

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

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| PJM Joint Stakeholder Proposal |) | |
| Filing Amendments to Section M-3 Process |) | ER20-2308-000 |
| |) | |

**COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO’S
OFFICE OF THE FEDERAL ENERGY ADVOCATE**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission or FERC), 18 C.F.R. Section 385.212, the Public Utilities Commission of Ohio’s Office of the Federal Energy Advocate (Ohio FEA) respectfully requests consideration of the following comments in response to several elements of the proposed amendments to the Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) developed by the PJM Joint Stakeholders and filed in this proceeding on July 2, 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 23, 2020. The

¹ Ohio Revised Code (ORC) 4828.24.

² *Id.*

Ohio FEA intervened in Docket No. ER20-2046-000 on July 15, 2020 and is, therefore, a party to this proceeding.

I. BACKGROUND

On July 2, 2020, the PJM Joint Stakeholders, acting through Section 205 of the Federal Power Act (FPA), made a filing³ with the Commission to amend Schedule 6 of the Operating Agreement pertaining to end of life (EOL) planning procedures. The proposed amendments seek to transfer EOL planning activities to a new category, EOL Projects, under the regional transmission expansion planning (RTEP) process of Schedule 6 of the Operating Agreement. EOL activities would occur exclusively under the RTEP, as opposed to under the Attachment M-3 to the PJM Interconnection, L.L.C. Open Access Transmission Tariff (Tariff) as a Supplemental Project or as a FERC Form No. 715 Project.

Pursuant to the Joint Stakeholders' proposal, each PJM Transmission Owner (Transmission Owner or TO) would be required to develop an EOL "Look-ahead Program" to determine if a transmission facility has approached, or will approach, the end of its useful life (EOL Condition) in the next ten years. The TO would create its own EOL Criteria to guide this decision-making. The Look-ahead Program is non-binding. To increase overall transparency, TOs would be required to submit the EOL Look-ahead Program to PJM and the Transmission Expansion Advisory Committee (TEAC) on an annual basis, "including the TO's EOL Criteria, a description of any changes to any prior submissions and the

³ Joint Stakeholder End of Life Proposal, eLibrary No. 20200702-5115 (July 2, 2020) ("Joint Stakeholder Proposal").

reasons for such changes, as well as a non-binding list of Transmission Facilities forecasted to reach their end of life 10 years subsequent to the submittal.”⁴

As proposed, a TO would be required to submit a binding EOL Notification to PJM when a transmission facility is expected to reach EOL Condition within 6 years. This timeframe would allow for timely incorporation into the RTEP process. Once an EOL Notification is submitted, PJM would have the authority to plan an EOL Project, which may overlap with a regional transmission planning need. The Joint Stakeholders define an EOL Project as “a Regional RTEP Project or Subregional RTEP Project developed by the Office of the Interconnection that is intended to address Transmission Facilities (or set of related Transmission Facilities) that has, or will within the applicable planning horizon, reach EOL Condition or for which an EOL Notification has been received by the Office of the Interconnection. Such EOL Project may combine more than one: (i) EOL Notification, (ii) EOL Condition, or (iii) any other Regional Transmission Expansion Plan planning criteria.”⁵ The Joint Stakeholders explain that while the TO would retain the authority to make EOL determinations of its own transmission facilities, PJM would have the jurisdiction to plan an EOL Project under the RTEP process. Finally, the Joint Stakeholders also propose to expand PJM’s competitive window process to include transmission facilities at or below 200 kV.⁶

The Joint Stakeholder Proposal was developed as a result of the PJM Markets and Reliability Committee special session entitled *Transparency and End of Life Planning* on

⁴ *Id.*, page 12.

⁵ *Id.*, page 14.

⁶ *Id.*, page 10.

December 19, 2020. The PJM Members Committee approved the amendments to the Operating Agreement on June 18, 2020.

