

140 FERC ¶ 61,226
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

American Transmission Systems, Inc.

Docket Nos. ER09-1589-001

FirstEnergy Service Company

v.

EL10-6-001

PJM Interconnection, L.L.C.

ORDER ADDRESSING REMAINING
REQUESTS FOR REHEARING AND CLARIFICATION

(Issued September 20, 2012)

1. In this order, we address requests for rehearing of a December 17, 2009 order, in which the Commission: (i) conditionally accepted a regional transmission organization (RTO) realignment request submitted by American Transmission Systems, Inc. (ATSI); and (ii) rejected a related complaint submitted by ATSI's parent entity, FirstEnergy Services Company (FirstEnergy).¹ In this order, we address only those rehearing requests concerning ATSI's obligations to pay, upon its integration into the PJM Interconnection, L.L.C. (PJM) RTO, an allocated share of PJM's regional transmission expansion plan (RTEP) costs, for projects rated 500 kV or above.²

¹ *American Transmission System, Inc.*, 129 FERC ¶ 61,249 (2009) (ATSI Realignment Order).

² The Commission addressed all other requests for rehearing of the ATSI Realignment Order in an order issued March 10, 2010. *See American Transmission System, Inc.*, 130 FERC ¶ 61,171 (2010) (March 2010 Order).

I. Background

2. In its initial filing in this proceeding, ATSI requested that the Commission: (i) preliminarily approve its withdrawal from the Midwest Independent Transmission System Operator, Inc. (MISO), effective June 1, 2011, subject to ATSI's receipt of related authorizations; (ii) preliminarily approve ATSI's membership in PJM; and (iii) make certain additional findings, including a finding that ATSI should not be required to pay RTEP costs for new transmission expansion projects, rated 500 kV and above, that were approved by PJM prior to ATSI's proposed integration.
3. In its complaint, FirstEnergy sought an alternative remedy in the event ATSI's RTEP waiver request was denied; namely, FirstEnergy sought a determination that the allocation of pre-integration RTEP costs to ATSI would be unjust, unreasonable, and unduly discriminatory.
4. In the ATSI Realignment Order, the Commission conditionally authorized ATSI to terminate its existing obligations to MISO, denied ATSI's RTEP costs waiver request, and rejected FirstEnergy's complaint. The Commission found that, based on PJM's current market design, it was neither unjust, unreasonable, nor unduly discriminatory or preferential for PJM to allocate a portion of these costs on a monthly, going-forward basis, based on the pool of transmission owners as they exist at that time. The Commission further found that ATSI's voluntary decision to move between RTOs does not render one RTO's allocation methodology unjust or unreasonable or unduly discriminatory simply because this cost allocation methodology differs from the other RTO's cost allocation methodology. The Commission added that transmission owners, under these circumstances, should be prepared to assume the costs attributable to their voluntary choice to move from one RTO to another.³
5. The ATSI Realignment Order also rejected ATSI's argument that allocating system-wide transmission expansion costs to those entities voluntarily exiting an RTO (MISO's policy) is preferable to charging such costs upon entry (PJM's policy). Finally, the Commission held that while PJM's existing tariff will govern ATSI's proposed

³ ATSI Realignment Order, 129 FERC ¶ 61,249 at P 113 (*citing Duquesne Light Co.*, 122 FERC ¶ 61,039 (2008) (Duquesne Withdrawal Order). The Commission noted that, in the *Duquesne Withdrawal Order*, it had expressly held that, while companies are free to leave one RTO and join another, the existing tariffs for each RTO will govern in determining the cost consequences of that decision). *Id.*

integration into PJM, ATSI and the PJM transmission owners may, at their election, negotiate the amount of their respective cost burdens.⁴

6. Rehearing and/or clarification of these findings was sought by: (i) FirstEnergy; (ii) the Public Utilities Commission of Ohio (Ohio Commission); (iii) Indianapolis Power & Light Company (IPL); (iv) the Office of the Ohio Consumers' Counsel (Ohio Consumers Counsel); (v) the Northeast Ohio Public Energy Council (NOPEC); and (vi) the Coalition of Midwest Transmission Customers and Industrial Energy Users-Ohio (Industrial Energy Consumers). On rehearing, petitioners assert, among other things, that PJM's RTEP allocation methodology would be unfair, as applied to ATSI, given the RTO entry circumstances presented by ATSI's integration.

