

138 FERC ¶ 61,118
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris
and Cheryl A. LaFleur.

PJM Interconnection, L.L.C.

Docket Nos. ER12-445-000
ER12-445-001

ORDER ON COST ALLOCATION REPORT

(Issued February 15, 2012)

1. On November 18, 2011, PJM Interconnection, L.L.C., in accordance with Schedule 12 of the PJM Open Access Transmission Tariff (OATT or Tariff) and section 1.6 of Schedule 6 of the PJM Operating Agreement, filed amendments to reflect the assignments of cost responsibility for baseline upgrades included in the most recent update to the Regional Transmission Expansion Plan (RTEP) approved by the PJM Board of Managers (PJM Board) (November 18, 2011 RTEP Filing).¹ On December 15, 2011, PJM filed substitute tariff sheets to correct cost responsibility assignments and project descriptions that were incorrectly reflected in the November 18, 2011 RTEP Filing (December 15, 2011 Amendment). In this order, we accept in part, and conditionally accept in part, PJM's revised tariff sheets, suspend them for a nominal period to become effective February 16, 2012, subject to refund and further proceedings.

I. Background

2. PJM filed cost responsibility assignments for transmission upgrades that were approved by the PJM Board as part of PJM's RTEP, in accordance with Schedule 12 of the Tariff and Schedule 6 of the Operating Agreement, and pursuant to section 205 of the

¹ The PJM Board approved the baseline upgrades in this proceeding on October 19, 2011, with an estimated cost of approximately \$127 million. With these approvals, the PJM Board has authorized a total of more than \$19 billion in transmission related investments since 2000.

Federal Power Act.² The RTEP provides for the construction of expansions and upgrades to PJM's transmission system in order to comply with reliability criteria, and to maintain and enhance the economic and operational efficiency of PJM's wholesale electricity markets.

3. Pursuant to Schedule 12, the costs of new RTEP facilities that operate at or above 500 kV (Regional Facilities), as well as lower voltage facilities that must be constructed or strengthened to support new Regional Facilities (Necessary Lower Voltage Facilities), are allocated on a region-wide basis (postage-stamp allocation).³ The costs of new RTEP facilities that operate below 500 kV and are not Necessary Lower Voltage Facilities are allocated based on a "beneficiary pays" approach using a distribution factor (DFAX) methodology.⁴

II. PJM's Filing

4. The November 18, 2011 RTEP Filing includes cost responsibility assignment for 162 baseline upgrades, which were approved by the PJM Board on October 19, 2011 (i.e., new baseline upgrades), including a region-wide cost allocation for ten upgrades that are Regional Facilities, and the beneficiary pays cost allocation for 152 upgrades that will operate below 500 kV. The November 18, 2011 RTEP Filing also includes 15 baseline upgrades, comprised of two upgrades that are Regional Facilities, six upgrades that will operate below 500 kV but are Necessary Lower Voltage Facilities and seven upgrades that will operate below 500 kV, that were previously approved by the PJM Board but not included in Schedule 12 due to administrative error.⁵

² 16 U.S.C. § 824d (2006).

³ Tariff, Schedule 12, section (b)(i); see *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007), *order on reh'g and compliance filing*, Opinion No. 494-A, 122 FERC ¶ 61,082, *order denying reh'g*, 124 FERC ¶ 61,033 (2008). On August 6, 2009, the United States Court of Appeals for the Seventh Circuit (Seventh Circuit Court) granted a petition for review regarding the use of a postage-stamp cost allocation methodology for new transmission facilities that operate at or above 500 kV, and remanded the case to the Commission for further proceedings. *Illinois Commerce Commission v. FERC*, 576 F.3d 470 (7th Cir. 2009).

⁴ The Commission accepted a settlement submitted by PJM that set forth the details of the beneficiary pays methodology in Schedule 12, section (b)(ii). *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,112 (2008).

