

150 FERC ¶ 61,087
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

PJM Interconnection, L.L.C.

Docket No. ER15-639-000

ORDER REJECTING PROPOSED TARIFF REVISIONS

(Issued February 13, 2015)

1. On December 16, 2014, PJM Interconnection, L.L.C. (PJM) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ proposed tariff revisions to section 1.5.8 of Schedule 6 (Regional Transmission Expansion Planning Protocol) of its Amended and Restated Operating Agreement. PJM proposes to establish an upfront, non-refundable fee to evaluate greenfield facilities (i.e., new transmission facilities)² unless the proposed transmission project is a Transmission Owner Upgrade³ under \$20 million. For the reasons discussed below, we reject, without prejudice, PJM's proposed tariff revisions as unjust and unreasonable and unduly discriminatory or preferential.

I. Background

2. PJM explains that, to promote the selection of competitive transmission project proposals, it implemented its Order No. 1000 competitive process under its Regional Transmission Expansion Plan (RTEP).⁴ PJM states that, since April 29, 2013, it has

¹ 16 U.S.C. § 824d (2012).

² Although PJM's filing uses the term "greenfield project," this order will refer to the facilities covered by PJM's filing as "new transmission facilities."

³ The term "Transmission Owner Upgrade" refers to an improvement to, addition to, or replacement of a part of, an existing Transmission Owner's facility and is not an entirely new transmission facility. *See PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128, at P 146 (2014).

⁴ PJM Transmittal Letter at 2.

opened five Order No. 1000 submission windows: (1) Artificial Island Area Proposal Window; (2) 2013 Market Efficiency Proposal Window; (3) 2014 Proposal Window 1; (4) 2014 Proposal Window 2; and (5) 2014/2015 Long Term Proposal Window.⁵ Because of its implementation of the Order No. 1000 open window proposal process, PJM has experienced new, additional internal labor and external consultant costs.⁶

3. PJM explains that, with its Regional Planning Process Task Force (RPPTF), it undertook a review of the costs of the additional analysis required to evaluate transmission project proposals submitted under PJM's Order No. 1000 open window process.⁷ PJM explains that, based on its review of transmission project proposals submitted in the most recent open window proposal process, it developed the framework for a fee to study projects submitted within the proposal window.⁸ PJM explains that it addressed in the stakeholder process: (1) whether the fee should apply to all transmission project proposals, only those transmission project proposals that are not Transmission Owner Upgrades, or to all transmission projects with an estimated cost over a certain dollar amount; and (2) the amount of the fee to be charged, as well as whether to charge an upfront flat fee or base the amount on actual costs and invoice any shortfalls or refund any excess fee amounts submitted. PJM states numerous alternative fee proposals were discussed and considered.⁹ PJM explains that its stakeholders agreed upon an upfront, non-refundable fee in the amount of \$30,000 for each transmission project proposed in response to a posted transmission need where the proposing entity is requesting Designated Entity Status for the project.

4. PJM explains that, while its original proposal passed the Markets and Reliability Committee, the window proposal fee was not endorsed by the Members Committee. PJM explains that an alternative motion, submitted by the independent transmission developers, proposed a requirement that incumbent transmission owners also submit an upfront, non-refundable \$30,000 fee for Transmission Owner Upgrades proposals with

⁵ *Id.*

⁶ *Id.* at 2-3.

⁷ *Id.* at 3.