7. Following the Commission's issuance of the ATSI Realignment Order, a number of relevant developments have transpired in related proceedings. First, the Commission conditionally accepted ATSI's and PJM's proposed joint integration filing and ATSI's proposed formula rates, in Docket No. ER11-2814-000, *et al.*⁵ The Commission rejected ATSI's proposal to recover its MISO exit fee, including the system-wide costs allocated to ATSI, since ATSI had failed to demonstrate that, since it was leaving MISO, its transition to PJM would provide wholesale customers with sufficient benefits to warrant the recovery of the MISO system-wide costs. The Commission, however, determined that it was just and reasonable for ATSI to recover from its wholesale customers the RTEP costs imposed under PJM's tariff. As relevant here, the ATSI Integration Order conditionally accepted ATSI's proposal to recover, in its formula rates, all RTEP costs assigned to the ATSI zone under PJM's existing RTEP allocation methodology, subject to: (i) the Commission's order addressing the parties' pending rehearing and clarification requests of the ATSI Realignment Order; and (ii) the Commission's then-pending order on remand of Opinion No. 494 from the United States Court of Appeals for the Seventh

⁴ In the March 2010 Order, the Commission addressed ATSI's expedited, partial clarification and/or rehearing of the ATSI Realignment Order, regarding ATSI's participation in PJM's capacity resource integration auctions. March 2010 Order, 130 FERC ¶ 61,171 at P 23. The March 2010 Order also addressed related rehearing and/or clarification requests. *Id.* P 15.

⁵ See *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,198 (2011) (ATSI Integration Order), *reh'g pending*.

Circuit, addressing the appropriate methodology to be used by PJM to allocate its RTEP costs for new facilities rated 500 kV or above.⁶

II. Requests for Rehearing and/or Clarification

8. Requests for rehearing and/or clarification of the ATSI Realignment Order, as noted above, were filed by FirstEnergy, the Ohio Commission, IPL, the Ohio Consumers Counsel, NOPEC, and the Industrial Energy Consumers.⁷

9. FirstEnergy and Ohio Consumers Counsel challenge the ATSI Realignment Order's finding that PJM's RTEP allocation methodology, for new projects rated 500 kV or above, need not be modified or waived, based on RTO entry and exit considerations. FirstEnergy asserts that PJM's cost allocation methodology, as applied to a new member, such as ATSI, or an existing PJM member seeking to withdraw from the PJM RTO, is unjust and unreasonable because such a methodology: (i) encourages existing PJM members to leave PJM in order to avoid PJM's RTEP charges; and (ii) discourages new members from joining PJM to the extent these new members would be required to pay RTEP costs for new projects that were planned and authorized prior to their entry.

10. Ohio Consumers Counsel argues that Schedule 12 was not designed to address the new entry circumstances presented here, i.e., where ATSI will remain subject to paying MISO transmission costs that are allegedly duplicative. Ohio Consumers Counsel also challenges the ATSI Realignment Order's reliance on the Duquesne Withdrawal Order for the asserted proposition that while companies are free to join and exit RTOs, the existing tariffs for each RTO will be applied in determining the costs to be allocated to the transmission owners seeking to exit and/or enter. Ohio Consumers Counsel argues that the Duquesne Withdrawal Order is inapposite, because in that case there was no

⁶ *Illinois Commerce Commission v. FERC*, 576 F.3d 470 (7th Cir. 2009) (Illinois Commerce Commission). Since issuance of the ATSI Integration Order, the Commission, on March 30, 2012, issued its order on remand, in Docket No. EL05-121-000, *et al. PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230 (2012) (RTEP Remand Order). The RTEP Remand Order found, among other things, that a region-wide, postage-stamp allocation methodology is a just and reasonable and not unduly discriminatory method of allocating RTEP cost for new transmission enhancements that operate at, or above, 500 kV, given that these RTEP projects benefit the PJM system as a whole. *Id.*

⁷ Answers to requests for clarification and/or rehearing and answers to answers were submitted by certain entities, as noted in the March 2010 Order, in which each of these answers was rejected. *See* March 2010 Order, 130 FERC ¶ 61,171 at P 7.

duplicative obligation. Ohio Consumers Counsel argues that while the PJM and MISO cost allocation methodologies need not be identical, their application must be reasonable when both apply to the same entity.

