the Grid, Today, available at: <https://www.pjm.com/-/media/library/reports-notices/2019-rtep/regional-transmission-expansion-planning-planning-the-future-of-grid-today.ashx?la=en> (last accessed Jan. 16, 2021).

different than when originally planned. The advent of competitive wholesale supply was a significant change, and the industry and regulators are still trying to figure out how to plan in that environment. Our current approach of rebuilding the grid of the past absent a holistic look at our future needs will only increase costs and drive a return to a balkanized grid, as recognized by the United States Court of Appeals for the Seventh Circuit:

The existing transmission system originally served vertically integrated utilities that built their own generation relatively close to their customers. The system was not designed for long-distance power transfers between different parts of the country. The inadequacy of the present network and the urgency of the need for its improvement has only been exacerbated by the additional burdens imposed by deregulation (or restructuring), which “unbundled” generation and transmission and created a need to bring power from distant generators. Additional challenges have been posed by the demand for power from renewable generation sources (such as wind farms) that are often located in places remote from centers of electric consumption.<sup>74</sup>

As discussed below, under Order No. 1000 PJM has an obligation to plan for all regional needs. Addressing current and future system needs when planning the Transmission Facilities necessary, if any, to replace existing Transmission Facilities that have reached the end of their operational lives is in all respects an “enhancement” of the grid.

In this regard, the Commission’s reference to PJM’s point that “transmission projects to address an EOL Condition that are related to replacement are outside the scope of its planning responsibilities as they relate to local planning determinations, not regional planning determinations”<sup>75</sup> is immaterial. The question for the Commission is not how responsibilities are currently divided, but whether the CTOA affirmatively prohibits PJM from regionally planning new Transmission Facility enhancements resulting from a determination by the PJM Transmission

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<sup>74</sup> *Illinois Commerce Comm'n v. F.E.R.C.*, 576 F.3d 470 (7th Cir. 2009)(J. Cudahy concurring in part, dissenting in part)(citations omitted).

<sup>75</sup> December 17 Order at P 54.

Owner that the Transmission Facility can no longer be maintained. PJM's comments regarding the current division of planning responsibilities does not support the December 17 Order's determination as to the rights that the PJM Transmission Owners retained through the CTOA.

**B. The December 17 Order erred in its application of *Atlantic City Electric*. (Statement of Error #2)**

The December 17 Order's rejection of the PJM Stakeholder Proposal rested in part on the Commission's expansive and unsupported determination that the Court of Appeals for the District of Columbia Circuit in *Atlantic City Electric* established restrictions on PJM's rights and authority as a regional planner.<sup>76</sup> The December 17 Order does not explain how *Atlantic City Electric* applies in the context of a Section 205 FPA filing proposing new planning rules, such as the PJM Stakeholder Proposal supported by a supermajority of the PJM Members Committee.<sup>77</sup> Instead, the December 17 Order emphasizes the filing rights of the PJM Transmission Owners and focuses on the Court's assertion in *Atlantic City Electric* that "nothing in section 206 [of the FPA] sanctions denying petitioners [the PJM Transmission Owners] their right to unilaterally file rate and term changes."<sup>78</sup> This assertion from *Atlantic City Electric* – on which the December 17 Order relies, at least in part, to support its ultimate holding rejecting the PJM Stakeholder Filing – does not apply in the context of the PJM Stakeholders' Section 205 filing proposing new planning rules.

In *Atlantic City Electric*, the D.C. Circuit reviewed PJM's authority and Section 205 filing rights relative to the filing rights of the PJM Transmission Owners. The PJM Transmission Owners had contended that FERC had exceeded its statutory authority by requiring the owners of

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<sup>76</sup> See December 17 Order at P 52.

<sup>77</sup> See Answer of the Joint Stakeholders to the Motion of the Indicated Transmission Owners for Summary December 17, Docket No. ER20-2308, at p. 1-4 (filed Aug. 4, 2020).

<sup>78</sup> December 17 Order at P 52 (citing *Atlantic City Electric*, 295 F.3d 1, 10 (D.C. Cir. 2002)).

transmission assets to cede their statutory right under Section 205 with respect to rate design for the transmission assets they would place under PJM’s operational control.<sup>79</sup> The D.C. Circuit agreed with the petitioning transmission owners and held that the transmission owners retain Section 205 filing rights related to rate design for their assets.<sup>80</sup>

Importantly, *Atlantic City Electric* only applied to rate filings and related terms of service over transmission assets; the case has no application to planning rules. The December 17 Order fails to explain or cite to any rule of law or discussion in *Atlantic City Electric* that demonstrates that the case applies to planning rules.<sup>81</sup> The *Atlantic City Electric* Court expressly limited its holding to Section 205 rate design changes:

In sum FERC lacks the authority to require the petitioners to cede their right under section 205 of the Act to file changes in rate design with the Commission.<sup>82</sup>

The December 17 Order states in one instance that *Atlantic City Electric* dealt with changes to rate design, not with changes to planning procedures.<sup>83</sup> Yet, the December 17 Order ultimately latches on to *Atlantic City Electric*’s use of the phrase “term changes” to conclude that such term changes encompass “the changes to planning procedures at issue [in the PJM Stakeholder Proposal].”<sup>84</sup> The December 17 Order goes too far. The *Atlantic City Electric* Court uses the phrase “term changes” only once and does so in reference to Section 206;<sup>85</sup> nowhere does the Court conclude that “term changes” in the context of the Court’s adjudication of a contested rate design

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<sup>79</sup> 295 F. 3d 1, 3, 9 (D.C. Cir. 2002).

<sup>80</sup> *Id.* at 11.