⁸ *Id.*

⁹ *Id.* at 4.

costs estimated at \$20 million or greater.¹⁰ PJM states that the alternative amendment was endorsed by the Members Committee in a sector weighted vote with 4.21 in favor.¹¹

II. Filing

5. PJM explains that it proposes to modify Schedule 6 of its Operating Agreement to add an upfront, non-refundable \$30,000 fee for each transmission project proposal submitted via a proposal window for transmission projects proposed in response to a posted transmission need, unless the proposed transmission project is a Transmission Owner Upgrade under \$20 million.¹² PJM contends that its proposal is consistent with fee and deposit structures that the Commission has approved for other Regional Transmission Organizations and Independent System Operators' (RTOs/ISOs) Order No. 1000 compliance filings.¹³

6. PJM explains that the purpose of the \$30,000 upfront, non-refundable fee is to offset costs to PJM members by allocating such costs to a subset of the membership associated with the competitive activities, *i.e.*, the "cost causer" voluntarily seeking ownership and construction responsibility for its transmission project proposal in return for a fair rate of return on its investment.¹⁴ PJM also explains that it and its stakeholders found the \$30,000 fee to be a reasonable estimation of analysis costs that would encourage serious, well-reasoned transmission project proposals.¹⁵ PJM further explains that the fee is structured so that proposing entities would know their up-front costs at the time they submit their proposal.¹⁶ Additionally, PJM explains that a one-time upfront,

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 5; Schedule 6, § 1.5.8(c) (1) of PJM's Operating Agreement.

¹³ PJM Transmittal Letter at 3, *citing Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,127 (2014) (finding MISO's proposed deposit requirement partially complies with Order No. 1000 subject to further compliance); ISO-NE Compliance Filing, at 14-15, Docket No. ER13-193-003, *et al.*; *Southwest Power Pool, Inc.*, 149 FERC ¶ 61,048, at P 205 (2014) (finding that SPP established a precise dollar amount and a process for additional payments or refunds and added a process to ensure payment of interest).

¹⁴ PJM Transmittal Letter at 5.

¹⁵ *Id.*

¹⁶ *Id.*

non-refundable fee will avoid the need to manage additional collections and/or refunds.¹⁷ PJM also believes that such amount should not be a barrier to entry for legitimate, well thought out transmission projects positioned to recover such investment if designated. Nonetheless, PJM states that it commits to review the fee two years after it implements the fee to assess whether adjustments are necessary.¹⁸

7. PJM explains that the proposed fee will also apply to incumbent transmission owners who submit a transmission project proposal within the proposal window for Transmission Owner Upgrades that are estimated at \$20 million or greater.¹⁹ PJM explains that the rationale for a fee for Transmission Owner Upgrade proposals is that PJM expects transmission project proposals that are estimated at \$20 million or greater will be more likely to generate additional costs through the competitive solicitation process than Transmission Owner Upgrades of less than \$20 million.²⁰ Additionally, PJM asserts that, prior to Order No. 1000, there would not have been other competitive proposals and thus, PJM would not have conducted a constructability analysis for Transmission Owner Upgrades.²¹

8. In determining the appropriate level of the proposed fee, PJM states that it considered costs associated with the Artificial Island proposal window, transmission projects reviewed under the RTEP process prior to Order No. 1000, and studies performed for various proposed interconnections.²² With regard to analysis performed under the Artificial Island proposal window, PJM found that the administrative costs as of August 2014 totaled approximately \$425,000 (approximately \$20,000 per proposal), which included internal PJM engineering analysis and external consultant costs. PJM further explains that it found the costs of the constructability analyses for the eight competitive transmission project proposals conducted prior to issuance of Order No. 1000 ranged from \$44,000 to \$168,000. PJM notes that these amounts do not include costs associated with internal PJM labor related to the evaluation of competitive transmission project proposals, which were not separately accounted for at that time.²³ PJM states

¹⁷ *Id.* at 5-6.

¹⁸ *Id.* at 6.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 7.

