

157 FERC ¶ 61,192
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER15-1387-002

ORDER DENYING REHEARING, PROVIDING CLARIFICATION, AND
REQUIRING A COMPLIANCE FILING

(Issued December 9, 2016)

1. On February 12, 2016, the Commission accepted, on rehearing, a PJM Interconnection, L.L.C. (PJM) Transmission Owner proposal to allocate 100 percent of the costs of transmission projects that are included in the PJM Regional Transmission Expansion Plan (RTEP) solely to address individual transmission owner Form No. 715 local planning criteria to the zone in which the criteria apply.¹ Dominion Energy Resources, Inc. (Dominion), Old Dominion Electric Cooperative (ODEC), and LSP Transmission Holdings, LLC and ITC Mid-Atlantic Development, LLC (LSP/ITC Mid-Atlantic) have requested rehearing. PJM requested clarification.

2. In this order, we deny the requests for rehearing, provide clarification, and require a compliance filing.

I. Background

A. PJM Transmission Owners' Proposal

3. On March 26, 2015, the PJM Transmission Owners proposed revisions to the PJM Open Access Transmission Tariff (Tariff) to allocate 100 percent of costs for reliability projects that are included in the PJM RTEP solely to address local transmission owner planning criteria as filed in individual transmission owner's FERC Form No. 715 to the

¹ *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,096 (2016) (February 2016 Order).

transmission zone of the transmission owner that filed the Form No. 715 planning criteria.² Specifically, the PJM Transmission Owners proposed:

Notwithstanding Sections (b)(i), (b)(ii), (b)(iv) and (b)(v), cost responsibility for any Required Transmission Enhancements that are included in the Regional Transmission Expansion Plan, but which would not have otherwise been so included but for the fact that they address individual Transmission Owner FERC filed planning criteria as filed in FERC Form No. 715 and posted on the PJM website, shall be assigned to the Responsible Customers in the Zone of the Transmission Owner that filed such planning criteria. Merchant Transmission Facilities shall not be assigned cost responsibility for a Required Transmission Enhancement subject to this Section (b)(xv).³

4. The PJM Transmission Owners' proposal addressed projects that are included in the RTEP pursuant to an individual transmission owner's Form No. 715 local planning criteria, rather than to address PJM regional criteria or NERC Reliability Standards. The PJM Transmission Owners explained that, historically, these projects are lower voltage transmission projects, the costs of which are allocated using the DFAX method, and that for 98 percent of the 303 projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria, all of the costs have been allocated exclusively to the zone of the transmission owner that filed the planning criteria that gave rise to the need for the project.⁴ The PJM Transmission Owners argued that the

² PJM Transmission Owner Transmittal at 3. PJM's RTEP planning criteria includes PJM planning procedures, North American Electric Reliability Corporation (NERC) Reliability Standards, Regional Entity reliability principles and standards, individual Transmission Owner FERC filed planning criteria as filed in FERC Form No. 715. *See* PJM, Intra-PJM Tariffs, Operating Agreement, [Schedule 6, §1.2\(e\) \(Conformity with NERC Reliability Standards and Other Applicable Reliability Criteria\) \(2.0.0\)](#).

³ Schedule 12, Section (b)(xv). Schedule 12, Sections (b)(i), (b)(ii), (b)(iv) and (b)(v) provide the assignment of cost responsibility for Regional Facilities and Necessary Lower Voltage Facilities, Lower Voltage Facilities, Spare Parts, Replacement Equipment and Circuit Breakers, and Economic Projects, respectively. Schedule 12, Section (b)(iii) provides for the solution-based distribution factor (DFAX) method for assignment of cost responsibility for reliability projects under subsections (b)(i)(A)(2)(a), and (b)(ii)(A).

⁴ PJM Transmission Owners Transmittal at 2.

proposed revisions will better align the purpose and intent of individual transmission owner Form No. 715 local planning criteria with the need for and beneficiaries of these projects.⁵

B. Commission Orders

5. On May 22, 2015, the Commission initially rejected the PJM Transmission Owners' proposal.⁶ The Commission concluded the proposal was inconsistent with Order No. 1000⁷ because "the local transmission owner planning criteria are incorporated into the regional transmission planning process, and as a result, projects intended to address such criteria may be selected in PJM's RTEP for purposes of cost allocation."⁸ The Commission also stated that the filing was inconsistent with an earlier filing by the Midwest Independent Transmission System Operator, Inc. (MISO)⁹ and the MISO Transmission Owners, in which the Commission had accepted 100 percent allocation to one zone for what MISO termed Baseline Reliability Projects.¹⁰ The Commission stated that it appeared that under the PJM Transmission Owners' proposal, a transmission facility that qualifies to be and is selected in PJM's RTEP for purposes of cost allocation

⁵ *Id.*

⁶ *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,172, at P 22 (2015) (May 2015 Order).

⁷ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁸ May 2015 Order, 151 FERC ¶ 61,172 at P 22.

⁹ Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

¹⁰ *Midwest Independent Transmission System Operator, Inc.*, 142 FERC ¶ 61,215 (2013) (*MISO*). Baseline Reliability Projects are network upgrades required to ensure that the MISO transmission system remains in compliance with NERC reliability standards. Baseline Reliability Projects include projects operating at 100 kV or above that are needed to maintain reliability while accommodating the ongoing needs of existing transmission customers. *Id.* P 484.

would not be eligible to use the PJM regional cost allocation method if it is intended to address individual transmission owner Form No. 715 planning criteria.¹¹ The Commission therefore concluded that the MISO projects are distinguishable from the PJM individual transmission owner Form No. 715 local planning criteria projects, because PJM selects the projects addressing the individual transmission owner Form No. 715 local planning criteria for the purposes of cost allocation in the RTEP, while the MISO Baseline Reliability Projects are not selected for purposes of cost allocation in the MISO regional transmission plan.

6. The PJM Transmission Owners and Dayton Power and Light Company (Dayton) requested rehearing of the May 2015 Order, raising concerns about how the PJM Transmission Owners conduct local transmission planning within the PJM regional transmission planning process and whether the integration of local and regional transmission planning requirements are in compliance with PJM's Order No. 1000-compliant transmission planning procedures. In the September 2015 Order,¹² the Commission noted that these rehearing requests raised "concerns regarding how PJM plans local transmission projects."¹³ The Commission directed staff to convene a technical conference to explore issues raised by these rehearing requests.¹⁴

7. In technical conference comments, the PJM Transmission Owners and other participants clarified that the intent of the PJM Transmission Owners' proposal was to create a category of projects that would not be selected in the regional transmission plan for purposes of cost allocation, rather than an exclusion for projects selected in the regional transmission plan for purposes of cost allocation with a subsequent reallocation of their costs to the zone of the individual transmission owner. The PJM Transmission

¹¹ May 2015 Order, 151 FERC ¶ 61,172 at P 24.

¹² *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,197, at P 7 (2015) (September 2015 Order).

¹³ *Id.* P 16.