<sup>81</sup> See December 17 Order at P 52 (only citing to *Atlantic City Electric*’s generic reference to “rate and term changes” and not citing to any discussion regarding planning rules).

<sup>82</sup> 295 F. 3d at 11; see also 295 F.3d at 15 (restating its holding in the conclusion of the decision).

<sup>83</sup> See December 17 Order at P 52.

<sup>84</sup> December 17 Order at P 52.

<sup>85</sup> See 295 F.3d at 10.

issue refers to or otherwise encompasses changes to planning procedures. The phrase “term changes” in *Atlantic City Electric* refers only to “terms for service rendered with [the PJM Transmission Owners’] assets”<sup>86</sup> and was not intended to allow the PJM Transmission Owners to engage in regional planning or otherwise expand or circumvent PJM’s governing documents – the CTOA, the PJM Tariff, and PJM Operating Agreement. Simply put, planning is not among the rights to which *Atlantic City Electric* pertains. But, even if planning *is* among the rights to which *Atlantic City Electric* pertains, the changes in the PJM Stakeholder Proposal fall squarely within the regional planning responsibilities that the PJM Transmission Owners have voluntarily surrendered to PJM, even if PJM is endeavoring to shirk those responsibilities by claiming otherwise.

The December 17 Order’s expansive interpretation of *Atlantic City Electric* is arbitrary and capricious and does not reflect reasoned decision-making because the December 17 Order fails to explain how *Atlantic City Electric*’s discussion of a PJM Transmission Owner’s rate filing authority under Section 205 of the Federal Power Act mandates that the PJM Transmission Owners get to make replacement decisions for Transmission Facilities or prevent those decisions from being made as part of regional planning that is reserved to PJM under PJM’s governing documents.<sup>87</sup> Because the December 17 Order’s interpretation of *Atlantic City Electric* is unsupported and does not reflect reasoned decision-making, rehearing is warranted.

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<sup>86</sup> 295 F. 3d at 9.

<sup>87</sup> *South Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 55 (D.C. Cir. 2014); *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 528 (D.C. Cir. 2010); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)); *see also New Eng. Power Generators Ass’n v. FERC*, 881 F.3d 202, 210-11 (D.C. Cir. 2018) (the Commission must reach its conclusion through decision-making that is “reasoned, principled, and based upon the record”).

**C. The Commission’s reference to prior precedent to justify its decision to not rule on the merits of the PJM Stakeholder Proposal is arbitrary and capricious. (Specification of Error #3)**

In the December 17 Order, the Commission claims that its decision to reject the PJM Stakeholder Proposal on the basis of the scope of planning responsibilities delegated to PJM “is consistent with [the Commission’s] precedent on the scope of RTO planning.”<sup>88</sup>

PJM properly filed the PJM Stakeholder Proposal pursuant Section 205 of the Federal Power Act and PJM’s obligations under the PJM Operating Agreement. Unlike in other cases where the Commission declines to review the merits of a proposal, the December 17 Order did not decline to rule on the merits of the PJM Stakeholder Proposal because the December 17 Order found that the proposal was improperly filed or not properly before the Commission.<sup>89</sup> In fact, the December 17 Order found that “the PJM Stakeholder Proposal is consistent with the obligations of section 10.4(xiii) of the PJM Operating Agreement.”<sup>90</sup> The December 17 Order, in denying the PJM Transmission Owners’ motion for summary rejection, disagreed with the PJM Transmission Owners’ arguments that the PJM Stakeholder Proposal was not consistent with the statutory or regulatory requirements of a Section 205 filing.<sup>91</sup> The December 17 Order explicitly recognized PJM’s legal duty under the Operating Agreement to make a filing on behalf of its members (even if PJM disagrees with the filing).<sup>92</sup>

The December 17 Order also did not find that the Joint Stakeholder Proposal failed to contain sufficient detail that would prevent the Commission from engaging and ruling on the

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<sup>88</sup> December 17 Order at P 55.

<sup>89</sup> See *New York Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,225 at P 73 (2019).

<sup>90</sup> December 17 Order at P 50.

<sup>91</sup> See *id.* at P 48.

<sup>92</sup> *Id.* at P 49.

merits.<sup>93</sup> In fact, the December 17 Order disagreed with PJM Transmission Owners' arguments that the filing was patently deficient.<sup>94</sup>

The December 17 Order is arbitrary and capricious because, on one hand, it finds the PJM Stakeholder Proposal to be properly filed and before the Commission, and on the other hand, it fails to rule on the merits of the proposal.

Moreover, the precedent cited by the Commission does not support the Commission's logic or the result in the December 17 Order. Commission precedent dictates that, rather than absolve the PJM Transmission Owners of any obligation to abide by the requirements of Order Nos. 890 and 1000, the Commission must require open, transparent and coordinated transmission planning for new Transmission Facilities even if those facilities are necessitated by the retirement of Transmission Facilities that have reached the end of their operational lives.<sup>95</sup>

**1. The Commission's Reliance on the *Monongahela Power Co.* and *California Independent System Operator* Orders is Misplaced.**

First, the Commission's determination in *Monongahela Power Co.*<sup>96</sup> regarding the scope of PJM's transmission planning responsibility is not at odds with the PJM Stakeholders Proposal's FPA Section 205 amendments to the PJM Operating Agreement. In *Monongahela Power Co.*, the Commission addressed the PJM Transmission Owners' planning for Supplemental Projects, which is a defined category of transmission projects in PJM. Supplemental Projects are defined in the

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<sup>93</sup> See *Entergy Serv., Inc.*, 101 FERC ¶ 61,291 at P 25 (2002).