A. Competing Proposals

On June 12, 2020, the PJM Transmission Owners (TOs), acting through the PJM Consolidated Transmission Owners Agreement (CTOA), filed an application with the Commission to expand the Attachment M-3 of the PJM Tariff in Docket No. ER20-2046⁷. As a major component of the filing, the TOs propose to incorporate EOL planning activities as part of the Attachment M-3 and propose a new process to incorporate EOL activities with PJM's RTEP under Schedule 6 of the Operating Agreement.

Cognizant of ongoing stakeholder activities, the TOs sent a letter to the PJM Board on June 26, 2020 protesting PJM's plans to file the Joint Stakeholder proposal, arguing that such plans fall outside of the authority of the CTOA. In their reply to the PJM Board, the Stakeholders pointed to a 69% sector-weighted supermajority vote in support of the Stakeholder Proposal as a requirement for PJM to file the proposal with the Commission.⁸ The Joint Stakeholders assert that PJM Members have the authority to change the Operating Agreement through the approved stakeholder process.

These filings stand in direct competition with one another, as they both seek to substantially change transmission facility end of life processes. The Ohio FEA provided

⁷ American Transmission Systems, Incorporated Amendments to Attachment M-3, eLibrary No. 20200612-5124 (June 12, 2020) ("PJM TO Proposal").

⁸ <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20200630-response-to-to-ex-parte-pjm-board-letter-on-eol.ashx?la=en>

protest and comments in response to the June 12, 2020 filing on July 6, 2020. As has been previously stated, the Ohio FEA recommends that the Commission reject the TOs' 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 the Ohio FEA provides comments herein regarding the Joint Stakeholders' filing in this docket.

II. SUMMARY

The Ohio FEA recommends that the Commission accept the Joint Stakeholders' proposed revisions to the PJM Operating Agreement with the modifications recommended herein and as set forth in the Ohio FEA comments on July 6, 2020 in ER20-2046-000 (in response to the TOs' filing). The Ohio FEA provides a brief summary of our comments, below, in this docket:

- 1) As explained further in Section III.A, the Ohio FEA supports the revision to place the planning of EOL Projects under the sole jurisdiction of PJM under RTEP. As the independent regional transmission planner, PJM is best positioned to identify cost-effective solutions to replace aging transmission facilities, or to identify overlaps between an EOL need and a regional planning need. The Ohio FEA further recommends that the ambiguity regarding the scope of PJM's authority must be eliminated to ensure comprehensive, meaningful transmission planning.
- 2) As explained further in Section III.B, the Ohio FEA believes that the requirement of submitting 6-year, binding EOL Notifications to PJM by the

TO would allow for adequate time for incorporation into the RTEP process. As the Ohio FEA has previously maintained, sufficient notice is an essential element of any proposal that seeks to incorporate EOL planning into the RTEP, including any applicable competitive window processes under FERC Order No. 1000.

- 3) As explained further in Section III.C, the Ohio FEA supports the proposed Look-Ahead proposal by the Joint Stakeholders and further recommends that the Commission require that the TOs provide both physical and cost-based analysis as part of its non-binding ten-year EOL Look-Ahead program and criteria.
- 4) As explained further in Section III.D, the Ohio FEA recommends that it is in the public interest to require that TOs provide forecasted indicative transmission services prices in order for transmission customers to budget and plan to meet their needs, innovate, and identify opportunities to meet weighted average delivered electricity prices objectives.
- 5) As explained further in Section III. E, the Ohio FEA agrees with the proposed revision to reinstate EOL competitive planning activities for transmission facilities at or below 200kV, expanding the current PJM RTEP reliability competitive window process, in order to allow for increased opportunities for competition and efficient planning of low voltage facilities.