¹⁴ *Id.* In addition, on March 20, 2015 (as amended on March 27, 2015), PJM submitted amendments to its Tariff to incorporate cost responsibility assignments for 61 baseline upgrades included in the recent update to the RTEP in Docket No. ER15-1344-001 (March 2015 RTEP Filing). In the September 2015 Order, the Commission also accepted for filing the Tariff records of the March 2015 RTEP Filing and suspended them for five months, subject to refund, to become effective February 16, 2016, or an earlier date set forth in a subsequent order, and directed staff to explore the issues related to the cost responsibility assignments for the 61 baseline upgrades.

Owners clarified that the proposal would only apply to projects solely to address transmission owner Form No. 715 local planning criteria, and that this category of transmission facilities is separate and distinct from reliability projects that are driven by PJM regional planning criteria or NERC Reliability Standards. The PJM Transmission Owners further stated that a project that only addresses an individual transmission owner local planning criteria would not be included in the RTEP to meet any regional planning criteria or NERC Reliability Standard.

8. In their comments, the PJM Transmission Owners further explained that PJM submits to the Commission a cost assignment responsibility summary that includes the criteria violation, the criteria test (e.g., NERC Reliability Standards, PJM planning procedure, Form No. 715 local planning criteria, etc.), the solution, and the cost allocation.¹⁵ The PJM Transmission Owners state, as mentioned in their request for rehearing, that not all transmission projects included in the RTEP are selected in the regional transmission plan for purposes of cost allocation.

9. Based on the technical conference comments and the rehearing petitions, in the February 2016 Order, the Commission granted rehearing of the May 2015 Order and accepted the March 26, 2015 proposed Tariff revisions, to be effective May 25, 2015.¹⁶ The Commission found that the PJM Transmission Owners' proposed Tariff revisions apply to transmission projects that are included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria, and are not selected in the

¹⁵ PJM Transmission Owners Post-Technical Conference Comments at 7.

¹⁶ February 2016 Order, 154 FERC ¶ 61,096 at PP 12-13. The Commission noted that concerns regarding how PJM plans local transmission projects would be addressed in a separate docket. *See Monogahela Power Co.*, 156 FERC ¶ 61,134 (2016) (establishing a proceeding to determine whether the PJM Transmission Owners are complying with their local planning obligations).

RTEP for purposes of cost allocation.¹⁷ The Commission found that it is just and reasonable to allocate 100 percent of the cost of projects solely needed to address transmission owner Form No. 715 local planning criteria to the zone of the individual transmission owner whose Form No. 715 local planning criteria underlie each project. The Commission found that the PJM Transmission Owners' proposal addressed transmission projects that are included in the RTEP, but are not selected for purposes of cost allocation, a category of projects that solely address individual transmission owner Form No. 715 local planning criteria.

10. The Commission also found that granting rehearing would be consistent with *MISO* by allocating 100 percent of the cost of projects solely needed to address individual transmission owner Form No. 715 local planning criteria to the zone of the individual transmission owner whose planning criteria underlie each project.¹⁸ The Commission further found that to the extent that PJM finds that a project is needed to meet not only individual transmission owner Form No. 715 local planning criteria but also PJM planning criteria, such a project must be eligible for regional cost allocation.¹⁹

II. Rehearing

A. Requests for Rehearing

11. On rehearing of the February 2016 Order, Dominion argues that projects selected pursuant to individual transmission owner Form No. 715 local planning criteria are not categorically local in nature, and that selection pursuant to such criteria does not justify

¹⁷ *Id.* P 13. The Commission noted that “[t]ransmission facilities selected in a regional transmission plan for purposes of cost allocation are transmission facilities that have been selected pursuant to a transmission planning region’s Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation because they are more efficient or cost-effective solutions to regional transmission needs...Such transmission facilities often will not comprise all of the transmission facilities in the regional transmission plan; rather, such transmission facilities may be a subset of the transmission facilities in the regional transmission plan...A local transmission facility is a transmission facility located solely within a public utility transmission provider’s retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation.” *Id.* P 13 n.16 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63).

¹⁸ February 2016 Order, 154 FERC ¶ 61,096 at PP 13-14.

¹⁹ *Id.* at P 14.

overriding past determinations that all PJM high voltage transmission facilities have regional benefits. Dominion contends that the statistic on which the Commission relied in the February 2016 Order (i.e., for 98 percent of the 303 projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria, all of the costs have been allocated exclusively to the zone of the transmission owner that filed the planning criteria) does not support the PJM Transmission Owners' proposal, but rather merely illustrates that different classes of transmission projects have different cost allocation because they have different cost causation. In other words, Dominion contends that nothing about this statistic explains why cost causation has changed for the two percent of projects whose costs were allocated regionally because those projects met the size criterion that the Commission determined demonstrates regional benefits. Dominion further contends that all PJM transmission projects that operate at or above 500 kV or at 345 kV with a double circuit configuration provide regional benefits, and that their costs should be allocated regionally, including the costs of Dominion's project, which Dominion contends PJM determined needed to go into service within three years to avoid several regional NERC Reliability Standards violations.²⁰

12. Dominion argues that, in relying on the 98 percent statistic, the Commission erroneously likens the situation to that accepted in *MISO*. Dominion asserts that in support of its proposal, MISO had submitted a flow-based analysis to show the pricing zones having flows impacted by Baseline Reliability Projects and to demonstrate that benefits provided by Baseline Reliability Projects were realized primarily in the pricing zone where the Baseline Reliability Project was located. In contrast, Dominion asserts that the PJM Transmission Owners did not provide a similar flow-based analysis to demonstrate that the benefits of projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria are realized primarily in the pricing zone where the project is located.²¹

13. Dominion maintains that consistent with the history of the Energy Policy Act of 1992 and the Commission orders requiring the filing of Form No. 715,²² Form No. 715

²⁰ Dominion Rehearing Request at 12-21.

²¹ *Id.* at 21-25.

²² *Id.* at 26 (citing *New Reporting Requirement Implementing Section 213(b) of the Federal Power Act and Supporting Expanded Regulatory Responsibilities under the Energy Policy Act of 1992, and Conforming and Other Changes to Form No. FERC-714*, Order No. 558, FERC Stats. & Regs. ¶ 30,980 (Order No. 558), *reh'g denied*, Order No. 558-A, 65 FERC ¶ 61,324 (1993), Final Rule, Order No. 558-B, FERC Stats. & Regs. ¶ 30,993 (1994)). *See* 16 U.S.C. § 824l(b) (2012).

is not limited to local projects. Dominion argues that Form No. 715 was designed to implement Federal Power Act (FPA) section 213(b) by providing customers with information on available transmission capacity and that, inside a Regional Transmission Organization (RTO), it is impossible to consider constraints and available transmission capability on a single zone basis. It maintains that the PJM Transmission Owners recognized this interrelationship in their Form No. 715 filing, stating “constraints may exist on a neighboring utility system that impact transmission capabilities in another utility’s service territory.”²³

14. Further, Dominion contends that the effect of the February 2016 Order is to allocate the costs of replacement transmission facilities locally for projects that might otherwise meet the criteria for regional cost allocation, but for the fact that they arise under individual transmission owner Form No. 715 local planning criteria. Dominion maintains that it is unduly discriminatory to require customers of the Dominion zone to be assigned the entire cost of regionally-beneficial projects, while customers in other zones only pay a portion of the costs of regionally-beneficial projects developed by the transmission owner in their zone.²⁴ Dominion also argues that ignoring regional benefits for projects merely because their need was identified by Form No. 715 is contrary to Opinion No. 494,²⁵ and Order No. 2000,²⁶ which suggested an eventual phase-in to regional cost allocation.²⁷

15. ODEC and LSP/MidAtlantic argue that under Schedule 6 (section 1.2(e)) of PJM’s Operating Agreement, individual transmission owner Form No. 715 local planning criteria are considered regional planning criteria for which PJM must plan the

²³ *Id.* at 30.

