UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Amendments to Attachment M-3 to the PJM Interconnection, L.L.C. Open Access Transmission Tariff	**)** **)** **)** **)**	**Docket No. ER20-2046-000**

COMMENTS AND PROTEST OF
THE PUBLIC UTILITIES COMMISSION OF OHIO'S
OFFICE OF THE FEDERAL ENERGY ADVOCATE

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission or FERC), 18 C.F.R. Section 385.211, the Public Utilities Commission of Ohio's Office of the Federal Energy Advocate (Ohio FEA) respectfully submits comments and protest to several elements of the proposed Amendments to Attachment M-3 to the PJM Interconnection, L.L.C. Open Access Transmission Tariff submitted by the PJM Transmission Owners (Transmission Owners or TOs) in this proceeding on June 12, 2020. The Ohio FEA was created by the Ohio Legislature in 2008 to "monitor the activities of the Federal Energy Regulatory Commission and other federal agencies and to advocate on behalf of the interests of retail electric service consumers."[1] The Ohio FEA is to "examine the value of the participation of this state's electric utilities in regional transmission organizations,"[2] and offers its perspectives here. The Commission established a comment deadline of July 6, 2020. The

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[1] Ohio Revised Code (ORC) 4828.24.
[2] *Id.*

Ohio FEA intervened in Docket No. ER20-2046-000 on June 16, 2020 and is, therefore, a party to this proceeding.

I. BACKGROUND

On June 12, 2020, the PJM Transmission Owners, pointing to their authority to act through the PJM Consolidated Transmission Owners Agreement (CTOA), made a filing with the Commission to amend the Attachment M-3 to the PJM Open Access Transmission Tariff. With the stated aim of enhancing transparency in transmission planning, the PJM Transmission Owners propose to expand the scope of the Attachment M-3 to encompass certain asset management activities.

Asset management activities are projects that maintain, repair, or replace existing transmission facilities in order to maintain the reliability of the grid. At present, supplemental projects dedicated to expanding the transmission grid are subject to governance by the Attachment M-3 and the planning requirements of FERC's Order No. 890, but not PJM's regional planning criteria. Accordingly, the TOs are proposing this expansion of the Attachment M-3 in lieu of "creat[ing] wholly new planning procedures for these projects."[3] The proposed revisions also codify the existing practice of presenting supplemental project needs for transmission facilities operating at 200 kV and above to the Transmission Expansion Advisory Committee (TEAC), rather than the individual Regional Transmission Expansion Plan (RTEP) Committees.

[3] PJM Transmission Owner Filing at P. 3.

Additionally, the PJM Transmission Owners are proposing modifications to the asset management methodologies used to determine End of Life (EOL) needs for existing transmission facilities. An EOL "need" is defined by the PJM Transmission Owners "to include a whole transmission line operating at or above 100 kV and a transformer, the high side of which operates at or above 100 kV and the low side of which is not connected to distribution facilities." This definition would be used to identify the universe of projected transmission facility replacement needs that the PJM Transmission Owners would identify for PJM planning when a single project could address the EOL need as well as a PJM planning criterion need. The Transmission Owners state that the definition is designed to exclude normal maintenance and repair, such as replacement of several poles or towers, but to include the reconstruction of a whole transmission line."[4]

A. Competing Proposals

As stated previously, the Transmission Owners, referencing their authority in the CTOA, filed this application on June 12, 2020 to make changes to the Tariff Attachment M-3 process as described more fully herein. The Ohio FEA notes the TOs were well aware at the time that the TOs, PJM stakeholders, and PJM were participating in a stakeholder process discussing changes to the Tariff Attachment M-3 related to asset management for EOL planning. On June 18, 2020, six days after the filing of this application, the PJM

[4] *Id*., at P. 14.

stakeholders passed, by a super majority vote, changes to the Attachment M-3 process that appears to conflict with this filing regarding several provisions.[5]

On June 26, 2020, the Transmission Owners sent a letter to the PJM Board protesting PJM's plans to file the PJM stakeholders' proposal. The PJM Transmission Owners stated in their letter to the PJM Board that such planning is beyond PJM's authority under the CTOA and requested that PJM not file the stakeholder-approved proposal with the Commission. On June 30, 2020, several PJM stakeholders responded to the PJM Transmission Owners' letter to the PJM Board. The PJM stakeholders point to a 69% sector-weighted supermajority vote in support of the stakeholder proposal as a requirement for PJM to file the stakeholder proposal with FERC. The stakeholders claim that PJM Members have authority to change the Operating Agreement through the approved stakeholder process. The Ohio FEA notes that it appears from the PJM stakeholders' June 18, 2020 presentation to the PJM Members Committee that their proposal is superior to the TOs filing in this case with regard to Order No. 1000 competition, transparency, and RTEP planning regarding EOL facilities.[6]

The Ohio FEA agrees with the PJM stakeholders that its approved proposal should be filed with FERC as required by PJM governance rules.[7] Unfortunately, the end result of this conflict is that parties and the Commission must deal with two competing or "jump

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[5] https://www.pjm.com/-/media/committees-groups/committees/mc/2020/20200618/20200618-item-02-1-joint-stakeholders-solution-package-presentation.ashx

[6] *Id.,* at P. 10.