<sup>94</sup> See December 17 Order at P 48.

<sup>95</sup> See *PSEG Energy Res. & Trade LLC v. FERC*, 665 F.3d 203, 208, 209-10 (D.C. Cir. 2011) (“Among other things, [a]n agency's ‘failure to respond meaningfully’ to objections raised by a party renders its decision arbitrary and capricious” quoting *Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1083); *Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C.Cir. 2001).

<sup>96</sup> *Monongahela Power Co., et al.*, 162 FERC ¶ 61,129 (2018), *order on rehearing and compliance*, 164 FERC ¶ 61,217 (2018).

PJM Operating Agreement in the negative; they encompass only facilities that are not otherwise covered by PJM regional planning criteria.<sup>97</sup> Thus, the scope of PJM’s planning responsibility defines, dictates, and limits the scope of Supplemental Projects, not the other way around. The residual nature of the scope of planning related to Supplemental Projects does not indicate the scope of PJM’s planning responsibility with regard to EOL Conditions as set forth in the CTOA. As such, the *Monongahela Power Co.* precedent is inapplicable here on the issue of the scope of PJM’s planning authority and, in any event, does not establish any scope of PJM regional transmission planning for purposes of planning for Transmission Facilities once a retirement decision has been made by the owner of those Transmission Facilities.

Second, the Commission’s application of the *California Orders*<sup>98</sup> to its interpretation of the CTOA is misplaced. The California Orders addressed a Section 206 complaint<sup>99</sup> and a single transmission owner Section 205 filing,<sup>100</sup> respectively. The CTOA is a contractual filed rate that, as discussed at length above, under Commission precedent is defined by its terms, not by precedent in an unrelated proceeding on unrelated tariff provisions. As such, the Commission’s determination in the *California Orders* is irrelevant to the interpretation of the plain and unambiguous language of the CTOA. Notably, the Commission in the *California Orders* made clear this very point, holding that its determinations there were based on the specific facts at issue

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<sup>97</sup> See PJM Operating Agreement, Section 1 (“a transmission expansion or enhancement that is **not** required for compliance with the following PJM criteria: system reliability, operational performance or economic criteria, pursuant to a determination by the Office of the Interconnection and is not a state public policy project pursuant to Operating Agreement, Schedule 6, section 1.5.9(a)(ii)”) [emphasis added].

<sup>98</sup> References herein to the “California Orders” include the following: *California Pub. Utils. Comm’n v. Pac. Gas and Elec. Co.*, 164 FERC ¶ 61,161 (2018), *order on reh’g*, 168 FERC ¶ 61,171 (2019); *S. California Edison Co.*, 164 FERC ¶ 61,161 (2018), *order on reh’g*, 168 FERC ¶ 61,170 (2019).

<sup>99</sup> *California Pub. Utils. Comm’n v. Pac. Gas and Elec. Co.*, 164 FERC ¶ 61,161 (2018), *order on reh’g*, 168 FERC ¶ 61,171 (2019).

<sup>100</sup> *S. California Edison Co.*, 164 FERC ¶ 61,161 (2018), *order on reh’g*, 168 FERC ¶ 61,170 (2019).



in each case and were not tied to the orders in *Monongahela Power Co.*<sup>101</sup> In its rehearing order in *California Pub. Utils. Comm'n v. Pac. Gas and Elec. Co.*, the Commission also noted that “transmission expansion or enhancement” as reflected in PJM documents is different than the issue of just transmission expansion that was at issue in that case.<sup>102</sup> The Commission concluded that:

In light of the specific criteria set forth in the definition of Supplemental Projects in the PJM Tariff, there is no basis to conclude that based on their definition, Supplemental Projects are in many cases identical to asset management projects, and this is the case regardless of whether one describes asset management projects as Complainants do or as the Commission described them in the Order on Complaint.<sup>103</sup>

Notwithstanding this conclusion the Commission now relies on these same Orders to assert that they provide support for its narrow interpretation of PJM regional planning rights under the provisions of the CTOA, PJM Operating Agreement and PJM Tariff.

Because the Commission erroneously determined that PJM does not have the authority to perform the planning activities for transmission facilities that have reached the end of their useful life, the Commission rejected PJM’s filing without addressing the merits of the PJM Stakeholders Proposal.<sup>104</sup>

In addition to misplaced reliance on *Monongahela Power Co.* with regard to the scope of PJM’s transmission planning responsibility, the December 17 Order also erred by refusing to address the merits of the PJM Stakeholders Proposal, which would have dictated that the

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<sup>101</sup> See *California Pub. Utils. Comm'n v. Pac. Gas and Elec. Co.*, 164 FERC ¶ 61,161 at P 73 (2018) (The Commission stated that the scope of the proceeding was “limited to whether PG&E’s self-approval of asset management projects and activities violates the requirements of Order No. 890.”); see also, *id.* at P 67 (the Commission stated that “based on the information in the record, we find that the specific asset management projects and activities here do not, as a general matter, expand the CAISO grid.”) (emphasis added).

<sup>102</sup> *California Pub. Utils. Comm'n v. Pac. Gas and Elec. Co.*, order on reh’g, 168 FERC ¶ 61,171 (2019) P 59.

<sup>103</sup> *Id.* The Commission’s reference to “PJM Tariff” is a reference in this instance to the PJM Operating Agreement, the location of the definition of Supplemental Project. As the December 17 Order found, PJM Stakeholders hold the right to amend the Operating Agreement and, by extension, the definition of Supplemental Project.

<sup>104</sup> December 17 Order at P 57.

Commission must require the PJM Transmission Owners to comply with Order No. 890 and Order No. 1000 *even if* they retained primary planning responsibility for EOL facilities.