⁵ With respect to these 15 baseline projects, PJM requests waiver, to the extent necessary, of: (1) the requirement to file retroactive changes to the PJM Tariff for these

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Additionally, PJM reallocates the cost responsibility assignments for ten upgrades that are currently allocated as Necessary Lower Voltage Facilities.⁶ On December 15, 2011, PJM amended its filing to correct cost responsibility assignments for two of the new baseline upgrades and the project description for one of the new baseline upgrades that were inadvertently incorrectly reflected in the November 18, 2011 RTEP Filing.⁷ PJM requests that the revised tariff sheets become effective on February 16, 2012.⁸

5. PJM states that its cost responsibility assignments of the ten new Regional Facilities upgrades in the most recent update to RTEP approved by the PJM Board are consistent with Opinion Nos. 494 and 494-A; Schedule 12, section (b)(i)(A); and Opinion 503.⁹ PJM notes that further proceedings regarding the use of a postage-stamp cost allocation methodology for new transmission facilities that operate at or above 500 kV,

upgrades; and (2) Schedule 12, section (b)(ii)'s requirement to designate in Schedule 12-Appendix and in a report filed with the Commission the "Responsible Customers" that will be subject to charges related to transmission enhancements and expansions included in the RTEP, within 30 days of the PJM Board's approval of an RTEP, or additions to the RTEP. PJM states that the waivers are appropriate because retroactive changes would be administratively burdensome and because no money has been collected for these upgrades. Further, PJM states that good cause exists for granting this waiver as no charges have been assessed and no money has been collected in association with these upgrades approved by the PJM Board. *See* PJM's November 18, 2011 RTEP Filing at n. 21.

⁶ These upgrades were associated with the proposed Branchburg-Roseland-Hudson 500 kV line. This project was originally designed as a 500 kV project and placed in the 2008 RTEP. However, in 2010, PJM determined that the reliability issues that the 500 kV line was designed to resolve could be adequately addressed by a 230 kV facility. Accordingly, pursuant to Schedule 12, section (b)(iii)(B), PJM has reassigned the cost responsibility for these upgrades to the zone with construction responsibility.

⁷ The December 15, 2011 Amendment includes the correct cost assignments for baseline upgrades b1590 and b1590.1, as well as a corrected description of project b1590.1.

⁸ With respect to the December 15, 2011 Amendment, PJM requested waiver of the Commission's notice requirement to permit an effective date of February 16, 2012, the date originally proposed by the November 18, 2011 RTEP Filing.

⁹ *PJM Interconnection, L.L.C.*, Opinion No. 503, 129 FERC ¶ 61,161 (2009), *reh'g pending*.

and issues regarding cost responsibility assignments to merchant transmission facilities are pending before the Commission.

III. Procedural Issues

A. Notice

6. Notice of PJM's November 18, 2011 filing was published in the *Federal Register*, 76 Fed. Reg. 73,611 (2011), with interventions and protests due on or before December 19, 2011. Notice of the December 15, 2011 amended filing was published in the *Federal Register*, 76 Fed. Reg. 80,356 (2011), with interventions and protests due on or before January 5, 2012.

B. Interventions, Comments and Protests

7. Notice of intervention was filed by the Illinois Commerce Commission (Illinois Commission). Motions to intervene were filed by Jersey Central Power & Light Company, *et. al.*,¹⁰ Duke Energy Corporation (Duke), Exelon Corporation (Exelon), Public Service Electric and Gas Company (PSE&G), North Carolina Electric Membership Corporation, and American Municipal Power, Inc. (AMP). Untimely motion to intervene was filed by Old Dominion Electric Cooperative (Old Dominion). Protests or comments were filed by Illinois Commission and Exelon.

8. Illinois Commission protests the use of a postage-stamp cost allocation methodology for new RTEP transmission facilities that operate at or above 500 kV. Illinois Commission requests that the Commission reject PJM's November 18, 2011 RTEP Filing or that the Commission hold its consideration in abeyance until after it completes its remand from the United States Court of Appeals for the Seventh Circuit decision. Illinois Commission states that its protest is confined to the cost responsibilities for Regional Facilities,¹¹ and those deemed Necessary Lower Voltage Facilities.¹²

¹⁰ Jersey Central Power & Light Company *et. al.* consists of: Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; Monongahela Power Company; The Potomac Edison Company; West Penn Power Company, American Transmission Systems, Incorporated; and Trans-Allegheny Interstate Line Company.

¹¹ PJM's November 18, 2011 RTEP Filing at 7.

¹² In total, the Illinois Commission argues that the November 18 2011 RTEP Filing proposes to allocate approximately \$19.78 million to the ComEd zone for High

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Illinois Commission asserts that load in the Commonwealth Edison Company (ComEd) zone did not contribute to the need for these projects, and these projects provide no corresponding benefits to the electricity customers in the ComEd zone.