[7] On July 2, 2020, PJM filed the stakeholder proposal with FERC. PJM states in the filing that while it does not agree with the stakeholder-approved proposal, PJM files it under its authority to file changes to its Operating Agreement. https://www.pjm.com/-/media/documents/ferc/filings/2020/20200702-er20-2308-000.ashx, at P. 2.

ball" filings with the Commission regarding similar changes to the Attachment M-3 process. The Ohio FEA notes that the purpose of PJM's stakeholder process is to encourage collaboration and efficiency by eliminating competing proposals and filing only the "winning" stakeholder proposal with FERC. It is certainly an inefficient use of both the Commission's and parties' resources to require comments on both filings. Therefore, the Ohio FEA recommends that the Commission reject this filing as a non-stakeholder approved filing or, at a minimum, consolidate the two dockets. In the event that the Commission declines to consolidate the two cases, or reject this filing, the Ohio FEA provides comments and protest herein regarding the Transmission Owners' filing in this docket.

II. SUMMARY

The Transmission Owners state that the following are key aspects of their filing to update Attachment M-3 to the Tariff. The Ohio FEA's view on each aspect also follows, below:

1) TOs: The mandatory inclusion of asset management projects meeting certain criteria in the Attachment M-3 process to provide opportunities for stakeholder input.

- Ohio FEA: As explained further in Section A, below, the Ohio FEA strongly supports that asset management and EOL projects be vetted through the Attachment M-3 process. However, the Ohio FEA believes that more should be done to align the PJM regional transmission planning process with the Attachment M-3 process due to the

recent escalation in transmission investment driven primarily by Transmission Owners' projects that occur independent of RTEP review.

2) TOs: A new mandatory requirement for Transmission Owners to document their respective end of useful life determination methodologies beyond levels required by the current Attachment M-3 process.

- Ohio FEA: As explained further in Section B, below, the Ohio FEA agrees with and supports the TOs' development of criteria to guide EOL decisions for each of their systems but believes it could be strengthened such that stakeholders may provide input when the TOs are developing their planning criteria and not just on the final decisions made utilizing such criteria.

3) TOs: A new mandatory requirement for Transmission Owners to provide a nonbinding five-year forecast of EOL need candidates to PJM.

- Ohio FEA: As explained further in Section C, below, the Ohio FEA believes that five years represents the minimum notification time that would be necessary for a project to be incorporated into RTEP. Providing sufficient notice is an essential element of any proposed Attachment M-3 Tariff revision if EOL projects are to be meaningfully coordinated with the PJM planning process, including any applicable competitive windows.

4) TOs: A new process to ensure that EOL need candidates that overlap with PJM planning criteria violations that qualify for the Order No. 1000 proposal window process will be posted to ensure efficient and cost-effective solutions in areas where there may be multiple system issues (violations and candidates).

- Ohio FEA: As explained further in Section C, below, the Ohio FEA supports identification of Transmission Owner EOL projects that also overlap with PJM regional projects in RTEP. However, in order to strengthen this requirement, and avoid duplication of projects, the Ohio FEA believes that the PJM Transmission Owners should not be permitted to proceed with a project that overlaps with a PJM RTEP project.

III. COMMENTS AND PROTEST

A. Improvements to PJM's RTEP

The Ohio FEA appreciates any improvement to the planning of asset management projects, including EOL projects, that is done to enhance transparency and the opportunity for stakeholder comment through the Attachment M-3 process. The proposed revisions would expand the existing and deficient regional planning process to provide greater opportunity for stakeholder input into the PJM Transmission Owners' planning of asset management projects than the Commission has required to date, either in Order No. 890 or in other orders addressing asset management activities and projects.