²⁴ *Id.* at 31-32.

²⁵ *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007), *aff’d on reh’g*, 122 FERC ¶ 61,082 (2008), *aff’d in part and rev’d in part Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009). *See PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230 (2012), *aff’d on reh’g*, 142 FERC ¶ 61,216 (2013). *See also, Ill. Commerce Comm’n, v. FERC*, 756 F.3d 556 (7th Cir. 2014).

²⁶ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

²⁷ Dominion Rehearing Request at 32-33.

transmission system.²⁸ LSP/MidAtlantic also argue that these projects meet the definition of Required Transmission Enhancement in the PJM Tariff (section 1.38C), and that PJM submits these projects to its Board of Directors (PJM Board) for approval.

16. ODEC and LSP/MidAtlantic also contend that merely because a reliability project is built to address an individual transmission owner Form No. 715 local planning criteria does not mean that the project will exclusively benefit customers in that transmission owner's zone. ODEC maintains that the allocation may be inconsistent with the solution-based DFAX and regional allocation methods and therefore does not ensure that costs are allocated commensurate with the benefits of a project. ODEC contends that if the costs of individual transmission owner Form No. 715 local planning criteria projects are allocated exclusively to the local zone, the allocation of the costs of certain reliability projects would depend entirely on the source of the planning criteria underlying the project rather than the use of, or broader benefits provided by, the project.²⁹ With respect to the February 2016 Order's reliance on the statistic that all of the costs of 98 percent of all individual transmission owner Form No. 715 local planning criteria projects have been allocated to the local transmission owner zone, ODEC maintains that rationale ignores its data showing that all of the costs of 82 percent of all PJM planned projects are allocated to a single zone. ODEC further argues that the February 2016 Order erred in rejecting the clarification offered by the PJM Transmission Owners that when an individual transmission owner Form No. 715 local planning criterion results in replacement of a transmission facility whose costs had been allocated regionally, the costs of the replacement project also should be allocated regionally.

B. Commission Determination

1. Procedural Matters

17. Dayton submitted an answer to the requests for rehearing. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2016), prohibits answers to a request for rehearing. Therefore, we reject Dayton's answer.

2. Discussion

18. As discussed below, we deny rehearing of the February 2016 Order and reaffirm our finding that the PJM Transmission Owners' proposed tariff changes providing for 100 percent allocation of the cost of projects solely needed to address transmission owner

²⁸ ODEC Rehearing Request at 6; LSP/MidAtlantic Rehearing Request at 7.

²⁹ ODEC Rehearing Request at 11.

Form No. 715 local planning criteria to the zone of the individual transmission owner whose Form No. 715 local planning criteria underlie each project are just and reasonable. Under Order No. 1000, “[i]n order for a transmission facility to be eligible for the regional cost allocation methods, the region must select the transmission facility in the regional transmission plan for purposes of cost allocation.”³⁰ Transmission facilities have been selected pursuant to a Commission-approved regional transmission planning process for selection in a regional transmission plan for purposes of cost allocation because they are more efficient or cost-effective transmission solutions to *regional* transmission needs.³¹

19. The projects included in the RTEP to address an individual transmission owner Form No. 715 local planning criteria are not selected to meet “PJM criteria: system reliability, operational performance or economic criteria pursuant to a determination by the Office of the Interconnection.”³² Rather, these projects are responsive to the *local* needs identified by the individual transmission owners pursuant to their individual planning criteria.³³ Thus, the PJM Transmission Owners have created a category of projects that are included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria, and not selected in the RTEP for purposes of cost allocation as the more efficient or cost-effective transmission solutions to regional transmission needs.³⁴

20. As the Commission found in the February 2016 Order, providing for allocation of 100 percent of the cost of projects solely needed to address transmission owner Form No. 715 local planning criteria to the zone of the individual transmission owner whose

³⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 318 n.299.

³¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63.

³² OA Definitions Q-R (3.0.0), § 138.01 Regional RTEP Project. *See* OA Definitions S-T (6.0.0), § 1.42A02 Subregional RTEP Project.

³³ OA Definitions I-L (5.0.0), § 1.18A Local Plans. The PJM Transmission Owners state that the local planning criteria address local reliability needs and aid the individual PJM Transmission Owners in satisfying their state and retail obligations. PJM Transmission Owners Transmittal at 3.

³⁴ The PJM Transmission Owners supported their proposal by noting that the individual transmission owner Form No. 715 local planning criteria address local reliability needs and aid the individual PJM Transmission Owners in satisfying their state and retail obligations. PJM Transmission Owners Transmittal at 3.

Form No. 715 local planning criteria underlie each project also is consistent with Commission precedent. In *MISO*, the Commission found just and reasonable a FPA section 205 proposal to allocate 100 percent of the costs of a Baseline Reliability Project to the pricing zone in which the Baseline Reliability Project is located, because “MISO had presented convincing support... that the pricing zone in which a Baseline Reliability Project is located receives most of the benefits provided by that project, and therefore...assigning all of the associated costs to that pricing zone results in an allocation of costs that is roughly commensurate to the distribution of the project’s benefits.”³⁵

21. ODEC and LSP/Mid-Atlantic contend that the Commission’s finding that projects addressing individual transmission owner Form No. 715 local planning criteria are not selected in the regional transmission plan for purposes of cost allocation runs counter to the PJM Operating Agreement. They cite in particular to section 1.2(e) of Schedule 6 of the PJM Operating Agreement which states:

The Regional Transmission Expansion Plan planning criteria shall include, Office of the Interconnection planning procedures, NERC Reliability Standards, Regional Entity reliability principles and standards, and the individual Transmission Owner FERC filed planning criteria as filed in FERC Form No. 715, and posted on the PJM website. FERC Form No. 715 material will be posted to the PJM website, subject to applicable Critical Energy Infrastructure Information (CEII) requirements.³⁶

ODEC claims that because these projects are approved by the PJM Board, they must be considered regionally planned projects subject to regional cost allocation.

22. Simply because the Operating Agreement includes the individual transmission owner Form No. 715 local planning criteria as part of the RTEP planning criteria and the PJM Board approves these projects as part of the RTEP does not mean that PJM selects

³⁵ *MISO*, 142 FERC ¶ 61,215 at P 521. The Commission found the allocation of 100 percent of the costs to one zone just and reasonable even though, just as in this case, prior to the FPA section 205 filing, MISO had allocated the costs of the Baseline Reliability Projects regionally.