The Commission first notes that in Order No. 890, it “found that RTO planning processes should focus on ‘regional planning problems and solutions, not local planning issues that may be addressed by individual transmission owners.’”<sup>105</sup> However, as the Joint Stakeholders explained in this proceeding, the PJM Stakeholders Proposal applies only to Transmission Facilities as defined in the PJM Tariff, which are transmission facilities that the PJM Transmission Owners have already turned over to PJM for operational control and planning<sup>106</sup> and include regional transmission facilities. As such, the PJM Stakeholders Proposal is consistent with the Commission’s findings in Order No. 890.<sup>107</sup>

Moreover, the Commission’s precedent dictates that it must not wash its hands of Order No. 890-compliant transmission planning simply because the PJM Transmission Owners said so. The December 17 Order apparently adopts a distinction of the Transmission Owners’ creation, between “new” PJM Transmission Facilities necessitated by a replacement of existing Transmission Facilities versus “new” Transmission Facilities otherwise. The Commission reasons that replacements are not subject to PJM regional planning unless they expand or enhance the Transmission System.<sup>108</sup> The fallacy of the expansion/enhancement limitation is discussed above. If the Commission corrects this error and concludes that PJM should plan all new Transmission Facilities, the Commission should accept the PJM Stakeholder Proposal as Order No. 890-

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<sup>105</sup> *Id.* at P 55.

<sup>106</sup> See Joint Stakeholders Comments at 13 (explaining that “the Joint Stakeholder Proposal applies only to Transmission Facilities as defined in the PJM Tariff.”).

<sup>107</sup> See also Comments of New Jersey Board of Public Utilities at 2-6 (arguing that the Joint Stakeholder Proposal is consistent with Order No. 890, particularly the transparency requirement).

<sup>108</sup> December 17 Order at P 54.

compliant. However, even if the Commission determines that the PJM Transmission Owners retain authority for planning Transmission Facilities that have reached the end of their operational lives, the Commission must still require planning of Transmission Facilities by the Transmission Owners, which will include regional transmission facilities, to adhere to Order No. 890.

The Commission points to Order No. 890 for the finding that RTO planning processes should focus on regional issues while individual transmission owners address local planning issues.<sup>109</sup> However, the Commission has also explained that the authority granted to the PJM Transmission Owners is not unfettered. The Commission’s acceptance of the PJM Transmission Owner Proposal to modify Tariff Attachment M-3 to add “Asset Management Projects” was on the basis that the Attachment M-3 process would be a stand-alone transmission planning process for local Supplemental Projects that complies with the requirements of Order No. 890. Specifically, the Commission found that “while Order No. 890 requires individual transmission owners’ local planning processes to comply with specified requirements, even when transmission owners participate in an RTO, they are not required to allow the RTO to do all planning for local or Supplemental Projects. Therefore, so long as the individual Transmission Owners’ local planning process is compliant with the Order No. 890 requirements, the PJM Transmission Owners may retain primary authority for planning local Supplemental Projects.”<sup>110</sup>

However, the Commission did not specifically find that the Transmission Owner Proposal or Attachment M-3 as revised satisfies Order No. 890.<sup>111</sup> In the August 11 Order accepting the

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<sup>109</sup> *Id.* at P 55.

<sup>110</sup> See Joint Protest of the Load Group, filed in Docket No. ER20-2046-000 on July 6, 2020.

<sup>111</sup> In the order on rehearing of the August 2020 order accepting the PJM Transmission Owner Proposal, *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,225, at P 35 (2020), the Commission explained: “Moreover, the Commission did not base its determination to accept the Attachment M-3 Revisions on the requirements of Order No. 890. Rather, the Commission based its determination on the planning rights reserved by the PJM Transmission Owners in the CTOA and in the PJM Operating Agreement. As pointed out earlier, Order No. 890 supports the Commission’s reading

Transmission Owner Proposal, the Commission agreed with the Transmission Owners that transmission projects developed under their revisions to Attachment M-3 that result only in incidental expansions of the transmission system, such as asset management, need not comply with Order No. 890<sup>112</sup> and then in a footnote, the Commission specifically said that it “make[s] no determination here as to whether EOL Needs or any of these Asset Management Projects, and in particular specific replacement activities, are subject to the transmission planning requirements of Order No. 890, as the PJM TOs proposed to include these types of projects in the Order No. 890 planning process in Attachment M-3.”<sup>113</sup> In other words, the Commission had not yet determined that the Transmission Owners’ planning for EOL conditions pursuant to Attachment M-3 satisfies Order No. 890 planning requirements. In an order on rehearing of the August 11 Order, the Commission confirmed that it did not “base its determination to accept the Attachment M-3 Revisions on the requirements of Order No. 890.”<sup>114</sup>

While not conceding that EOL projects can or should be planned locally by individual Transmission Owners, an error that the Commission should correct by finding that EOL planning of new Transmission Facilities must be done by PJM and not the Transmission Owners, even if the Commission fails to correct this error, the Commission must at least require the Transmission Owners’ planning to comply with Order No. 890 requirements. It has not made such a requirement

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of the CTOA, as Order No. 890 found that RTO planning focuses ‘on regional problems and solutions, not local planning issues that may be addressed by individual transmission owners.’ Therefore, the requirement that the planning of local projects comply with Order No. 890 was a necessary component in the establishment of an RTO.” *Monongahela Power Co.*, 173 FERC ¶ 61,225 at P 35 (2020).

<sup>112</sup> *PJM Interconnection, L.L.C. et al.*, 172 FERC ¶ 61,136 (2020) at P 89.