11. FirstEnergy also asserts that the Commission erred in the ATSI Realignment Order by failing to find that the provisions of Schedule 12 must be modified, given that Schedule 12 was not drafted with RTO entry and exit considerations in mind. FirstEnergy argues that the Commission gave no consideration to this RTO entry/exit scenario at the time that it first accepted Schedule 12.

12. FirstEnergy adds that the MISO tariff offers the preferable allocation methodology, whereby an existing transmission owner and its associated load serving entities, were they to withdraw from MISO, could not, by doing so, avoid regional transmission costs for facilities planned to serve their load. Conversely, FirstEnergy points out that, under the MISO methodology, a new member would not be assessed for costs incurred for transmission facilities planned for existing RTO members. FirstEnergy argues that this approach is not only preferable to PJM's methodology but, in fact, was imposed by the Commission as the preferred methodology.⁸

13. FirstEnergy also challenges the ATSI Realignment Order's finding that no *a priori* determination can be made that any particular cost allocation methodology (PJM's or MISO's) will create a more stable RTO. FirstEnergy asserts that the Commission's finding is inconsistent with the Commission's express ruling in the MISO Transmission Cost Recovery Order on the issue of cost avoidance.⁹ FirstEnergy argues that the Commission cannot deviate from its prior policy without articulating a sound reason for doing so. FirstEnergy adds that it was not sound reasoning to suggest that "[i]f, as ATSI posits, network upgrades are not allocated to new members, an incentive would be created for transmission owners to delay their request to enter until the RTO approves large projects."¹⁰ FirstEnergy counters that transmission planning and new investment is a continual process, not one that can be timed neatly with any certainty.

⁸ FirstEnergy rehearing request at 2 (*citing Midwest Independent Transmission System Operator, Inc.*, 118 FERC ¶ 61,209, at P 193 (2007) (MISO Transmission Cost Recovery Order)).

⁹ *Id.* ("[I]n principle, a transmission owner should not be able to avoid previously allocated [transmission] costs by withdrawing from [MISO].").

¹⁰ ATSI Realignment Order, 129 FERC ¶ 61,249 at n.76.

14. FirstEnergy also raises a cost causation argument, arguing that PJM's RTEP allocation methodology is unjust and unreasonable, as applied to the ATSI zone, because under this methodology, costs are allocated to loads that did not cause them to be incurred, while the loads for which the projects were planned are allowed to escape these costs by leaving the RTO. FirstEnergy cites Commission precedent for the proposition that "[p]rinciples of fairness in ratemaking support the concept that those who are responsible for the incurrence of costs be the ones who bear those cost burdens."¹¹ FirstEnergy concludes that the ATSI zone should only be required to pay for RTEP projects planned for its loads. In addition, FirstEnergy argues that no ratemaking principle can justify having both MISO and PJM charge FirstEnergy for transmission projects planned and approved during the same period.

15. FirstEnergy also raises as error the assertion that Schedule 12 cannot be found to be unjust or unreasonable because the Commission, under FPA section 206, will only consider the new RTO's tariff taken as whole, a finding of the ATSI Realignment Order. FirstEnergy argues that taken to its logical conclusion, such a policy would insulate most, if not all, filed rate schedules from any challenge under section 206.

16. FirstEnergy also challenges the ATSI Realignment Order's interpretation of other Commission precedent. First, FirstEnergy argues that it was not accurate to suggest that the Commission has *never* ordered a change in an RTO tariff to accommodate issues associated with a transmission owner's RTO entry and exit decisions. FirstEnergy asserts that, to the contrary, the Commission, in this proceeding, revised PJM's tariff for the purpose of facilitating ATSI's proposed capacity procurement integration auction. FirstEnergy adds that the Commission took similar action in the Duquesne Withdrawal Order.¹² Further, FirstEnergy states that in other cases the Commission has approved changes in transmission cost allocation methodologies in part to avoid adverse impacts on voluntary RTO participation.¹³

17. Finally, FirstEnergy asserts that the ATSI Realignment Order erred by failing to address the argument that allocating RTEP costs to the ATSI zone for facilities planned prior to ATSI's integration violates the Commission's policy against reallocating sunk

¹¹ FirstEnergy rehearing request at 17 (*citing System Energy Res., Inc.*, 41 FERC ¶ 61,238, at 61,616 (1987)).

¹² *Id.* at 15 (*citing* Duquesne Withdrawal Order, 122 FERC ¶ 61,039 at P 93).