³⁶ OA Schedule 6 Sec 1.2 Conformity with NERC and Other Applicable Reliability Criteria, § 1.2(e) (2.0.0), <http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=1731&sid=120351>.

the projects addressing the individual transmission owner Form No. 715 local planning criteria in the RTEP for purposes of cost allocation as the more efficient or cost-effective solutions to regional transmission needs.³⁷ While PJM administers the transmission planning process for meeting local transmission needs driven solely by individual transmission owner Form No. 715 local planning criteria and allocated 100 percent to an individual transmission owner zone, the fact that PJM, rather than the individual transmission owners, plans to meet these criteria does not render the resulting transmission needs regional transmission needs rather than local transmission needs. To the extent that PJM finds that a transmission project addressing individual transmission owner Form No. 715 local planning criteria also addresses a regional transmission need, PJM will evaluate the project to determine whether it is a more efficient or cost-effective solution to the regional transmission need and therefore would be eligible for selection in the regional transmission plan for purposes of cost allocation.

23. We continue to find that the PJM Transmission Owners' proposal is just and reasonable because the projects are included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria, not region-wide PJM reliability criteria, and the evidence shows that for 98 percent of such projects all the costs have been allocated to the zone of the individual transmission owner.³⁸ Because, under the PJM Transmission Owner's proposal, 100 percent of the costs of projects solely addressing individual transmission owner Form No. 715 local planning criteria will be allocated to the single pricing zone of the individual transmission owner whose Form No. 715 local planning criteria underlies the project, there is no regional cost allocation pursuant to Order No. 1000. Further, the PJM Transmission Owners state that, traditionally, the individual transmission owner local planning criteria have resulted in lower voltage transmission projects that address unique aspects of the individual

³⁷ In Order No. 1000, the Commission noted that a regional transmission plan may also include transmission facilities that have *not* been selected for purposes of cost allocation and "the presence of such transmission projects does not necessarily indicate an evaluation of whether such transmission facilities are more efficient or cost-effective solutions to a regional transmission need." Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 63-64 (emphasis added).

³⁸ February 2016 Order, 154 FERC ¶ 61,096 at P14 (citing *MISO*, 142 FERC ¶ 61,215 at P 524).

transmission owner's zone,³⁹ not transmission facilities that are selected in a regional transmission plan for purposes of cost allocation.⁴⁰ Thus, as we previously found, such projects are included in the RTEP only to ensure that they are developed in a manner that is consistent with PJM's overall regional transmission expansion plan, but are not selected in the regional transmission plan for purposes of cost allocation as the more efficient or cost-effective transmission solutions to regional transmission needs.⁴¹

24. Dominion, ODEC, and LSP/Mid-Atlantic argue that some transmission projects included in the RTEP to address individual transmission owner Form No. 715 local planning criteria provide regional benefits under PJM's voltage-based approach to cost allocation and that, therefore, a local allocation of their costs is unjust and unreasonable. Here, the PJM Transmission Owners have provided an "articulable and plausible basis"⁴² for allocating 100 percent of the cost of projects solely needed to address individual transmission owner Form No. 715 local planning criteria to the single zone in which the criteria apply by providing evidence that, historically, for 98 percent of the projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria, all of the costs have been allocated exclusively to the zone of the

³⁹ PJM Transmission Owners Transmittal at 3. *See, e.g.* "A local transmission facility is a transmission facility located solely within a public utility transmission provider's retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation." Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 63.

⁴⁰ The Commission clarified that "the term 'selected in a regional transmission plan for purposes of cost allocation' excludes a new transmission facility if the costs of that facility are borne entirely by the public utility transmission provider in whose retail distribution service territory or footprint that new transmission facility is to be located." *See* Order No. 1000-A, 139 FERC ¶ 61,132 at P 423.

⁴¹ February 2016 Order, 154 FERC ¶ 61,096 at 13.

⁴² *MISO*, 142 FERC ¶ 61,215 at 521 (citing *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 477) (where MISO has presented convincing support for its claim that the pricing zone in which a Baseline Reliability Project is located receives most of the benefits provided by that project, assigning all of the associated costs to that pricing zone results in an allocation of costs that is roughly commensurate to the distribution of the project's benefits).

transmission owner in which the criteria apply. Cost allocation is not an exact science,⁴³ and there may be “multiple just and reasonable rates” on the same set of facts.⁴⁴ Here, whether the allocation proposed by the PJM Transmission Owners is the best allocation method is not the issue;⁴⁵ the issue is whether it is a just and reasonable method, and we find that it just and reasonable based on the supporting data.

25. All of the rehearing requests challenge the Commission’s reliance on the statistic that 98 percent of all transmission projects needed solely to address individual transmission owner Form No. 715 local planning criteria historically have had 100 percent of their costs allocated to the zone of the individual transmission owner whose Form No. 715 local planning criteria underlie each project. They maintain that such an allocation of the costs of the majority of these transmission projects does not justify 100 percent allocation of the costs to one zone of the 2 percent of the projects that they assert provide regional benefits. ODEC further adds that the statistic relied on by the Commission is arbitrary and capricious because it ignores evidence showing that approximately 83 percent of all RTEP projects have been allocated to a single zone.⁴⁶ First, we note that the Commission did not rely exclusively on this statistic; the Commission considered that data along with the fact that these transmission projects are not planned to meet regional transmission needs, creating a class of projects for which the costs are allocated 100 percent to the zone whose Form No. 715 local planning criteria underlie each project. Second, while not conclusive, we find the data useful in assessing

⁴³ *Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945) (“allocation of costs is not a matter for the slide rule. It involves judgment on a myriad of facts. It has no claim to an exact science”). See *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, at 1369 (D.C. Cir. 2004) (“we have never required a ratemaking agency to allocate costs with exacting precision”).

⁴⁴ *Consolidated Edison Co. of New York, Inc. v. FERC*, 165 F.3d 992, 1003 (D.C. Cir. 1999).

⁴⁵ *New England Power Co.*, 52 FERC ¶61,090, at 61,336 (1990), reh'g denied, 54 FERC ¶61,055 (1991), aff'd, *Town of Norwood v. FERC*, 962 F.2d 20 (D.C. Cir. 1992); *City of Bethany v. FERC*, 727 F.2d 1131, 1136, cert. denied, 469 U.S. 917 (1984) (utility need establish that its proposed rate design is reasonable, not that it is superior to alternatives); accord *OXY USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (Commission may approve methodology proposed in settlement agreement if it is “just and reasonable”; it need not be the only reasonable methodology, or even the most accurate).