III. COMMENTS

A. PJM Planning of EOL Projects under the RTEP Planning Process

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. In any event, the Ohio FEA believes that PJM’s designation as regional planner extends to all facilities the cost of which rolls up into rates and charges for transmission service subject to the Commission’s jurisdiction and that PJM’s expertise and capabilities need 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

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>.

proposals and confirm PJM's responsibility to equip itself with the required expertise to function comprehensively and effectively as a regional planner.

The Joint Stakeholders' propose to require TOs to develop their own EOL Program and EOL Criteria to guide end of life status decision-making. As the Joint Stakeholders propose, EOL determination should remain the responsibility of the TO but only under the auspices of the PJM RTEP planning process as more fully described herein. Joint Stakeholders explain that this approach allows for end of life needs to be placed in competitive open windows, including potentially combined with other needs, as a means to find the most cost-effective solutions.¹¹ The Ohio FEA strongly supports this proposed transparent structure and process because it provides a better foundation for the identification of solutions capable of providing customers with the best value while leveraging market-based innovation. Having previously expressed our concerns with supplemental transmission planning and the level of transmission investment in PJM,¹² the Ohio FEA supports this modification to the Transmission Owners' proposal and applauds the Joint Stakeholders and the MRC for the arduous but good-faith negotiations that led to a supermajority vote in favor of the proposal at the June 18, 2020 Members Committee. We encourage the Commission to adopt the proposed amendments to the Operating Agreement with the modifications recommended herein, as they represent an important step forward towards increased efficiency and transparency in PJM's transmission planning paradigm.

¹¹ Joint Stakeholders' Proposal at P. 13

¹² Ohio FEA comments in RM20-10-000 at P. 5-6, July 1, 2020.

B. Timing of Binding Notice

The Joint Stakeholders propose for the TOs to provide a binding six-year notice of EOL candidates to PJM for incorporation into RTEP.¹³ This modification compares favorably to the Transmission Owners' proposal, in which a nonbinding five-year forecast of end of useful life candidates would be provided to PJM. The Ohio FEA supports the timely identification of EOL projects 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. For EOL projects to be meaningfully incorporated into RTEP, the notice must be binding upon the Transmission Owners so that the finding of the RTEP planning process can be implemented without prejudice. A six-year binding notice, as compared to a five-year non-binding notice in the TOs' filing, provides additional confidence that EOL projects can be identified with sufficient time to be fully incorporated into the regional transmission planning process.

C. Timing of Non-Binding Notice

The Joint Stakeholders' Proposal would require submission by each TO its EOL Look-ahead Program on an annual basis that would provide a ten-year non-binding forecast of facilities that would reach EOL in the next ten years. The Joint Stakeholders propose that the EOL Look-ahead Program would include the TO's EOL Criteria and a description

¹³ *Id.*

of any changes from prior submissions (including the basis for such changes). According to the Joint Stakeholders, all EOL Look-ahead Programs would be submitted to PJM's TEAC for review and comment, and must include "sufficient detail such that [PJM] and stakeholders may understand and, to the extent possible, replicate results of individual EOL Notifications."¹⁴ The Joint Stakeholders submit that this ten-year look-ahead requirement would increase transparency for stakeholders regarding future EOL Projects. The Joint Stakeholders' proposal also requires PJM to post a combined Transmission Owners' list of Transmission Facilities that are listed in the EOL Look-Ahead Programs as having EOL Conditions within the ten-year horizon.

The Ohio FEA strongly supports the Joint Stakeholders' proposal regarding the development of Transmission Owner EOL criteria and annual presentation of long-term non-binding EOL needs in a Look-Ahead program. The Ohio FEA notes that this requirement is non-binding and in addition to the proposed six-year binding notice previously discussed. The Ohio FEA agrees with the Joint Stakeholders that a Look-Ahead program and criteria will greatly increase transparency and understanding regarding future EOL projects.

The Ohio FEA agrees with the Joint Stakeholders that, "End of operational life shall not be, for purposes of EOL Condition, determined by the Transmission Facilities' service life for accounting or depreciation purposes."¹⁵ The Ohio FEA notes that the plant or facility may be, for example, physically capable of performing a function but the Operating

¹⁴ *Id.*, at P. 17.