¹³ *Id.* (*citing Midwest Independent Transmission System Operator*, 129 FERC ¶ 61,060, at P 68 (2009) (RECB Standards Order) (approving an interim cost allocation change due to the unanticipated consequences of the existing cost allocation method)).

costs. FirstEnergy states that the Commission has characterized the reallocation of sunk costs, in the case of existing facilities, as an inefficient price signal,¹⁴ a policy set forth in both Order No. 890¹⁵ and Opinion No. 494.¹⁶ FirstEnergy further asserts that this policy, as enunciated relative to existing facilities, has also been applied by the Commission under the circumstances presented here, i.e., in the case of planned, but not yet completed, transmission projects.¹⁷ FirstEnergy asserts that the investment decision for the new RTEP projects at issue here (PJM's planned projects) was initially made when the ATSI zone was not yet part of PJM. FirstEnergy concludes that, as such, "[a] reallocation of [these] costs . . . will not affect . . . whether and where to build [them]."¹⁸

18. NOPEC, Ohio Consumers Counsel, and Industrial Energy Consumers seek clarifications regarding the RTEP rates that will be assessed to customers in the ATSI zone. NOPEC seeks clarification that the authorizations and findings made by the Commission in the ATSI Realignment Order will not permit ATSI to avoid prior Commission review and approval of any proposed recovery by ATSI of the ATSI zone's share of RTEP costs from its customers. The Ohio Consumers Counsel requests clarification that the ATSI Realignment Order made no findings on the prudence of ATSI's decision to change RTOs. The Industrial Energy Consumers argue that consumers should not be held responsible for overlapping RTEP cost obligations.

¹⁴ *Id.* (citing *Inquiry Concerning the Commission's Pricing Policy for Transmission Service Provided by Public Utilities Under the Federal Power Act*, FERC Stats. & Regs. ¶ 31,005, at 31,144 (1994)).

¹⁵ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 557, *order on reh'g and clarification*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007).

¹⁶ *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063, at P 53 (2007), *reh'g denied*, Opinion No. 494-A, 122 FERC ¶ 61,082, *reh'g denied*, 124 FERC ¶ 61,033 (2008), *reh'g and clarification denied*, 127 FERC ¶ 61,092, *aff'd in part and reversed in part, Illinois Commerce Commission v. FERC*, 576 F.3d 470 (7th Cir. 2009), *order establishing paper procedures, PJM Interconnection, L.L.C.*, 130 FERC ¶ 61,052 (2010).

¹⁷ FirstEnergy rehearing request at 18 (citing *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,106 at P 109 (MISO Transmission Costs Order), *order on reh'g*, 117 FERC ¶ 61,241 (2006), *aff'd, Pub. Serv. Comm'n of Wisc. v. FERC*, 545 F.3d 1058 (D.C. Cir. 2008)).

¹⁸ *Id.* (citing Opinion No. 494, 119 FERC ¶ 61,063 at P 53).

19. The Ohio Commission argues that the Commission's decision to approve some aspects of ATSI's application while leaving other matters for separate filings and future determinations fosters undue uncertainty. The Ohio Commission also characterizes as unacceptable the Commission's failure to require a preliminary estimate of the impacts of FirstEnergy's transfer on ATSI zone customers. Finally, the Ohio Commission asserts that the Commission should have addressed reliability issues attributable to Lake Erie loop flow.¹⁹

20. Finally, IPL raises as error the ATSI Realignment Order's silence regarding the appropriateness of allocating ATSI-zone transmission project costs to MISO load located outside the ATSI zone where, as here, the underlying transmission facilities, following ATSI's integration into PJM, will benefit only PJM. IPL requests an affirmative ruling that the costs associated with any new ATSI zone transmission facilities will, upon ATSI's migration, be assigned to PJM load alone, not MISO load. IPL argues that, under the Commission's precedent, the operative question is whether the facilities at issue have been turned over to the control of an RTO or ISO.²⁰ IPL also relies on the Commission's cost causation precedent holding that cost allocation should follow the use or benefit of the facilities in question.²¹ IPL adds that, while MISO load may see some benefit from ATSI's new transmission facilities, the current allocation methodology inappropriately assigns all of the costs for such facilities to MISO's customers. IPL adds that the assignment of these costs for facilities that will benefit load in PJM, not load in MISO, and will not be used or useful to MISO's customers, is inappropriate and would be unjust and unreasonable.