⁴⁶ ODEC Rehearing Request at 13 (citing ODEC Protest at 11-12).

whether the PJM Transmission Owners' proposal is just and reasonable. The data supports the PJM Transmission Owners' assertion that, historically, the pricing zone of the individual transmission owner whose Form No. 715 planning criterion is being met virtually always receives the benefits provided by a project driven solely to address an individual transmission owner Form No. 715 local planning criterion violation, and, thus, assigning 100 percent of the associated project costs to that pricing zone results in an allocation of costs that is roughly commensurate to the project's benefits.⁴⁷

26. Dominion contends that, unlike *MISO*, no flow-based analysis supports the categorization of individual transmission owner Form No. 715 local planning criteria projects as allocated 100 percent to one zone. However, PJM, like *MISO*, previously used a flow-based analysis for transmission projects needed solely to address individual transmission owner Form No. 715 local planning criteria, and as the PJM Transmission Owners note, the analysis shows that all of the costs of 98 percent of these projects are allocated to one zone, while only two percent of the total number of transmission projects needed solely to address individual transmission owner Form No. 715 local planning criteria had costs allocated to more than one zone. Accordingly, we find that allocating 100 percent of the costs of all such projects to the zone of the individual transmission owner whose Form No. 715 local planning criteria underlie each project is just and reasonable.

27. Dominion maintains that the criteria included in Form No. 715 are designed to promote regional reliability, not merely individual zonal planning. Dominion contends that the original mandate of FPA section 213(b), which gave rise to Form No. 715 was to provide customers with information sufficient to identify available transmission capacity and known constraints. Dominion notes that the Commission's rulemaking encouraged utilities to provide regional power flow analyses, and that the PJM Transmission Owners filed comments in the rulemaking from the "unique perspective" of a tight power pool. The Commission initiated Form No. 715 specifically to implement FPA section 213(b),⁴⁸ and provide customers with information regarding the availability of transmission

⁴⁷ See *MISO Transmission Owners v. FERC*, 819 F.3d 329, at 336 (7th Cir. 2016) (accepting the Commission's calculations suggesting that the spillover of benefits to other zones is modest enough to make the local allocation of costs "roughly commensurate" with the allocation of benefit).

⁴⁸ Section 213(b) states: "Not later than 1 year after October 24, 1992, the Commission shall promulgate a rule requiring that information be submitted annually to the Commission by transmitting utilities which is adequate to inform potential transmission customers, State regulatory authorities, and the public of potentially available transmission capacity and known constraints." See 16 U.S.C. § 824l.

capacity.⁴⁹ While Order No. 558, requiring the Form No. 715 filing, considered the possibility that regional transmission planning groups might develop in the future, the Commission determined to proceed with the rule on an individual utility basis.⁵⁰ Merely because the Commission anticipated that individual utilities might need to take regional load flow into account does not indicate that the transmission planning criteria in Form No. 715 reflects regional planning. Dominion points to no statement or other support that Form No. 715 is anything other than what it purports to be: individual planning criteria for each transmission owner.

28. Dominion asserts that the transmission projects included in the RTEP to address individual transmission owner Form No. 715 local planning criteria do not constitute a different class of transmission projects from other higher voltage projects, and that allocating their costs 100 percent to one zone thus violates Order No. 1000's prohibition of the application of different cost allocation methods to the same type of project.⁵¹ We disagree, and do not find that the PJM Transmission Owner's proposal results in unduly discriminatory rates. Dominion's reliance on Order No. 1000 Regional Cost Allocation Principle 6 is misplaced because the regional cost allocation principles in Order No. 1000 apply only to a cost allocation method for new regional transmission facilities selected in a regional transmission plan for purposes of cost allocation.⁵² Since transmission projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria are local transmission facilities with 100 percent of their costs allocated to the zone in which the criteria apply, not transmission facilities selected in a regional transmission plan for purposes of cost allocation, Regional Cost Allocation Principle 6 and the concerns described by Dominion do not apply. ODEC contends that there is no category of reliability-based projects distinct from projects included in the RTEP to address individual transmission owner Form No. 715 local planning criteria. But as the PJM Transmission Owners argue, transmission projects needed solely to address

⁴⁹ Order No. 558, FERC Stats. & Regs. ¶ 30,980.

⁵⁰ *Id.* at 30,899.

⁵¹ Dominion Rehearing Request at 31 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 686) (“if public utilities choose to have a different cost allocation method for each type of transmission facility, *there can only be one cost allocation method for each type.*”) (emphasis added by Dominion).

⁵² “A transmission planning region may choose to use a different cost allocation method for different types of transmission facilities in the regional transmission plan, such as transmission facilities needed for reliability, congestion relief, or to achieve Public Policy Requirements.” Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 685.

individual transmission owner Form No. 715 local planning criteria are a different class of projects from the projects that PJM plans to meet regional transmission needs. The criteria used for projects included pursuant to Form No. 715 are developed by each transmission owner, and thus reflect transmission needs of the individual transmission owner instead of regional transmission needs that are identified through planning criteria that apply more uniformly.⁵³

29. Dominion maintains that the Commission departed from its policy and precedent in Opinion No. 494 by treating new transmission facilities of the same voltage level differently.⁵⁴ Although Opinion No. 494 occurred in a different context, we do not find that acceptance of the PJM Transmission Owners' proposal is inconsistent with Opinion No. 494. In Opinion No. 494, the Commission found reasonable differing allocation of facilities depending on whether the transmission owner constructed the facilities before or after joining PJM.⁵⁵ The Commission justified the differential treatment because the existing facilities "were developed by the individual companies to benefit their own systems and their own customers."⁵⁶ Similarly, the PJM Transmission Owners in this proceeding justify the differential treatment of facilities based on whether the transmission owners planned such facilities to meet their local needs or PJM planned those facilities to meet regional reliability or economic planning criteria. While we recognize, as Dominion points out, that Opinion No. 494 dealt with sunk costs, and not

⁵³ For example, not all transmission owners include an end-of-life transmission owner planning criterion as Dominion has. PJM Transmission Owners state that individual transmission owner Form No. 715 local planning criteria address local reliability needs and aid the individual PJM Transmission Owners in satisfying their state and retail obligations, noting that each transmission owner's local planning criteria is slightly different and that, over time, the local planning criteria have evolved to include specific unique criteria such as: end of life, age and condition of existing infrastructure, storm hardening of selected coastal facilities, and specific zonal customers with more stringent reliability requirements than those applied to the PJM system. PJM Transmission Owners Transmittal at 3.

⁵⁴ Dominion Rehearing Request at 32-33 (citing Opinion No. 494).

⁵⁵ The Commission found reasonable the zonal allocation of the costs of transmission facilities built by transmission owners prior to their joining PJM and regional allocation of facilities of the same voltage constructed after the transmission owner joined PJM would be allocated regionally. Opinion No. 494, 119 FERC ¶ 61,063 at PP 42-44.

⁵⁶ Opinion No. 494, 119 FERC ¶ 61,063 at P 42.

new development, we do not find unjust and unreasonable the PJM Transmission Owners' proposal relating to a similar principle for newly developed transmission facilities that are the product of individual transmission owner planning criteria.

30. Dominion states that the central issue here is the unilateral nature of Form No. 715, and the absence of a generally applicable end-of-life criterion for planning replacement transmission facilities within the PJM regional transmission planning process. It maintains that its inclusion of end-of-life criteria in its individual Form No. 715 was merely a means to fill in the gap in PJM's criteria. Whatever the merits of this critique of PJM's regional transmission planning process, it only indirectly affects the PJM Transmission Owners' proposal and does not demonstrate that allocation of 100 percent of the cost of projects solely needed to address transmission owner Form No. 715 local planning criteria to the zone of the individual transmission owner whose Form No. 715 local planning criteria underlie each project is unjust and unreasonable.