9. Illinois Commission also argues that PJM's reallocation of the cost responsibility of the ten baseline projects that were previously allocated as Necessary Lower Voltage Facilities demonstrates the arbitrary nature of PJM's cost allocation for Regional Facilities and Necessary Lower Voltage Facilities.¹³

10. Exelon requests that the Commission make clear in its order that the allocation of costs of the Regional Facilities that are 500 kV and above, as well as Necessary Lower Voltage Facilities contained in PJM's November 18, 2011 RTEP Filing is subject to revisions pending the outcome of the Commission's decision on the remand of Opinion No. 494 and Opinion No. 494-A, and any further appeals in that proceeding.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁴ the notices of intervention and timely, unopposed motions to intervene serve to make them parties to this proceeding.

12. Pursuant to Rule 214(d),¹⁵ the Commission will grant the Old Dominion's motion to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

13. We grant PJM's requests for a waiver of the filing and reporting requirements for the projects that were included in the November 18, 2011 RTEP Filing that were previously approved by the PJM Board but not included in Schedule 12 due to administrative error, and the notice requirement regarding the December 15, 2011 Amendment.

Voltage Facilities and Necessary Lower Voltage Facilities that are mostly located in Pennsylvania, Virginia, New Jersey and Maryland.

¹³ Illinois Commission's Protest at 7-8 (citing PJM's November 18, 2011 RTEP Filing at 11).

¹⁴ 18 C.F.R. § 385.214 (2011).

¹⁵ 18 C.F.R. § 385.214(d) (2011).

B. Commission Determination

14. With respect to the assignment of costs for new RTEP transmission facilities that operate at or above 500 kV and Necessary Lower Voltage Facilities, we accept the November 15, 2011 RTEP Filing,¹⁶ subject to refund, and, because issues regarding cost allocation of Regional Facilities and Necessary Lower Voltage Facilities are pending in other proceedings, subject to the pending further proceedings to address issues presented on remand of Opinion No. 494 and Opinion No. 494-A.¹⁷ We also accept PJM's proposed assignment of cost for new facilities that operate below 500 kV, as amended on December 15, 2011, as being consistent with the methodology set forth in Schedule 12.¹⁸

The Commission orders:

(A) PJM's revised tariff sheets for new and previously approved RTEP transmission facilities that are Regional Facilities (500 kV and above) and Necessary Lower Voltage Facilities are hereby conditionally accepted for filing and suspended for a nominal period to become effective on February 16, 2012, subject to refund and to the outcome of further proceedings, as discussed in the body of this order.

(B) PJM's revised tariff sheets for new and previously approved RTEP transmission facilities that operate below 500 kV are hereby accepted for filing to become effective on February 16, 2012, as discussed in the body of this order.

(C) PJM's revised tariff sheets reallocating the cost responsibility assignments for upgrades that were previously allocated as Necessary Lower Voltage Facilities are

¹⁶ This includes the assignment of cost of the upgrades that operate at or above 500 kV that were previously approved, but not included in Schedule 12 due to administrative error.

¹⁷ See *PJM Interconnection, L.L.C.*, 130 FERC ¶ 61,103, at P 13 (2010).

¹⁸ This includes the reallocation of the cost responsibility assignments for the ten upgrades that were previously allocated as Necessary Lower Voltage Facilities, and the assignment of cost of the upgrades that operate below 500 kV that were previously approved, but not included in Schedule 12 due to administrative error.

hereby accepted for filing to become effective on February 16, 2012, as discussed in the body of this order.

By the Commission. Commissioner LaFleur is concurring with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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LaFLEUR, Commissioner, *concurring*:

While I agree that PJM has complied with its Tariff, and therefore concur in the judgment, I write separately to express my concern about the uncertainty that hangs over this proceeding regarding whether PJM's "postage-stamp" cost allocation methodology is just and reasonable in light of the court's opinion in *Illinois Commerce Commission v. FERC*.¹⁹

In *ICC*, the United States Court of Appeals for the Seventh Circuit remanded the case to the Commission for further review of PJM's cost allocation methodology. The Commission has yet to resolve this issue. While I express no judgment on the merits of the case, I am concerned that additional delay could make it difficult for PJM to comply with any potential directives on remand.²⁰ I am also concerned that the uncertainty created may complicate PJM's efforts to comply with Order No. 1000.²¹ Therefore, I respectfully urge that the Commission act quickly to resolve this matter.

Cheryl A. LaFleur
Commissioner

¹⁹ 576 F.3d 470 (7th Cir. 2009) (*ICC*).

²⁰ *See supra* P 14 (accepting PJM's filing subject to the outcome of the remand proceeding).

²¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 Fed. Reg. 49842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011).