III. Discussion

21. For the reasons discussed below, we deny rehearing of the ATSI Realignment Order. Specifically, we cannot find on this record that PJM's tariff is unjust and unreasonable in allocating to a new member, such as ATSI, a share of the costs of

¹⁹ See *New York Independent System Operator, Inc.*, 128 FERC ¶ 61,049 (2009).

²⁰ IPL rehearing request at 7 (*citing City of Vernon, California.*, 111 FERC ¶ 61,092, at P 78 (2005) (“the actual, physical operational control of the facilities is the determining factor in deciding whether the costs of particular facilities should be included in the . . . rate.”)).

²¹ *Id.* at 8 (*citing PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,161, at P 21 (2009) (“the appropriate measure for determining cost allocation considers who benefits from the facilities.”)).

regional transmission expansion projects rated 500 kV and above, that were planned prior to the new member's integration into PJM.

22. In the ATSI Realignment Order, the Commission found that ATSI's voluntary choice to move from one RTO to another does not render the transmission expansion cost allocation methodologies of either RTO unjust or unreasonable or unduly discriminatory simply because these methodologies may differ. The Commission added that while transmission owners that seek to change RTOs should thus be prepared to assume the costs attributable to their decisions, ATSI and the PJM transmission owners remain free to negotiate the terms of ATSI's entrance into PJM. We reaffirm these findings here, as further supported by the analysis set forth below.

A. Allocation of PJM System-Wide Charges to New Members

23. We disagree with the rehearing requests that argue that the MISO policy is superior to the PJM policy or that the PJM policy is so deficient as to be considered unjust and unreasonable. As the Commission held in the ATSI Realignment Order, transmission owners that change RTOs should be prepared to assume the costs attributable to their decisions, including all applicable charges that may be imposed under the agreements and tariffs of either RTO.²² As we further explained, however, ATSI and the PJM transmission owners are free to negotiate the terms of ATSI's entrance into PJM to the extent that ATSI brings benefits to the existing PJM transmission grid.²³

24. In this case, ATSI signed a transmission owner's agreement when it joined MISO that obligated it, as a transmission owner, to pay certain costs incurred while ATSI was a member of MISO. As the ATSI Integration Order held, such an obligation does not necessarily mean that customers benefit from the RTO transfer and would be responsible to pay those exit costs. Rather, these are contractual costs ATSI assumed upon joining MISO. Upon entering PJM, ATSI is responsible, under the PJM tariff, for paying the relevant costs imposed with respect to those high voltage facilities constructed after ATSI's entry.²⁴

²² ATSI Realignment Order, 129 FERC ¶ 61,249 at P 112.

²³ *Id.* P 114.

²⁴ *Cf. Midwest Independent Transmission System Operator, Inc*, 139 FERC ¶ 61,056, at P 68 (2012) (accepting an allocation method different from that in the tariff as a result of a negotiated agreement).

25. FirstEnergy argues that PJM's RTEP allocation methodology, as applied to new members, violates the principle that costs should be borne by those who caused them. It maintains the only just and reasonable methodology to be applied to system-wide costs is to allocate those costs to those transmission owners present during the RTO's planning process. FirstEnergy also argues that allocating RTEP costs to the ATSI zone, for facilities planned prior to ATSI's integration, violates the Commission's policy on allocating sunk costs, as set forth in the MISO Transmission Costs Order.

26. We do not find that the cost causation principle limits the allocation of costs only to capital costs incurred after the customer, or entity, first joins and takes service from the utility. Cost causation also includes the allocation of "costs to serve" that party including those facilities that benefit the party.²⁵ Even if a new member was not using the system when a particular project was planned or authorized, the new member may nevertheless use and benefit from the new facility in the future.²⁶ In the RTEP Remand Order, for example, the Commission recognized that high voltage facilities may provide benefits over their entire lifetime that are not necessarily captured by a short-term snapshot analysis of benefits during the planning process.²⁷ Even if a new member was not using the system when a particular project was initially authorized, we cannot find PJM's tariff unjust and unreasonable for allocating a share of the costs for such facilities to a new member, given that the new member will both use and benefit from these new facilities.

²⁵ *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1301 (D.C. Cir. 1992). See also *Illinois Commerce Commission*, 576 F.3d 470 at 476 (citing *K N Energy*, 968 F. 2d at 1300); *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 708 (D.C. Cir. 2000); *Pacific Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1320-21 (D.C. Cir. 2004); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004); *Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009); *Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1, 4-5 (D.C. Cir. 2002).