¹⁵ Joint Stakeholders' Proposal at P. 14.

and Maintenance (O&M) expense associated with maintaining it may be, from a Net Present Value (NPV) perspective, too high. The Ohio FEA believes that there is a remaining useful life (physical) determination that is informed by the NPV of the total cost of maintaining the existing plant or facility as compared to the NPV total cost of replacing the plant or facility. The Ohio FEA recommends that the Commission require that a TOs provide both physical and cost-based analysis as part of its EOL Look-Ahead program and criteria to support a TO's determination of end of operational life of a facility or plant. This analysis should be provided by the TOs with the understanding that such forecast is for a non-binding ten-year planning horizon that may need to remain flexible until the six-year binding forecast, previously discussed, is submitted to PJM.

D. Forecasted Price Impacts

To further improve the Joint Stakeholder proposal, the Ohio FEA recommends that the 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 retail customers, as well as curtailment service providers and vendors offering behind the meter demand and supply-side goods and services, as these parties' budget and plan to meet their needs, innovate, and identify opportunities to meet weighted average delivered electricity prices objectives.

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 investors owned utilities projected earnings growth is tied to continuing investment in transmission plant and facilities and FERC's formula rate recovery.¹⁶ Therefore, the Ohio FEA recommends that it is in the public interest to require that the TOs provide forecasted indicative transmission service prices.

E. 200 kV Exemption

According to the Joint Stakeholders, the PJM tariff exempts projects at or below 200 kV from the FERC Order 1000 competitive window process. However, the Joint Stakeholder proposal would include in PJM's competitive process those violations identified on facilities at or below 200 kV arising from an EOL Notification or EOL Condition.¹⁷

While the Ohio FEA notes that FERC approved the 200-kV exemption from the Order 1000 competitive window process, it did so in August of 2016 prior to the recent significant uptick of supplemental and EOL transmission projects in the PJM region. The Ohio FEA reminds the Commission that it accepted PJM's proposal in 2016 on the condition that PJM file revisions to the tariff to ensure that transmission needs driven by reliability violations on facilities operating at or below 200 kV continue to comply with FERC Order No. 890 transmission planning principles.¹⁸ The Ohio FEA recommends that

¹⁶ 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>

¹⁷ *Id.*, at P. 17-18.

¹⁸ PJM Docket ER16-1335-002, Order Accepting Compliance Filing, at P. 2, February 2, 2017.

all projects at or below 200 kV be included in PJM's competitive window process because many EOL projects fall into smaller voltage categories that would benefit from an efficient and competitive planning process consistent with higher voltage reliability transmission projects in PJM. This recommendation will expand competition and its benefits to the greatest number of transmission projects. Therefore, the Ohio FEA strongly supports the Joint Stakeholders' proposal to expand competitive and Order 890 benefits to these lower voltage projects.

IV. CONCLUSION

Given the 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 recommends the Joint Stakeholders' proposal with the modifications explained herein and in the Ohio FEA July 6, 2020 comments in ER20-2046-000 should be adopted by FERC. 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, competitive and forward-looking examinations of asset management activities including EOL projects. In order to accomplish this objective, the TOs must submit both a non-binding ten year forecast and a binding 6 year forecast that would comprehensively include both the physical and cost-based criteria needed to evaluate EOL projects. Further, the Ohio FEA urges FERC to include a requirement for the TOs to forecast price impacts on transmission services for

the benefit of wholesale and retail customer who should be better positioned to manage transmission spend. Finally, the Ohio FEA recommends that the PJM competitive process apply to all EOL projects, including those at or below 200 kV to expand the benefits of competition and FERC's Order 890 planning principles to the greatest extent possible.

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 23, 2020.

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Summary: Comments 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