31. ODEC seeks rehearing of the Commission's rejection of the clarification sought by the PJM Transmission Owners in their post-technical conference comments that, under their proposed change to Schedule 12, the costs of a replacement project required by individual transmission owner Form No. 715 local planning criteria should be allocated according to the methodology originally used for that project.⁵⁷ ODEC maintains that the proposed clarification is needed to be consistent with section (b)(xiii) of Schedule 12, which states:

unless determined by PJM to be a Required Transmission Enhancement included in a Regional Transmission Expansion Plan, cost responsibility for the replacement of Transmission Facilities, as defined in section 1.27 of the Consolidated Transmission Owners Agreement, shall be assigned to the Zonal loads and Merchant Transmission Facilities responsible for the costs of the Transmission Facilities being replaced.

32. We deny ODEC's rehearing request. We cannot find the PJM Transmission Owner's requested a permissible clarification of the Tariff. As filed, section (b)(xv) of Schedule 12 provides for 100 percent allocation to a single zone of the individual transmission owner whose Form No. 715 local planning criteria underlie each project.

⁵⁷ ODEC Rehearing Request at 15-16 (citing Reply Comments of the PJM Transmission Owners, January 27, 2016). For example under ODEC's argument, if the original project is allocated to multiple zones, then the cost of replacing that project under individual transmission owner Form No. 715 criteria would be allocated to the same multiple zones.

Section (b)(xv) of Schedule 12 states that “notwithstanding” the other cost allocation provisions of the Tariff, all individual transmission owner Form No. 715 projects are to be allocated solely to the individual transmission owner’s zone. No exception is made for any other method of allocation for replacement projects. Moreover, as we found in the February 2016 Order, Section (b)(xiii) of Schedule 12 on its face applies only to transmission projects that are not Required Transmission Enhancements.⁵⁸ Because transmission projects needed solely to address individual transmission owner Form No. 715 local planning criteria are Required Transmission Enhancements, section (b)(xiii) of Schedule 12 does not apply to this category.

33. The PJM Transmission Owners therefore requested a clarification that goes beyond what the Tariff states. An FPA section 205 filing would be necessary if the PJM Transmission Owners wish to seek to effectuate their interpretation.

III. Request for Clarification

A. PJM Request

34. In its request for clarification, PJM asks whether the cost allocation method accepted by the Commission in the February 2016 Order, with an effective date of May 25, 2015, should apply to annual updates for projects included in the RTEP between February 1, 2013 and May 25, 2015 that solely addressed individual transmission owner Form No. 715 local planning criteria, but whose costs were originally allocated under the

⁵⁸ The PJM Tariff defines Required Transmission Enhancements as “[e]nhancements and expansions of the Transmission System that (1) a Regional Transmission Expansion Plan developed pursuant to Schedule 6 of the Operating Agreement or (2) any joint planning or coordination agreement between PJM and another region or transmission planning authority set forth in Schedule 12-Appendix B (“Appendix B Agreement”) designates one or more of the Transmission Owner(s) to construct and own or finance.” *See* PJM, Intra-PJM Tariffs, OATT, § 1.38C (R - S, OATT Definitions – R - S, 6.0.0).

Schedule 12 cost allocation method for reliability projects.⁵⁹ PJM contends that Schedule 12 does not address whether the cost allocation method to address projects included in the RTEP to address individual transmission owner Form No. 715 local planning criteria should replace the reliability cost allocation method applied to projects included in the RTEP prior to May 25, 2015 that address individual transmission owner Form No. 715 local planning criteria.

B. Answers

35. Answers to PJM's request for clarification were filed by Linden VFT, LLC (Linden), Hudson Transmission Partners, LLC (Hudson), and Consolidated Edison Company of New York, Inc. (Con Edison). Public Service Electric and Gas Company (PSEG) filed an answer in response. Con Edison filed an answer to the response of PSEG.

36. Linden, Hudson, and Con Edison maintain that the revised tariff change takes effect upon its effective date and applies to cost allocation for all transmission projects that qualify as transmission projects needed solely to address individual transmission owner Form No. 715 local planning criteria. They maintain that the tariff change does not grandfather or preserve the prior cost allocation for any projects, and that no other authority in the Tariff preserves any existing cost allocation for the future.

37. In response, PSEG contends that application of the new Tariff provision to projects previously approved is not supported by the Tariff language, the intent of the language, or Commission policy. PSEG contends that the relevant sections of Schedule 12 support that PJM makes a preliminary cost responsibility determination, and that the annual adjustments are only intended to update the cost responsibility based on the changing use of the facilities under the solution-based DFAX method. PSEG

⁵⁹ Schedule 12, subsection (b)(iii)(H) provides: “[T]he Transmission Provider shall make a preliminary cost responsibility determination for each Required Transmission Enhancement subject to this section (b)(iii) of Schedule 12 at the time such Required Transmission Enhancement is included in the RTEP.” Subsection (b)(iii)(H)(2) provides: “[b]eginning with the calendar year in which a Required Transmission Enhancement is scheduled to enter service, and thereafter annually at the beginning of each calendar year, the Transmission Provider shall update the preliminary cost responsibility determination for each Required Transmission Enhancement using the values and inputs used in the base case of the most recent RTEP approved by the PJM Board prior to the date of the update.”

contends that changing the cost allocation method is not within the scope of the purpose of the annual adjustment mechanism.⁶⁰

38. PSEG contends that there are several policy considerations that weigh against applying the new transmission owner criteria project allocations to undo previously effective cost allocations for transmission owner criteria driven projects. First, PSEG contends that applying the new transmission owner criteria project allocations to previously effective cost allocations for transmission owner criteria driven projects would violate a longstanding principle and practice that Commission approved rate design and cost allocation changes should only apply prospectively because the parties to whom these rate design changes apply “cannot alter past decisions made in reliance on a rate design then in effect.”⁶¹

39. PSEG also contends that a second policy consideration that weighs against applying the new transmission owner criteria project allocations to previously effective cost allocations for transmission owner criteria driven projects is the Order No. 1000 requirement for the establishment of *ex ante* cost allocation rules to be applied to all transmission planning project categories. PSEG contends that the purpose of this requirement is to ensure that project developers and other stakeholders (e.g., state commissions, market participants, end use customers) are well aware of and understand the cost impacts of projects being proposed in the regional transmission planning process, and in turn increase the likelihood that transmission facilities selected in regional transmission plans for purposes of cost allocation are actually constructed, rather than later encountering cost allocation disputes that prevent their construction. PSEG argues that altering a project’s effective cost allocation based on a subsequent revised methodology does not aid that objective, and that it will undermine the regional process, given the lack of confidence stakeholders will have in the resulting cost allocations

⁶⁰ PSEG Answer at 4 (citing Schedule 12, section (b)(iii)(H) (“The Transmission Provider shall make a preliminary cost responsibility determination for each Required Transmission Enhancement subject to this section (b)(iii) of Schedule 12 at the time such Required Transmission Enhancement is included in the RTEP”)).