<sup>113</sup> *Id.* at footnote 141.

<sup>114</sup> *PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,225, at P 35 (2020).

or otherwise found that the Attachment M-3 transmission planning for EOL Projects meets the Order No. 890 requirements.

The effect of this error is that the Commission has granted to the Transmission Owners unfettered and complete discretion to ignore the requirements of Order No. 890 and plan regional End of Life Transmission Facilities. Such a result does not square with the Commission's requirement that local planning by the PJM Transmission Owners must comply with Order No. 890 requirements as set forth in the *Monongahela Power Co.* proceeding. Accordingly, the December 17 Order is arbitrary and capricious, and does not reflect reasoned decision-making.

## **2. The Commission Arbitrarily and Capriciously Ignored the Regional Planning Requirements of Order No. 1000 and Order No. 2000.**

As with the Commission's disregard of Order No. 890 requirements, the Commission similarly disregards Order No. 1000 requirements. Had the Commission appropriately reviewed the PJM Stakeholders Proposal on the merits, it would have determined that the PJM Stakeholder Proposal is consistent with the regional planning requirements of Order No. 1000, while the Commission's interpretation of the CTOA is not. The Commission's failure to engage the parties' arguments<sup>115</sup> and its failure to apply its own existing regional planning rules renders its decision arbitrary and capricious.<sup>116</sup>

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<sup>115</sup> Joint Stakeholder Comments at 32-33, 46-47; LS Power Comments at 20, 33-35; LS Power Answer at 7, 21-22.

<sup>116</sup> See *Nor Am Gas Transmission*, 148 F.3d 1158, 1165 (1998)(quoting *KN Energy Inc. v. FERC*, 968 F.2d 1295, 1303 (D.C. Cir. 1992)("It is the duty of a reviewing court to make sure that an agency 'engage[s] the arguments raised before it."); *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981-982 (2005) ("Unexplained inconsistency is. . . a reason for holding an interpretation to be an arbitrary and capricious change from agency practice under the Administrative Procedure Act.")(citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 436 U.S. 29, 46-57 (1983)); *United Mun. Distribs. Group v. FERC*, 732 F.2d 202, 210 (D.C. Cir. 1984) ("[A]n agency must conform to its prior practice and decisions or explain the reason for its departure from such precedent."); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970)("[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.").

To address ongoing inefficient transmission planning and shortcomings in Order No. 890,<sup>117</sup> Order No. 1000 expanded upon regional planning requirements by requiring Transmission Owners to participate in a regional transmission planning process that results in a single regional plan that identifies the more efficient or cost-effective solutions to *all* the region’s needs.<sup>118</sup> In upholding Order No. 1000, the D.C. Circuit held that “it required no speculation by the Commission to conclude, ‘based on [its] expertise and knowledge of the industry, . . . that regional transmission planning is more effective if it results in a transmission plan, is open and transparent, and **considers all transmission needs.**’”<sup>119</sup> As noted earlier, transmission planning is a core function of an RTO like PJM.<sup>120</sup> The Commission’s regulations provide:

The [RTO] must be responsible for planning, and for directing or arranging, necessary transmission expansions, additions, and upgrades that will enable it to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with the appropriate state authorities.<sup>121</sup>

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<sup>117</sup> Order No. 890.

<sup>118</sup> See Order No. 1000 at P 3-4 (describing the deficiencies that Order No. 1000 is intended to correct and one of the primary objectives of the rule as ensuring “that transmission planning processes at the regional level consider and evaluate, on a non-discriminatory basis, possible transmission alternatives and produce a transmission plan that can meet transmission needs more efficiently and cost-effectively . . .”), see also Order No. 1000 at P 43 (“As a number of commenters contend, inadequate transmission planning and cost allocation requirements may be impeding the development of beneficial transmission lines or resulting in efficient and overlapping transmission development due to a lack of coordination, all of which contributes to unnecessary congestion and difficulties in obtaining more efficient or cost-effective transmission service.”).

<sup>119</sup> *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (citing Order No. 1000-A at P 60)[emphasis added].

<sup>120</sup> *Reg’l Transmission Organs.*, Order No. 2000, 89 FERC ¶ 61,284, at P 485, *order on reh’g*, Order No. 2000-A, (2000), *aff’d sub nom.*, *Pub. Util. Dist. No. 1. Of Snohomish Cty., Wash. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)). In Order No. 2000, the Commission determined that an RTO or independent system operators has “ultimate responsibility for both transmission planning and expansion within its region.” Order No. 2000 at P 485.

<sup>121</sup> 18 CFR § 35.34(k)(7); see *Public Util. Dist. No. 1 v. FERC*, 272 F.3d 607, 612 (D.C. Cir. 2001) (“the RTO must have planning and expansion authority”).

Order No. 2000 assigned to RTOs ultimate responsibility for planning and expansion within their regions.<sup>122</sup> Consistent with this, the PJM Transmission Owners chose to comply with the regional planning requirements in Order No. 1000 through their participation in PJM's Regional Transmission Expansion Planning Protocol.<sup>123</sup> This means that PJM is the Order No. 1000 regional transmission planner for the transmission providers in the PJM region. As such, PJM's authority to engage in regional planning must be consistent with the regional planning requirements in Order No. 1000.

