

On August 30, 2019, the Commission initiated a proceeding under section 206 of the Federal Power Act “to no longer exempt from the competitive proposal window process projects needed solely to address individual transmission owner Form No. 715 local planning criteria.”³ Specifically, the Commission directed PJM to revise section 1.5.8(c) and remove section 1.5.8(o) of its Operating Agreement (“OA”).⁴ In its Compliance Filing, PJM submitted revisions to its OA which it deemed consistent with the Commission’s requirements, including revisions to section 1.5.8(c) and removal of section 1.5.8(o).⁵ Additionally, PJM requested that the Commission provide “guidance” on a host of separate issues and questions that, in PJM’s view, may create “inconsistencies” in its transmission planning process.⁶ Effectively, PJM is attempting to turn a compliance filing regarding whether transmission projects should be competitively bid into a proceeding on what planning criteria should be included on a FERC form that is applicable to transmission operators across the country.

The Joint Consumer Advocates take no position on the merits of the August 30 Order or whether the Commission should find PJM’s proposed OA changes consistent with its directive. However, the Joint Consumer Advocates strongly believe that PJM’s separate request for guidance far exceeds the limited scope of this proceeding. Furthermore, rather than merely seeking guidance, PJM is in fact advancing positions on several fundamental transmission issues in an attempt to gauge the Commission’s temperature on those positions. These issues are only

³ *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,132 at P 14 (2019) (“August 30 Order”).

⁴ *Id.*

⁵ PJM Compliance Filing at 5-7.

⁶ *Id.* at 8-12.

appropriately considered either through the PJM stakeholder process or a separate FERC proceeding where they can be fully vetted. Unfortunately, as the Commission is well aware, any early pronouncements on these issues on its part will prejudice later discussion, which is why the JCA respectfully request that the Commission decline PJM's invitation to provide advisory opinions on such issues.

I. PJM'S REQUEST FOR GUIDANCE IS OUTSIDE THE SCOPE OF THIS PROCEEDING AND SHOULD BE DENIED.

In the August 30 Order, the Commission directed PJM to modify section 1.5.8(c) and remove section 1.5.8(o) of its OA and "make any additional changes necessary to comply *with the directives contained herein.*"⁷ A commonsense reading of the text would require that any additional changes be limited to those that directly impact or effectuate the changes that the Commission required to sections 1.5.8(c) and 1.5.8(o). That is in fact how PJM read the August 30 Order and why PJM "does not propose additional changes to its governing documents."⁸ With that statement, PJM should have concluded its Compliance Filing and it is where the JCA respectfully submit that the Commission should conclude its review. PJM's request for guidance beyond what is required to comply with the August 30 Order is outside the scope of this proceeding and should be denied.

As explained in *AES Huntington Beach, LLC*, "[t]he Commission has long established that compliance filings must be limited to the specific directives ordered by the Commission."⁹

⁷ August 30 Order at P 14 (emphasis added).

⁸ PJM Compliance Filing at 8.

⁹ 111 FERC ¶ 61,079 at P 60 (2005).

Moreover, when reviewing a compliance filing, “the *sole* issue” before the Commission “is whether they comply with these directives.”¹⁰ In the instant matter it’s whether PJM made the necessary changes to sections 1.5.8(c) and 1.5.8(o) of its OA. Given the Commission’s wise recognition that “[t]he purpose of a compliance filing is to make the directed changes and the Commission’s focus in reviewing them is whether or not they comply with the Commission’s previously-stated directives,”¹¹ it is clear that PJM’s request for peripherally-related guidance far exceeds the Commission’s own limited but well-established authority in a compliance filing.

Finally, as elaborated on below, PJM is not merely asking for guidance but is in fact seeking the Commission’s tacit, if not explicit, approval of various positions. Again, the Commission has a long-standing precedent of not providing advisory opinions.¹² There is good reason for this, as the applicability of many of the Commission’s “laws and regulations often depends upon the specific factual situation.”¹³ When implicit requests for advisory opinions are cloaked in other proceedings, such as the instant Compliance Filing, the Commission is denied the opportunity to be fully briefed by all interested stakeholders on both the laws and regulations and their interaction with the specific factual situation.

¹⁰ *Tampa Elec. Co.*, 113 FERC ¶ 61,159 at P 37 (2005) (emphasis added).

¹¹ *NorthWestern Corp.*, 113 FERC ¶ 61,215 at P 9 (2005); *see also*, *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,156 at P 57 n. 51 (2008); *Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,128 at P 12 (2019).

¹² *See, e.g.*, *Western Grid Dev., LLC*, 130 FERC ¶ 61,056 at P 111 (2010) (“As a general proposition, we do not render advisory opinions.”).

¹³ *Sagebrush, a California P’ship*, 132 FERC ¶ 61,234 at P 33 (2010).

II. PJM SEEKS APPROVAL OF, NOT GUIDANCE ON, SEVERAL COMPLEX TRANSMISSION ISSUES OUTSIDE THE SCOPE OF THIS COMPLIANCE FILING.

PJM claims that it is only seeking “guidance” to address what it describes as “inconsistences” between the requirements of the August 30 Order and its existing transmission planning process. As previously noted, this alone is well outside the scope of a compliance filing that’s sole purpose is to determine if PJM met the directives of the August 30 Order; it is not to conduct an inquiry into transmission planning policy. Moreover, for a party seeking “guidance,” PJM has a lot of answers. For example, according to PJM, “one way” to reconcile an inconsistency it believes exists between the August 30 Order and other Commission orders related to transmission planning in other RTOs “would be to determine that criteria for asset management activities, such as end of life projects, are not ‘planning criteria’ and thus not appropriately included in an individual Transmission Owner’s Form No. 715 report.”¹⁴ Put another way, in seeking “guidance” in a compliance filing related to whether certain projects should be subject to competitive proposal windows, PJM has proposed a sweeping change to what criteria transmission operators may include on FERC’s Form No. 715—a form applicable to each of FERC’s transmission operators. Of course, assuming, *arguendo*, that any inconsistency actually exists,

¹⁴ PJM Compliance Filing at 11.

someday FERC may want to discuss the inclusion (or exclusion) of certain criteria on its Form No. 715, but that is a discussion appropriately left for another day and another forum.