⁶¹ PSEG Response at 6 (citing *Occidental Chemical Corporation v. PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,378, P 10 (2005); *Consumers Energy Company*, 89 FERC ¶ 61,138, at 61,138 (1999) (*Consumers Energy*) and *Union Electric Company*, 58 FERC ¶ 61,247 (1992); *Great Lakes Gas Transmission, L.P.*, 57 FERC ¶ 61,140, at 61,443 (1991) (*Great Lakes*); *Tennessee Gas Pipeline Company*, 46 FERC ¶ 61,113, at 61,443 (1989) (*Tennessee*)).

discussed during the RTEP process.⁶² PSEG contends that these policy considerations support that the new cost allocation methodology should be applied on a prospective basis, to projects that address an individual transmission owner Form No. 715 local planning criteria with cost allocations going into effect after May 25, 2015.

40. Con Edison answers that nothing in the Tariff limits the annual update as PSEG suggests, and that such an interpretation would force PJM to reallocate costs in a manner inconsistent with the effective Tariff.

C. Commission Determination

41. The Commission clarifies that for all transmission facilities included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria, PJM must apply the Tariff on file to all charges imposed from the date the Tariff provision became effective, which was May 25, 2015, regardless of when the project was included in the RTEP. As stated in *West Deptford*,⁶³ under the FPA, “‘the time when the change or changes’ in an amended tariff will displace the schedules ‘then in force’ and ‘go into effect’ must be ‘plainly’ ‘stated in an open, accessible, and convenient manner.’”⁶⁴ Here, the Commission in the February 2016 Order accepted the Schedule 12 section (b)(xv) with an effective date of May 25, 2015. Nothing in those Tariff provisions grandfather, or exempt, certain transmission projects or indicate that the PJM

⁶² *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323, *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044, *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41).

⁶³ *West Deptford Energy, LLC v. FERC*, 766 F.3d 10, 12 (D.C. Cir. 2014) (reversing Commission determination to apply a superseded tariff provision to an interconnection agreement signed after the date the tariff had been revised). *See PJM Interconnection, LLC*, 153 FERC ¶ 61,327 at P 14 (2015) (reversing earlier finding and holding that PJM should have applied the tariff that was in effect at the time the interconnection agreement was filed, not the tariff that was in effect at the time West Deptford submitted its interconnection request).

⁶⁴ *West Deptford*, 766 F.3d at 20.

Transmission Owners did not intend the Tariff revisions to apply to all cost responsibility assignments imposed after the effective date.⁶⁵

42. PSEG argues that the Commission should not require the reallocation of the costs of projects approved prior to May 25, 2015, the effective date of the tariff provision, because the annual update provisions of Schedule 12 of the Tariff do not apply to projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria. PSEG maintains that the annual update provision applies only to projects using the solution-based DFAX or load ratio share methodologies which are updated annually. It therefore maintains that for all projects included in RTEP prior to the May 25, 2015 effective date, the prior cost allocation mechanism, including the use of annual updates, will continue to apply.

43. We agree with PSEG that the annual update provisions relating to the solution-based DFAX and Regional Facilities do not apply to projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria, because the costs under section (b)(xv) of Schedule 12 are not allocated using the solution-based DFAX methodology. However, that does not mean that the costs of projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria approved prior to the effective date of section (b)(xv) of Schedule 12 should be allocated according to prior Tariff provisions.

44. Section (b)(xv) of Schedule 12 provides the allocation of all costs incurred for projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria after it became effective.⁶⁶ The Tariff provision accepted by the Commission states that “*notwithstanding*” the Tariff provisions requiring annual updates (Sections (b)(i), (b)(ii), (b)(iv) and (b)(v) of Schedule 12), “cost responsibility for any transmission projects that are included in the RTEP, but which would not have

⁶⁵ The PJM Transmission Owners included a Tariff provision in their Order No. 1000 filing when they sought to exclude projects from prospective cost allocation revisions. But they did not include such a provision here. *See* PJM Transmission Owner Filing at 3-4 (Docket No. ER13-90-000 (October 11, 2012)) (requesting an effective date of February 1, 2013 for Required Transmission Enhancements included in Schedule 12-Appendix A, and noting that, except as specifically set forth, nothing in the proposed revisions to Schedule 12 shall change the assignment of cost responsibility or classification of Required Transmission Enhancements included in Schedule 12-Appendix). *See also*, Schedule 12(a)(v).

⁶⁶ Costs incurred prior to the effective date would be allocated according to the Tariff applicable for that period.

otherwise been so included but for the fact that they address an individual transmission owner Form No. 715 local planning criteria, must be assigned to the zone of the transmission owner that filed such planning criteria” (emphasis added).⁶⁷ Therefore, section (b)(xv) of Schedule 12 does not envision that the prior cost allocation methodologies will continue to apply; rather, it provides that “notwithstanding” such prior cost allocations, starting from the effective date of the proposed provision, PJM will assign future cost responsibility for projects needed solely to address individual transmission owner Form No. 715 local planning criteria 100 percent to the individual transmission owner’s zone consistent with the rate on file in section (b)(xv) of Schedule 12.

45. Despite the May 25, 2015 effective date of section (b)(xv) of Schedule 12, PSEG maintains that for projects that PJM approved prior to the effective date of section (b)(xv) of Schedule 12, the Commission should adopt a policy of applying the earlier tariff in effect when PJM approved the project. PSEG maintains that section (b)(xv) of Schedule 12 should be applied on a prospective basis only, i.e., to projects with cost allocations going into effect after May 25, 2015.

46. The changes effected by the PJM Transmission Owner’s proposal apply prospectively only to those costs incurred, after the effective date of section (b)(vx) of Schedule 12, and do not apply retroactively, as implied by PSEG.⁶⁸ As the Commission

⁶⁷ Schedule 12, Section (b)(xv) of the PJM OATT reads, in pertinent part, “*Required Transmission Enhancements to Address Transmission Owner Planning Criteria. Notwithstanding Sections (b)(i), (b)(ii), (b)(iv) and (b)(v), cost responsibility for any Required Transmission Enhancements that are included in the Regional Transmission Expansion Plan, but which would not have otherwise been so included but for the fact that they address individual Transmission Owner FERC filed planning criteria as filed in FERC Form No. 715 and posted on the PJM website, shall be assigned to the Responsible Customers in the Zone of the Transmission Owner that filed such planning criteria.*” (emphasis added). Schedule 12, OATT Schedule 12 (7.0.0), <http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=1731&sid=176905>.