A fundamental requirement of Order No. 1000 is that each transmission planning region be "governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions."<sup>124</sup> For a region governed by an RTO in the first instance, this regional focus should be easily achieved, as it was a requirement of the formation of an RTO:

the RTO should have **ultimate responsibility for both transmission planning and expansion within its region**. The rationale for this requirement is that a single entity must coordinate these actions to ensure a least cost outcome that maintains or improves existing reliability levels. In the absence of a single entity performing these functions, there is a danger that separate transmission investments will work at cross purposes and possibly even hurt reliability.<sup>125</sup>

The December 17 Order ignored the Commission's pronouncements in Order No. 1000 and Order No. 2000 and opted instead for a planning scheme that allows the PJM Transmission

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<sup>122</sup> *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,284, at P 486, *order on reh'g*, Order No. 2000-A, (2000), *aff'd sub nom.*, *Pub. Util. Dist. No. 1. Of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)[emphasis added].

<sup>123</sup> The Commission found that the PJM footprint satisfied the regional scope requirement. *PJM Interconnection, L.L.C., et al.*, 142 FERC ¶ 61,214 at P 30 (2013).

<sup>124</sup> Order No. 1000 at P 160.

<sup>125</sup> *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,284, at P 486, *order on reh'g*, Order No. 2000-A, (2000), *aff'd sub nom.*, *Pub. Util. Dist. No. 1. Of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)[emphasis added].

Owners to locally plan Transmission Facilities on an individual transmission owner basis that is balkanized, piecemeal and opaque, notwithstanding the integration of those Transmission Facilities in meeting regional needs. Allowing such an outcome demonstrates that the December 17 Order failed to engage in reasoned decision-making consistent with the Commission's own rules regarding RTOs and regional planning.<sup>126</sup>

There is ample record evidence demonstrating that aging infrastructure *is* a particular reliability and resource issue affecting the PJM region. While not repeating all the evidence here, a few key facts are that two-thirds of Transmission Facilities in PJM are more than 40 years old and one-third of those transmission facilities are more than 50 years old.<sup>127</sup> The Transmission Facilities under PJM's operational control are, on average, 10 years older than the transmission facilities in other Regional Transmission Organizations.<sup>128</sup> Additionally, as noted, in 2018, there were \$8.5 billion worth of transmission projects planned with the largest driver being the need to address EOL conditions on the assets.<sup>129</sup> The statistics for 2019 demonstrate that all transmission planning was equally driven by the need to address EOL conditions.<sup>130</sup> Transmission planning to

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<sup>126</sup> *United Mun. Distributions Group v. FERC*, 732 F.2d 202, 210 (D.C. Cir. 1984) (“[A]n agency must conform to its prior practice and decisions or explain the reason for its departure from such precedent.”); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970) (“[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.”).

<sup>127</sup> LS Power Comments in Support at 3 (citing “The Benefits of the PJM Transmission System” PJM Interconnection at 5 (April 16, 2019), available at: <https://www.pjm.com/-/media/about-pjm/newsroom/fact-sheets/the-value-of-transmission.ashx>).

<sup>128</sup> *Id.* at 30.

<sup>129</sup> PJM Stakeholder Proposal, Docket No. ER20-2308, Attachment C (May 12 Stakeholder Letter) at 1; *see also* RTEP at pp. 5, 40 (Feb. 28, 2019 PJM Presentation), available at [2018-rtep-book-1.ashx \(pjm.com\)](https://www.pjm.com/-/media/about-pjm/newsroom/fact-sheets/2018-rtep-book-1.ashx) (last accessed Jan. 16, 2021).

<sup>130</sup> *Id.*



address EOL needs is a regional issue. PJM itself has stated that the aging infrastructure is a major concern for the region:

Aging Infrastructure: These days, instead of expanding the grid to accommodate more and more customer demand, transmission investment tends to be focused on aging infrastructure (some approaching 90 years old) and upgrades to ensure reliability, improve transfer capability, and comply with local load-serving criteria. These system enhancements help avoid equipment failure and blackouts, and often, projects identified to solve one issue help address other system needs as well.<sup>131</sup>

The Commission's rejection of the PJM Stakeholders Proposal amounts to denying PJM the ability to regionally plan for the largest driver of new Transmission Facilities in complete disregard of its own obligations to identify more efficient or cost-effective solutions to **all** the PJM region's needs.

The PJM Stakeholder Proposal, supported by a supermajority of PJM members, establishes an open and transparent process that allows PJM to identify any enhancements or expansions that are necessary to enable PJM to continue to meet the region's needs following the retirement of an existing Transmission Facility. Contrary to the Commission's statement in Paragraph 54, it does not assign PJM responsibility for local planning determination because each PJM Transmission Owner remains responsible for replacements of "transmission facilities" that have not been turned over to PJM for planning and operational control. Similarly, under the PJM Stakeholder Proposal, PJM does not make decisions about when a Transmission Facility will retire.<sup>132</sup> Rather, the EOL Look-Ahead Program enables PJM to more efficiently look for regional solutions consistent with

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<sup>131</sup> See, "Regional Transmission Expansion Planning: Planning the Future of the Grid, Today," at 4, *available at* <https://www.pjm.com/-/media/library/reports-notices/2019-rtep/regional-transmission-expansion-planning-planning-the-future-of-grid-today.ashx?la=en> (last accessed Jan. 19, 2021).

<sup>132</sup> The EOL Look-ahead program does not prevent a PJM Transmission Owner from addressing purely local ramifications from the retirement of Transmission Facilities if PJM determines that retirement of existing Transmission Facilities creates no reliability issues and no EOL Project (Regional RTEP or Sub-regional RTEP Project) is necessary.