²³ *Id.*

that, for the system impact and facility studies under the interconnection queue, it took a sampling of fifteen projects and the average total cost was \$85,276 per interconnection project, \$21,106 for system impact studies and \$64,170 for facility studies.²⁴

9. PJM took the lower end of the ranges from the eight competitive proposals and the interconnection studies and the higher end of the range from its experience with Artificial Island and proposed a \$30,000 upfront, non-refundable fee. PJM states that it will review whether adjustments to the fee process or amount are appropriate after two years.²⁵ PJM also explains shortfalls or surpluses will be managed within the overall System Planning Division budget and used to cover other RTEP-related costs, therefore, offsetting the costs borne by the PJM Membership in administering the fee.²⁶

10. PJM requests an effective date of February 16, 2015, but no later than February 27, 2015, which is the close of the current proposal window.²⁷

III. Notice of Filing and Responsive Pleadings

11. Notice of PJM's filing was published in the *Federal Register*, 79 Fed. Reg. 77,468, (2014), with interventions and protests due on or before January 6, 2015.

12. American Electric Power Service Corporation; FirstEnergy Service Company; Dominion Resources Services, Inc.; American Municipal Power, Inc.; and Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company filed timely motions to intervene. Exelon Corporation (Exelon) filed a timely motion to intervene, comments, and a protest.

13. On January 7, 2015, Public Service Electric and Gas Company (PSE&G) filed a motion to intervene out-of-time. On January 22, 2015, LSP Transmission Holdings, LLC (LSP Transmission) and ITC Mid-Atlantic Development, LLC (ITC) each filed a motion to intervene out-of-time and comments. PJM filed an answer on January 23, 2015.

A. Comments and Protests

14. LSP Transmission asserts that the issue in this proceeding is whether the PJM proposal window, designed to determine more efficient or cost-effective transmission

²⁴ *Id.* at 7-8.

²⁵ *Id.* at 8-9.

²⁶ *Id.* at 9.

²⁷ *Id.* at 10.

projects, should create a preference for a transmission owner's upgrades or new transmission facilities.²⁸ LSP Transmission asserts that it is unfair and discriminatory to treat one type of transmission project one way and another competing transmission project another way in a nondiscriminatory proposal window. LSP Transmission argues that Order No. 1000 did not create a preference for upgrades in the selection and proposal window process, but rather that Order No. 1000 mandates a non-discriminatory selection process for determination of the more efficient or cost-effective transmission project.

15. LSP Transmission explains that the RPPTF, which is heavily weighted by incumbent transmission owners, approved a fee proposal that applied only to new transmission facilities, and not to transmission upgrades submitted in the same proposal window.²⁹ LSP Transmission explains that as a compromise, it proposed the alternative motion that passed and which PJM subsequently filed with the Commission.³⁰

16. LSP Transmission argues that, although it believes that all transmission projects submitted in a proposal window should be treated the same, the PJM Members Committee developed a compromise that excluded transmission owner upgrades under \$20 million. LSP Transmission adds that this will force the larger "upgrade" projects (i.e., "rebuilding a state's transmission system") to compete on a level playing field with new transmission facilities.³¹ Further, LSP Transmission asserts that, because PJM is using a set fee rather than an actual cost proposal, it is appropriate to use a generally applicable fee that represents the general cost of studying all transmission project proposals. LSP Transmission asks that the Commission approve PJM's proposal as filed.³²

17. Exelon agrees with PJM's proposal not to apply a non-refundable fee to Transmission Owner Upgrades with costs estimated to be less than \$20 million because upgrades such as equipment replacement, reconductoring or replacement of substation facilities do not require extensive cost estimates or constructability analyses. On the other hand, Exelon argues that PJM does not adequately explain what costs PJM will incur in evaluating Transmission Owner Upgrades estimated to cost \$20 million or

²⁸ LSP Transmission Comments at 2.

²⁹ *Id.* at 3.

³⁰ *Id.*

³¹ *Id.* at 4.