However, while this is a good first step directionally, the Ohio FEA believes the proposal does not go far enough given current and anticipated circumstances that indicate that the rapid pace of transmission plant investment and sharp escalation in transmission service prices are likely due to continue. PJM, as the independent regional transmission planner, is in the best position to identify a cost-effective solution to replace, if needed, an EOL facility or to identify the intersection of a potential EOL need and a regional planning

need effectively and efficiently and by utilizing competitive window processes under FERC Order No. 1000, where appropriate. Given the information TOs and their affiliates make available during quarterly earnings calls and presentations to investors, it seems likely that these attention-worthy trends are going to continue. Much of these investor owned utilities projected earnings growth is tied to continuing investment in transmission plant and facilities and FERC's formula rate recovery.[8]

Last year, the PJM Board stated that it "does not have the authority or expertise to assume responsibility for asset management decisions or to determine when a facility is at the end of its useful life or otherwise needs to be replaced." But it also stated that "PJM may be in the best position to determine the more cost-effective regional solution to replace a retired facility."[9] The PJM Board has more recently stated that PJM's role in regional transmission planning is only partially defined in FERC regulations.[10] PJM's timid receptiveness to filling an obvious regulatory vacuum or "attractive regulatory gap" can perhaps be explained, at least in part, by its fear that the TOs will exit their "voluntary" relationship with PJM and reduce PJM's relevance. The Ohio FEA believes that PJM's designation as regional planner extends to all facilities the cost of which rolls up into rates

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[8] See American Electric Power 1st Quarter 2020 Earnings Call Presentation, Appendix at 33 available *via* the Internet at https://www.aep.com/newsroom/resources/earnings/2020-05/1Q20EarningsReleasePresentation.pdf ; See FirstEnergy Corp. 1st Quarter 2020 Earnings Call Investor Fact Book at pages 11-15 available *via* the Internet at https://investors.firstenergycorp.com/Cache/IRCache/9e6967be-f8be-554e-c044-6c0d93f82739.PDF?O=PDF&T=&Y=&D=&FID=9e6967be-f8be-554e-c044-6c0d93f82739&iid=4056944

[9] Letter from Dean Oskvig, Chair-Board Reliability Committee, PJM Board of Managers to the PJM Members Committee, dated October 4, 2019. Enclosed in the June 12, 2020 filing.

[10] Letter from Dean Oskvig to the PJM Stakeholders, Attachment A, May 27, 2020, available at https://pjm.com/-/media/committees-groups/committees/mc/2020/20200618/20200618-item-02-4-pjm-board-reliability-and-security-committee-chair-dean-oskvig-response-multiple-parties-letter-regarding-end-of-life-transmission-planning.ashx.

and charges for transmission service and that its expertise needs to be coextensive with this scope of responsibility. The Ohio FEA further believes this is supported by FERC's Order No. 1000, which was issued to create competition and incentivize cost-effective transmission projects. The Ohio FEA urges FERC to eliminate any ambiguity regarding the scope of PJM's authority that results in no—or a deficient—review of TO transmission investment proposals and confirm PJM's responsibility to equip itself with the required expertise to function comprehensively and effectively as a regional planner.

B. EOL Criteria and Candidate EOL Needs List

The TOs propose to require that they articulate and identify the planning criteria they use to address EOL Needs to be presented at the annual Assumptions Meeting along with other planning criteria, models and assumptions used in Attachment M-3 Project planning.[11] The Transmission Owners oppose annually submitting "universal" EOL planning criteria during this process. The TOs explain that while several of them have documented these criteria and presented them to PJM stakeholders, there can be no requirement of uniformity in the adoption and documentation of EOL criteria due to several factors, including system design and topology developed over time. The TOs further argue that, ultimately, planning decisions are the responsibility of the entities that bear the risks and costs pursuant to Order No. 890.[12] The TOs state that an Order No. 890-compliant planning process is not one in which planning decisions are shared with stakeholders, rather

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11 PJM Transmission Owner Application at P. 15.

12 *Id.,* at P. 17.

it is one in which stakeholders have a "meaningful opportunity to provide input into those decisions."[13]

The Ohio FEA fully supports the Transmission Owners' mandatory development of EOL criteria for each of their respective companies in order to rigorously vet and approve the need to replace an existing transmission facility. Ohio FEA also understands that each set of criteria will be unique to the individual TO. Furthermore, the Ohio FEA believes that criteria will certainly be helpful to understanding the TOs' asset management decisions regarding EOL facilities. However, the language as proposed appears to leave the sum and substance of the criteria in the hands of the TOs who claim that they are not actually required to share EOL planning decisions with PJM stakeholders.

In order for Transmission Owner EOL criteria to be useful, the Ohio FEA does not support a rote annual presentation of criteria to PJM stakeholders. The Ohio FEA believes that the PJM stakeholders, including interested state commissions, should be provided the opportunity to actively participate and comment on the development of the planning criteria and not just the decisions that result from the application of those criteria to a list of facilities that stakeholders cannot consider. FERC should require that the TOs' proposal be amended to allow for a process by which Transmission Owner planning criteria can be cooperatively developed and understood by stakeholders. The Ohio FEA believes this will lead to more effective planning of EOL criteria and may help to alleviate, upfront, some questions and concerns about the TO's determination of need to replace an EOL facility.