PJM also offers numerous “reasons why asset management criteria that includes end of life decisions do not belong in Form No. 715.”¹⁵ These “reasons” would be more accurately described as arguments for a position and opinions supporting those arguments; particularly because the veracity of some assertions—that, for example, the M-3 process provides “the necessary transparency of Transmission Owner asset management criteria, including end of life criteria”¹⁶—is currently a matter of considerable debate among stakeholders.

Coming to the Commission with pre-baked answers and set of arguments supporting a position is *not* asking for its guidance. Instead PJM seized the opportunity provided by a required compliance filing in a section 206 proceeding to assert its own position on a peripherally-related subject, to the detriment of its members and to future stakeholder discussions and/or Commission proceedings. The Commission must not countenance PJM’s disregard for the Commission’s processes and a full vetting of these significant issues.

III. THE COMMISSION HAS REPEATEDLY STATED THAT THE CALIFORNIA ORDERS ADDRESS TRANSMISSION PLANNING IN A DIFFERENT RTO AND ARE NOT BINDING ON PJM.

In its request for guidance PJM cites a pair of Commission orders addressing transmission planning activities of the California Independent System Operator, Inc. (“CAISO”).¹⁷ PJM argues

¹⁵ *Id.* at 12.

¹⁶ *Id.*

¹⁷ *Southern California Edison Co., et al.*, 164 FERC ¶ 61,160 (Aug. 31, 2018); *California Pub. Util. Commission, v. Pacific Gas & Elec. Co.*, 164 FERC ¶ 61,161 (Aug. 31, 2018) (“PG&E Order”) (collectively the “California Orders”).

that, according to the PJM Transmission Owners, “the California Orders undermined any need or authority for PJM to assume responsibility for planning or approval of Supplemental Projects to apply PJM’s Order No. 890-compliance process to those projects.”¹⁸ This is a surprisingly bold assertion considering that in both the initial PG&E Order and its subsequent order denying rehearing¹⁹ the Commission went out of its way to acknowledge the inherent differences in transmission planning between CAISO and PJM and made clear that orders directed at one RTO’s process are not binding on another’s.

In the PG&E Order, the Commission was “not persuaded by ... assertions that the transmission planning practices in other ISOs/RTOs are instructive here.”²⁰ In the Commission’s view, CAISO’s Order No. 890 transmission planning process was “inapposite”²¹ to PJM’s Supplemental Project process. In the PG&E Order Denying Rehearing, the Commission provided a lengthy explanation why its requirements for CAISO did *not* apply to PJM. Distinguishing between PJM’s Supplemental Project process and CAISO’s asset management process, the Commission found that “even if some Supplemental Projects are similar to asset management projects as a factual matter, this does not imply that because Supplemental Projects are subject to PJM’s Order No. 890-compliant transmission planning process, all similar projects and activities in other RTOs/ISOs that do not expand the transmission grid must pass through such a process.”²²

¹⁸ PJM Compliance Filing at 5.

¹⁹ *California Pub. Util. Commission, v. Pacific Gas & Elec. Co.*, 168 FERC ¶ 61,171 (Sept. 19, 2019) (“PG&E Order Denying Rehearing”).

²⁰ PG&E Order at P 72.

²¹ *Id.*

²² PG&E Order Denying Rehearing at P 55.

Just as PJM’s planning process, and the FERC orders that govern it, are not binding on other RTOs, neither are other RTOs’ planning processes and their applicable orders binding on PJM. As the Commission made clear, “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.”²³ Thus, PJM’s parsing of unrelated and inapplicable language between Commission orders regarding RTOs on opposite sides of the country and masquerading as “guidance” should be summarily ignored.

IV. THE ISSUES RAISED BY PJM’S REQUEST FOR GUIDANCE ARE BEST ADDRESSED IN OTHER FORUMS WHERE THEY CAN BE FULLY VETTED.

To be clear, the JCA are not suggesting that the issues raised by PJM are trivial or unworthy of serious discussion. Rather, it is because these issues are important that they should not be raised in a back door fashion, but instead should be addressed in their own appropriate venue where stakeholders and the Commission can be fully briefed and complex issues can be thoroughly and carefully considered. Indeed, the JCA believe consumers deserve full consideration of these issues in the appropriate forum and at the appropriate time. Some of these issues are already part of significant stakeholder discussions at PJM.²⁴ Eventually, it will likely be necessary for the Commission to provide its views on these issues—that time, however, is not now. As noted earlier, a premature hearing and opinion by the Commission will stifle and prejudice further discussions, preventing these issues from organically and fully developing.

²³ *Id.* at P 59.

²⁴ *See, e.g.*, PJM Markets and Reliability Committee Agenda, October 31, 2019, Item #2, Transmission Asset End of Life Problem Statement and Issue Charge, <https://www.pjm.com/-/media/committees-groups/committees/mrc/20191031/20191031-agenda.ashx> (accessed Oct. 25, 2019).

V. CONCLUSION

The Joint Consumer Advocates respectfully request that the Commission consider this Answer and Comments and not provide the guidance that PJM has requested.

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 party designated on the official service list compiled by the Secretary in this proceeding, by email.

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