³² *Id.*

greater.³³ As a result, Exelon recommends that the Commission reject the portion of PJM's proposal that would impose an automatic fee on all Transmission Owner Upgrades with estimated costs of \$20 million or greater.³⁴ Exelon explains that this aspect of the proposal was introduced as an amendment during the stakeholder process, but it is unclear why this proposed charge is needed. Exelon believes that the proposal is unsupported and that PJM should instead use categories of Transmission Owner Upgrades as the basis for the fee.³⁵

18. ITC argues the proposal to charge fees for all non-incumbent proposals, but only a small subset of incumbent proposals, discriminates against non-incumbent transmission developers.³⁶ ITC asserts that the costs to study the proposals are no more "caused" by the non-incumbents than they are by the incumbent transmission owner upgrades against which those new transmission facilities are compared.³⁷

19. ITC argues that, in contrast to other RTOs that exclude from the competitive process incumbent transmission owner upgrades, which retain federal rights of first refusal, PJM has elected to conduct its Order No. 1000 mandated competitive transmission owner selection process through a "sponsorship" model in which proposals for competitive and non-competitive transmission projects are submitted and evaluated as part of a single process.³⁸ ITC asserts that, while there is nothing inherently unjust and unreasonable about such an approach, PJM should not be allowed to implement a competitive process that requires non-incumbent transmission developers to subsidize the participation of incumbent transmission owners.³⁹ However, ITC maintains that, in recognition of the fact that PJM does incur costs to conduct the competitive transmission owner selection process, and that PJM has committed to reevaluate the proposal fee

³³ Exelon Comments and Protest at 6, *citing Southwest Power Pool, Inc.*, 149 FERC ¶ 61,048, at PP 201-205 (2014).

³⁴ Exelon Comments and Protest at 6.

³⁵ *Id.*

³⁶ ITC Comments at 3.

³⁷ *Id.* at 4.

³⁸ *Id.*

³⁹ *Id.*

structure in two years, ITC is not protesting the fee structure that was approved by PJM stakeholders.⁴⁰

20. Additionally, Exelon and ITC contend that PJM should provide a refund of the proposed fee to transmission developers in situations where PJM decides following submittal of the proposals that there is no need for the facilities covered by the proposals.⁴¹ Exelon contends that fees should be returned to transmission developers in situations where PJM decides following submittal of the proposals that there is no need, regardless of whether the proposals address one need or multiple needs.⁴² Therefore, Exelon and ITC request that the Commission should direct PJM to include a provision to refund the fee (with interest) in a situation where PJM determines that a need listed for an open window was, in fact, not needed.⁴³

B. PJM's Answer

21. PJM explains that the proposed fee is intended to establish a reasonable collection mechanism that can be executed with minimal administrative oversight.⁴⁴ As a result, PJM explains that the parties agreed that an upfront, non-refundable fee would most likely realize that objective. PJM asserts that it and its stakeholders agreed on the \$30,000 fee because it struck a reasonable balance between being sufficient enough to encourage well-developed transmission project proposals while modest enough not to discourage participation in the open window process.⁴⁵ PJM acknowledges that there would be times when the proposed \$30,000 fee would be less than actual study costs and other times when the fee would exceed actual study costs for these transmission project proposals. PJM contends that an “actual cost” approach would add a level of complexity far beyond that of a flat rate fee.⁴⁶

⁴⁰ *Id.* at 5.

⁴¹ *Id.* at 2-3; Exelon Comments and Protest at 4.

⁴² Exelon Comments and Protest at 4.

⁴³ *Id.*

⁴⁴ PJM Answer at 2.

⁴⁵ *Id.*

⁴⁶ *Id.*

22. PJM argues that its proposal minimizes administrative burdens and encourages a robust competitive solicitation process.⁴⁷ PJM further argues that the \$30,000 fee was agreed to by PJM and its stakeholders through an extensive stakeholder process, finding that the proposal is fair and non-discriminatory.⁴⁸