[13] *Id*.

In other words, strong EOL criteria, mutually developed with PJM and its stakeholders, would go a long way toward providing assurances that it is time to retire an EOL facility and that the need to replace that facility is based on objective EOL criteria.

C. Five-Year Forecasts for Candidate EOL and RTEP Planning

In addition to providing annual EOL criteria for evaluation of Candidate EOL needs, in their proposed revisions to Attachment M-3, the Transmission Owners propose a new mandatory requirement to provide a nonbinding, five-year forecast of EOL candidates to PJM. This revision would theoretically enable PJM to incorporate EOL information into its existing RTEP planning process.[14]

The Ohio FEA supports the timely identification of EOL projects through the TOs' proposed 5-year forecast and their incorporation into PJM's existing transmission planning framework. If done correctly, this change promises to increase the efficiency of the planning process by identifying overlaps and by introducing competitive pressures that will in turn help contain the ever-increasing costs of transmission service.

However, the nonbinding nature of the forecast, as well as concerns about transparency of the list and state regulator access to the information, may cause any benefits of the proposed revisions to prove illusory. The Ohio FEA is concerned that if the PJM TOs object to any of the findings of the RTEP planning process as it pertains to their project candidates, they will be under no obligation to abide by them. Indeed, according to the

[14] *Id.*, at P. 17-19.

Transmission owners they will only be required to *consult* with PJM regarding findings of the RTEP planning process.[15] To facilitate meaningful improvement to the planning process, the Transmission Owners must, at some point, be bound by the findings therein for all EOL projects, based upon the information they, themselves, provided.

The proposed timing of the forecast of EOL projects is also of concern. The PJM Transmission Owners propose to provide a five-year forecast. The Ohio FEA believes that five years represents the minimum notification time that would be necessary for a project to be incorporated into RTEP. Providing sufficient notice is an essential element of any proposed Attachment M-3 Tariff revision if EOL projects are to be meaningfully coordinated with the PJM planning process, including any applicable competitive windows. However, there may be some concern about the compatibility of projections that require a five-year advance determination of EOL, with PJM stakeholder training noting that EOL decisions that typically occur in a one-to-three-year timeframe.[16] Nevertheless, the Ohio FEA recommends that at some point, PJM's regional planning decisions and process must be mandatory on the PJM Transmission Owner or such decisions will be rendered meaningless.

Finally, the proposed forecast proposal excludes any information showing the impact of the forecast on transmission prices. The Ohio FEA urges the Commission to recognize that these forecasted price impacts are important information for wholesale and

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15 *Id*., at P. 19.

16 PJM Members Committee (MC) Meeting, June 18, 2020, PJM Presentation at 11. *See*, https://www.pjm.com/-/media/committees-groups/committees/mc/2020/20200618/20200618-item-02-3-eol-transmission-planning-pjm-presentation.ashx

retail customers as well as curtailment service providers and vendors offering behind the meter demand and supply-side goods and services, as they budget and plan to meet their needs, innovate, and identify opportunities to meet weighted average delivered electricity prices objectives. Given the past sharp increase in investment and the reasonable expectation that this trend will continue, it is in the public interest to require that TOs provide forecasted indicative transmission services prices.

IV. CONCLUSION

As stated, the Ohio FEA appreciates any improvement to the planning of asset management projects, EOL criteria/forecasts, and fully supports enhancements to transparency and the opportunity for stakeholder comment through the Attachment M-3 process. But the Ohio FEA believes that the Transmission Owners' proposal does not go far enough, given the rapid pace of transmission plant investment in supplemental and asset management projects, and the sharp escalation in transmission service prices that is occurring and likely to continue. The Ohio FEA urges FERC to eliminate any ambiguity regarding the scope of PJM's authority that results in no—or a deficient—review of such investment and confirm PJM's responsibility to take an active role in conducting comprehensive, transparent, and forward-looking examinations of asset management activities. Further, the Ohio FEA urges FERC to reject any revisions that favor nonbinding forecast information and nonbinding EOL criteria. While such information and criteria may need to be individual to Transmission Owners, it should still be binding and part of a transparent stakeholder process that is meaningful and a significant improvement over

current practice. For these and the foregoing reasons, the Ohio FEA respectfully asks for careful consideration of these comments and protest to ensure efficient, fair, and comprehensive regional transmission planning processes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. Section 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Thomas Lindgren
Thomas Lindgren
Assistant Attorney General

Dated at Columbus, Ohio, this July 6, 2020

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Summary: Comments and Protest of The Public Utilities Commission of Ohio's Office of The Federal Energy Advocate electronically filed by Mrs. Kimberly M Naeder on behalf of PUCO