Order No. 1000 by including within the regional planning criteria the impacts of local decisions that Transmission Facilities have reached the end of operational life.<sup>133</sup>

In the analysis required by Order No. 1000, PJM must evaluate alternative regional solutions to determine whether the regional solution is the more efficient or cost-effective solution and should displace the local solution(s).<sup>134</sup> If PJM cannot include all the region’s needs in its regional planning, particularly the needs driving the majority of new transmission, so that it can identify potential regional solutions, then PJM cannot satisfy the affirmative obligation to regionally plan solutions to all the region’s transmission needs. The PJM Stakeholder Proposal recognizes the regional importance of planning for aging infrastructure and includes the criteria in PJM planning under the RTEP Protocol of Schedule 6 to more efficiently evaluate the appropriate replacement Transmission Facilities, if any. PJM Transmission Owners are fully able to participate in the competitive solicitation.<sup>135</sup> The United States Court of Appeals for the District of Columbia Circuit specifically held that “nothing we say here **prevents PJM or its member utilities from amending the Tariff, the Operating Agreement**, or PJM's own planning criteria to address any problem of prodigal spending, **to establish appropriate end-of-life planning criteria**, or otherwise to limit regional cost sharing—as long as any amendment respects the cost-

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<sup>133</sup> See LS Power Comments at 22-25. The Brattle Group’s Presentation included with LS Power Comments provided the Commission with record evidence on the increased costs associated with failing to look for regional solutions to retiring Transmission Facilities. *Id.* at 24-25.

<sup>134</sup> *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 65 (2013)(“The proposed process allows **PJM to evaluate**, in consultation with stakeholders, alternative transmission solutions that might meet the transmission needs of the transmission planning region *more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning processes.*” [emphasis added].

<sup>135</sup> Under the PJM Stakeholder Proposal, if a regional project is identified as a result of a Transmission Facility reaching the end of its operational life, but the project meets the definitions of projects reserved to local transmission owners, Section 1.5.8(l) of the Operating Agreement maintains the reservation of the assignment of those projects to the PJM Transmission owner.

causation principle.”<sup>136</sup> The EOL Notification to be given by the Transmission Owners to PJM and stakeholders is in essence the end-of-life planning criteria in the PJM Operating Agreement that is explicitly authorized by the United States Court of Appeals for the District of Columbia.<sup>137</sup>

The Commission’s determination that PJM does not have the authority to regionally plan for transmission needs resulting from the retirement of a Transmission Facility is not the result of reasoned decision-making. In the December 17 Order, the Commission did not engage in the analysis discussed above and, in fact, never once referenced Order No. 1000 or Order No. 2000 in its determination. Instead, the Commission narrowly construed the regional planning aspects of the CTOA and the Operating Agreement, and expansively construed the rights retained by the PJM Transmission Owners in the CTOA, ignoring the actual language of both while relying on PJM-specific Commission precedent related to local transmission planning requirements and irrelevant California precedent and ignoring its own regional planning requirements. Sound decision-making requires the Commission to apply the requirements in Order No. 890, Order No. 1000, and Order No. 2000 and find that PJM has authority to regionally plan new Transmission Facilities to meet transmission needs resulting from the proposed retirement of a Transmission Facility.

**D. The Commission’s Rejection of the PJM Stakeholders Proposal fosters unjust and unreasonable rate outcomes by subjecting more transmission projects to local cost allocation. (Specification of Error #4)**

Just as with EOL projects planned when EOL criteria are included as part of a PJM Transmission Owner’s FERC Form No. 715 criteria, projects to address needs arising from

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<sup>136</sup> *ODEC Elec. Co-op., Inc. v. F.E.R.C.* 898 F.3d at 1263.

<sup>137</sup> See EOL Notification definition in the Joint Stakeholder Proposal. Under the EOL Notification definition, a resulting regional project is only ordered by PJM “if necessary,” meaning its retirement creates regional planning reliability violations or is needed in conjunction with other drivers, such as public policy or market efficiency. The “if necessary” language also respects the cost causation principle, by ensuring that unneeded regional projects are not regionally cost-allocated, as well as addresses the problem of prodigal spending.

Transmission Facilities reaching the end of their operational lives must conform to cost causation principles regardless of the planning mechanism. The impact of the December 17 Order, combined with the Commission’s order approving the PJM Transmission Owner Proposal,<sup>138</sup> is that nearly all EOL planning will be done at the local level and cost allocated locally, thus violating cost causation principles. Approval of the PJM Stakeholder Proposal would address this fundamental flaw and avoid unjust and unreasonable rate outcomes of locally allocating the costs of a project with regional benefits.

The cost allocation methodology related to FERC Form No. 715 criteria serves as applicable precedent. FERC Form No. 715 criteria are locally determined by individual Transmission Owners. However, the planning of new Transmission Facilities that results from the application of the Transmission Owner-developed criteria is done on a regional basis. Although the Commission initially accepted the single zone cost allocation revisions sought by the PJM Transmission Owners for FERC Form No. 715 projects, the United States Court of Appeals for the District of Columbia Circuit vacated the Commission’s order, finding that the single zone cost allocation was inappropriate because “[T]he cost causation principle focuses on project benefits, not on how particular planning criteria were developed.”<sup>139</sup> The cost causation principle requires costs to be allocated in a manner that is roughly commensurate with the benefits.<sup>140</sup>

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<sup>138</sup> *PJM Interconnection, L.L.C. et al.*, 172 FERC ¶ 61,136 (2020).

<sup>139</sup> *ODEC v. FERC*, 898 F.3d at 1262 *citing S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 87 (D.C. Cir. 2014); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004); *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992)). As the New Jersey Board of Public Utilities noted in its comments, on remand, the Commission rejected the single zone cost allocation method and required PJM to refile assignment of cost responsibility for Form No. 715 projects. Comments of the New Jersey Board of Public Utilities at 9 in Docket No. ER20-2308 (filed on July 23, 2020) *citing PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,133 at P 2, 28-31 (2019)). PJM reallocated the costs of 44 projects to multiple zones within the region rather than requiring a single zone to pay all the costs. *Id.* *citing PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,013 at P 13 (2020)).