23. PJM asserts that the purpose of the fee proposal was to better allocate the additional costs of implementing Order No. 1000, while keeping the process simple. PJM urges the Commission to reject Exelon's proposed modifications. PJM argues that Exelon failed to provide any support for its proposed change to the requirement that an incumbent transmission owner submit a \$30,000 fee for certain Transmission Owner Upgrades. PJM contends that adding a layer of complexity to whether a Transmission Owner Upgrade estimated at \$20 million or greater should be required to submit a fee based on whether the transmission project proposal will require any study, some study, or a lot of study will only complicate the process more and open the door for more challenges, particularly since PJM will not have those answers until it completes its study of the proposal. PJM urges the Commission to allow PJM to apply the fee as proposed. PJM states that, after two years, it will consider in the context of the stakeholder process whether any of Exelon's proposals have merit.⁴⁹

IV. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant PSE&G's, LSP Transmission's and ITC's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014) prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept PJM's answer filed in this proceeding because it has provided information that assisted us in our decision-making process.

⁴⁷ *Id.* at 4.

⁴⁸ *Id.*

⁴⁹ *Id.* at 5.

B. Commission Determination

26. We find that PJM's proposed \$30,000 non-refundable fee is unjust and unreasonable and unduly discriminatory and preferential. As proposed by PJM, a transmission developer proposing a new transmission facility, or a transmission owner proposing a Transmission Owner Upgrade with estimated costs of \$20 million or greater, for selection in the regional transmission plan for purposes of cost allocation in response to a posted transmission need must pay a \$30,000 non-refundable fee to cover the expense to evaluate the proposed transmission project. However, PJM proposes to exempt incumbent transmission owners proposing a Transmission Owner Upgrade with estimated costs under \$20 million for selection in the regional transmission plan for purposes of cost allocation from paying the \$30,000 non-refundable fee. We find that PJM has failed to provide sufficient support to justify that the costs of studying Transmission Owner Upgrade proposals with estimated costs under \$20 million would be different than the costs of studying new transmission facilities with estimated costs under \$20 million. We therefore find that it is unduly discriminatory and preferential to require transmission developers proposing new transmission facilities with estimated costs under \$20 million for selection in the regional transmission plan for purposes of cost allocation to pay a fee to cover the expense of evaluating the proposed transmission projects, while exempting from paying such a fee incumbent transmission owners proposing Transmission Owner Upgrades with estimated costs under \$20 million for selection in the regional transmission plan for purposes of cost allocation.⁵⁰ Even though PJM's proposal represents a compromise among stakeholders, PJM's proposal is inconsistent with the requirements of Order No. 1000.⁵¹ We therefore reject PJM's \$30,000 non-refundable fee proposal.⁵²

⁵⁰ See *Tampa Elec. Co.*, 143 FERC ¶ 61,254, at P 147 (2013) ("Subject to our directive that Florida Parties revise their OATTs such that both incumbent transmission providers and nonincumbent transmission developers are subject to the same qualification criteria and deposits, we find that Florida Parties' proposed deposit complies with Order No. 1000 since it will apply comparably to incumbent transmission owners and nonincumbent transmission developers.").

⁵¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at P 328 (2011).

⁵² Given that we are rejecting PJM's filing, there is no need to address the issues raised in Exelon's protest and the comments on PJM's filing.

27. Nonetheless, we agree with PJM that it is reasonable to charge a fee to cover the costs of evaluating transmission projects proposed for selection in the regional transmission plan for purposes of cost allocation. The Commission has accepted non-refundable fees for submitting a transmission project for selection in the regional transmission plan for purposes of cost allocation in its orders addressing Order No. 1000 compliance filings.⁵³ Thus, we reject PJM's proposal without prejudice to PJM filing a new proposal that addresses the unduly discriminatory nature of the fee proposed in this proceeding.

The Commission orders:

PJM's proposed tariff revisions are hereby rejected, without prejudice, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵³ See *Avista Corp.*, 148 FERC ¶ 61,212, at P 141 (2014); and *Louisville Gas and Elec. Co.*, 144 FERC ¶ 61,054, at P 162 (2013).