⁶⁸ PJM will not be retroactively changing any rates reflecting cost allocations prior to the May 25, 2015 effective date of section (b)(xv) of Schedule 12.

has found, prospective revisions to Tariff provisions are permissible even if they may affect prior expectations of some parties.⁶⁹

47. PSEG argues that applying the current section (b)(xv) of Schedule 12 to the future costs of projects planned before May 25, 2015 would violate Commission policy that FERC-approved rate design and cost allocation method changes should only apply prospectively because the parties to whom these rate design changes apply “cannot alter past decisions made in reliance on a rate design then in effect.”⁷⁰ First, the cases cited by PSEG are inapposite. These cases involve the exercise of Commission discretion over refunds and the effectiveness of Natural Gas Act (NGA) section 5 proceedings in a way to avoid utilities and pipelines under-recovering their cost of service.⁷¹ In contrast, application of section (b)(xv) of Schedule 12 on a prospective basis to costs incurred after the effective date will not result in under-recovery by the transmission owner; the transmission owner will simply recover those prospective costs from a different set of customers, but will collect its full cost of service. Moreover, whereas the cases cited by PSEG involve Commission discretionary authority with respect to refunds and the effective date of NGA section 5 tariff changes, this proceeding addresses the

⁶⁹ *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,059, at P 18 (2014); *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 261 (2015), *reh’g denied*, 155 FERC ¶ 61,157, at P 173 (2016). *See Columbia Gas Transmission Corporation v. FERC*, 895 F.2d 791, 795 (1990) (utilities may file to revise tariff rates prospectively from the date of filing if the Commission waives notice requirements).

⁷⁰ PSEG Answer at 6.

⁷¹ *See* section 5 of the NGA, 15 U.S.C. § 717d (2012), analogous to section 206 of the FPA, 16 U.S.C. § 824e (2012). In the three electric cases, the Commission, under its discretionary authority with respect to refunds, determined not to order refunds when doing so would result in the public utility being unable to recover its cost of service. *Occidental Chemical Corporation v. PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,378, P 10; *Consumers Energy*, 89 FERC ¶ 61,138 at 61,138 and *Union Electric Company*, 58 FERC ¶ 61,247. In two natural gas pipeline cases, the Commission determined to implement a rate reduction for some shippers under section 5 of the NGA at the same time the Commission accepts the pipelines’ rate increase for other shippers. Coordinating the effective dates would ensure the pipeline would not underrecover its cost of service. *Great Lakes, L.P.*, 57 FERC ¶ 61,140 at 61,525, *rev’d and remanded*, *TransCanada PipeLines Ltd. v. FERC*, 24 F.3d 305 (D.C. Cir. 1994). *Tennessee*, 46 FERC ¶ 61,113 at 61,443.

effectiveness of a Tariff provision accepted by the Commission.⁷² As discussed above, once Schedule 12 section (b)(xv) became effective under FPA section 205, it applies to all prospective cost allocations.⁷³

48. PSEG also maintains that applying the revised rate to projects in RTEP prior to the May 25, 2015 effective date is inconsistent with the *ex ante* cost allocation of Order No. 1000. Order No. 1000 required the development of an *ex ante* cost allocation method “to enhance certainty for developers of potential transmission facilities by identifying, up front, the cost allocation implications of selecting a transmission facility in the regional transmission plan for purposes of cost allocation,”⁷⁴ which would “enhance the ability of stakeholders in the regional transmission planning process to evaluate the merits of the transmission project.”⁷⁵ However, PSEG points to no provision of Order No. 1000 that prohibits transmission owners from proposing prospective modifications to the cost allocation methodology, as they did here. Moreover, because 100 percent the costs of projects solely addressing individual transmission owner Form No. 715 local planning criteria will be allocated to the single pricing zone of the individual transmission owner whose Form No. 715 local planning criteria underlies the project, there is no regional cost allocation pursuant to Order No. 1000. The PJM Transmission Owners could have, and as pointed out earlier, have determined not to apply such cost allocation changes to earlier approved projects. However, the PJM Transmission Owners here did not do so. As the court found in *West Deptford*, where the Tariff does not provide notice that a different process will govern, PJM is obligated to apply the Tariff on file to calculate charges from the effective date of that Tariff.

⁷² In contrast to the *Great Lakes* and *Tennessee* cases where the Commission determined the effective date of the tariff under NGA section 5, FPA section 205 filings become operative on the effective date unless the filer agrees to a different effective date. *See TC Ravenswood, LLC v. FERC*, 741 F. 3d 112, 118 (D.C. Cir. 2013). In this proceeding, the PJM Transmission Owners have not agreed to different effective dates applicable to projects previously approved by PJM.

⁷³ *See Transcontinental Gas Pipe Line Corp. v. FERC*, 54 F.3d 893, 899 (D.C. Cir. 1995) (finding the Commission erred in seeking to delay the effective date of a rate design change due to possible shipper reliance).

⁷⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 561.

⁷⁵ *Id.* at P 559.

IV. Compliance Filing

49. Because section (b)(xv) of Schedule 12 became effective May 25, 2015, PJM must make a compliance filing within 30 days of this order to revise its Tariff records to reflect that the costs of projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria incurred after that date are to be allocated to the single pricing zone of the individual transmission owner whose Form No. 715 local planning criteria underlies the project. PJM need not include in this filing Tariff records for projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria whose costs already are allocated to the single pricing zone of the individual transmission owner whose Form No. 715 local planning criteria underlies the project.⁷⁶ PJM must also rebill for any costs for projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria that were allocated incorrectly for the period starting on, and continuing after, May 25, 2015.

The Commission orders:

(A) The requests for rehearing are hereby denied, as discussed in the body of the order.

(B) PJM's request for clarification is hereby granted, as discussed in the body of the order.

⁷⁶ As part of this compliance filing requirement, PJM must refile Schedule 12 Appendix A – 12 Public Service Electric and Gas for the Sewaren Project to reflect the May 25, 2015 effective date.

(C) PJM is required to submit a compliance filing, within 30 days of the date of this order and to correct its billing to reflect the Tariff in effect as of May 25, 2015, as discussed in the body of this order.

By the Commission. Commissioner LaFleur is dissenting in part with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket No. ER15-1387-002

(Issued December 9, 2016)

LaFLEUR, Commissioner *dissenting in part*:

As explained in my partial dissent to the prior order issued in this proceeding,¹ I would have conditioned acceptance of the PJM Transmission Owners' filing on the preservation of the current regional cost allocation method for certain high voltage projects,² even if those projects are selected solely to address local planning criteria. I believe that, as FERC has recognized,³ high-voltage transmission lines in PJM have inherent regional benefits that warrant some measure of regional cost allocation, and those benefits exist regardless of the underlying need that drove the project. I would therefore preserve PJM's Commission-approved, bright-line thresholds for regional cost allocation for all double-circuit 345 kV and 500 kV and above transmission projects.

Accordingly, I respectfully dissent in part.

Cheryl A. LaFleur
Commissioner

¹ *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,096 (2016) (LaFleur, Comm'r, dissenting in part).

² In 2012, as part of their Order No. 1000 regional compliance proposal, the PJM Transmission Owners proposed, and the Commission approved, a cost allocation methodology for double-circuit 345 kilovolt (kV) and 500 kV and above transmission projects that allocates 50 percent of the projects' costs on a postage stamp basis, and 50 percent through a solution-based DFAX analysis. *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at PP 412-426 (2013).

³ *Id.* PP 413-414.