<sup>140</sup> *See* 16 U.S.C. § 824e; *S.C. Pub. Serv. Auth.* 762 F.3d at 53, 83; *Illinois Commerce Commission v. FERC*, 576 F.3d 470, 477-478; (7<sup>th</sup> Cir. 2009); *Nat’l Ass’n Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277, 1285 (D.C. Cir. 2007); *KN Energy v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); *see also* Comments of the New Jersey Board of Public

In this case, the effect of the December 17 Order is that planning for new projects to address needs arising from Transmission Facilities reaching the end of operational life is local planning. The result is that cost allocation for these Transmission Facilities integrated into regional operation and planning will be exclusively local as well, thus violating cost causation principles. The cost allocation issues identified by the D.C. Circuit in *ODEC v. FERC* are just as applicable to EOL transmission projects and are only respected with adoption of the PJM Stakeholder Proposal. In addition to applicable precedence, the December 17 Order ignored record evidence that EOL planning addresses regionally beneficial projects that should be regionally cost allocated. Evidence submitted by the PJM Stakeholders demonstrated that Supplemental Projects to addresses EOL conditions have regional benefits but are only being locally cost allocated.

Pterra's analysis demonstrates that there are numerous Supplemental Projects that when single zone cost allocation is analyzed against PJM's region-wide dFax method, the error in cost allocation can be 100%. Eight Supplemental Projects had the cost erroneously allocated by more than 70% and 10 by more than the 47% the D.C. Circuit found violative of cost causation in *ODEC*.<sup>141</sup>

Following adoption of the expanded Attachment M-3, additional EOL planning has occurred with the same local cost allocation as for Supplemental Projects. As set forth in the Supplemental Comments filed by LS Power, PPL identified numerous end of life projects that have regional benefits but which will be allocated locally without adoption of the PJM Stakeholders Proposal.<sup>142</sup>

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Utilities at 9-10 in Docket No. ER20-2308 (filed on July 23, 2020) *citing ODEC v. FERC*, 898 F.3d at 1263 noting that the Court did not prevent PJM or its members "from amending the Tariff, the Operating Agreement, or PJM's own planning criteria to address any problem of prodigal spending, to establish appropriate end-of-life planning criteria, or otherwise to limit regional cost sharing – as long as any amendment respects the cost-causation principle." [emphasis added].

<sup>141</sup> On November 23, 2020, LS Power filed supplemental comments in this proceeding, and included as an attachment to those comments, LS Power's letter to the PJM Board, that established that cost allocation anomalies remain under the Attachment M-3 revisions. In that letter, LS Power requested that either PJM or PJM's Independent Market Monitor conduct an independent beneficiary analysis for proposed EOL high voltage projects as Transmission Facilities in the PJM RTEP. *See* LS Power Supplemental Comments at P. 37.

<sup>142</sup> LS Power Supplemental Comments at Exhibit A.

Dominion, which previously identified EOL planning in its Form No. 715 planning and has identified a significant portion of its entire transmission system as having reached EOL,<sup>143</sup> has changed its FERC Form No. 715 criteria to shift a significant number of those projects to Attachment M-3 planning and thus local cost allocation.<sup>144</sup> An example of the disparate treatment of EOL planning is identified in footnote 11 to LS Power's Letter to the PJM Board where two pieces of the same EOL project were cost allocated using completely different methodologies.<sup>145</sup>

Finally, addressing EOL planning as part of PJM's regional planning will also ensure appropriate cost allocation for substations that are needed to replace aging infrastructure. A plethora of 500 kilovolt substations already are being proposed in the Supplemental Project planning process.<sup>146</sup> Adoption of the Joint Stakeholder Proposal will ensure appropriate cost allocation for any EOL replacement projects, including substations.

Regardless of the local planning category, with the December 17 Order the Commission has inappropriately prohibited EOL projects from access to regional cost allocation in violation of Order No. 1000 and *ODEC v. FERC*. By failing to address the evidence before it, the Commission has failed to engage in reasoned decision-making. For this reason, the Commission should grant rehearing of the December 17 Order.

#### **IV. CONCLUSION**

WHEREFORE, for the foregoing reasons, the Joint Stakeholders request that the

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<sup>143</sup> See Transmission Expansion Advisory Committee Reliability Analysis Update at pages 52-57 (January 7, 2016) available at: <https://www.pjm.com/~media/committees-groups/committees/teac/20160107/20160107-reliability-analysis-update-and-2016-rtep-assumptions.ashx> (last accessed on Jan. 19, 2021).

<sup>144</sup> See, <https://www.pjm.com/~media/committees-groups/committees/pc/2020/20200512/20200512-item-12-dominion-planning-criteria-updates.ashx>

<sup>145</sup> LS Power Supplemental Comments at Exhibit A, fn 11.

<sup>146</sup> LS Power Comments in ER20-2046-000 at 48, citing <https://www.pjm.com/~media/committees-groups/committees/teac/2020/20200310/20200310-item-08-ppl-supplemental.ashx>

Commission grant rehearing of the December 17 Order, modify the Order on rehearing and approve the PJM Stakeholder Proposal.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused a copy of the foregoing document to be served on each person included on the official service list maintained for this proceeding by the Commission's Secretary, by electronic mail or such other means as a party may have requested, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated this the 19<sup>th</sup> day of January, 2021.

/s/ Lisa G. McAlister  
Lisa G. McAlister