²⁶ See *Midwest Independent Transmission System Operator, Inc.*, 129 FERC ¶ 61,060, at P 53 (2009) (finding that facilities that may have been caused by one party may benefit other parties); *Public Service Co. of Colorado*, 59 FERC ¶ 61,311 (1992), *reh'g denied*, 62 FERC ¶ 61,013 (1993) (rejecting the direct cost assignment of grid facilities even if the grid facilities would not be installed but for a particular customer's service).

²⁷ See RTEP Remand Order, 138 FERC ¶ 61,230 at P 60. Indeed, FirstEnergy does not challenge the proposition that these costs may provide system-wide benefits.

Simply because costs may have previously been expended does not necessarily mean that allocating these costs to new members is unjust and unreasonable. Were this so, a new customer or a customer increasing its service would not be required to pay for the costs of the existing transmission system.²⁸ Carried to its logical extreme, FirstEnergy's argument would require that any new customer in the ATSI zone be exempt from paying any transmission project charge, given that the facilities at issue would have been built prior to that customer's entrance into the zone. We do not find the cost causation principle should be that narrowly construed.

27. We also reject FirstEnergy's argument that allocating RTEP costs to the ATSI zone for projects planned prior to ATSI's integration is inconsistent with the Commission's prior determinations on allocating sunk costs. FirstEnergy recognizes that the Commission's findings on the allocation of sunk costs, in Opinion No. 494 and other orders, address facilities that were not the result of a regional planning process, rather than the planned facilities at issue in this case. FirstEnergy, however, interprets the MISO Transmission Costs Order as having extended the Commission's policy on sunk costs to planned facilities because, it is claimed, the MISO Transmission Costs Order allowed MISO to exempt certain "grandfathered" facilities from the "going forward" cost allocation.

28. In fact, however, the Commission's findings in the MISO Transmission Costs Order do not support FirstEnergy's claims. In the MISO Transmission Costs Order, the Commission addressed MISO's proposal (a compromise proposal, as produced by a stakeholder task force) to exclude from MISO's revised regional transmission expansion cost allocation protocol certain projects that were: (i) planned, or could effectively be considered as planned; and (ii) would have moved forward regardless of whether a new allocation policy was approved.²⁹ The Commission accepted this as a reasonable

²⁸ See *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,268 (new customers charged higher of rolled-in or incremental rates); *PG&E Transmission, Northwest Corporation*, 82 FERC ¶ 61,289, at 62,125 (1998) (finding that new customers on a system cannot pay a rate lower than the highest expansion rate on the system), *aff'd, Washington Water Power Co. v. FERC*, 201 F.3d 497 (D.C. Cir. 2000).

²⁹ MISO Transmission Costs Order, 114 FERC ¶ 61,106 at P 91.

compromise that established when the MISO regional cost-sharing initiative would begin on a going-forward basis.³⁰

29. The Commission, however, did not characterize its acceptance of this compromise proposal as a new policy of general applicability, nor did it address how this policy would apply with respect to transmission owners choosing to move from one RTO to another. As the ATSI Realignment Order makes clear, the Commission has not found that “allocating system-wide costs to those leaving an RTO is necessarily preferable to charging such costs upon entry, or that any particular cost allocation will create more stable RTOs.”³¹ The costs at issue here (for projects rated 500 kV or above) were part of the ongoing PJM planning process and have been determined to benefit all load within PJM. Moreover, PJM’s RTEP planning process involves an ongoing evaluation of previous RTEP authorizations to reflect changing assumptions and system conditions, including the addition of ATSI, pursuant to which any planned project may be added, accelerated, deferred, or cancelled based on a continuous, ongoing analysis of economic, technological, and resource sector changes.³² We therefore affirm our prior decision that FirstEnergy has not demonstrated that the allocation of planned regional facilities to new members into PJM is unjust and unreasonable.

30. First Energy also takes out of context, the Commission’s determination in Opinion No. 494 not to require a system-wide allocation of transmission investment existing prior to the formation of the RTO. As the Commission noted, it determined not to allocate these existing costs on a region-wide basis because they were constructed prior to any transmission owner joining PJM, were therefore not designed to benefit the entire RTO, and were built solely for the benefit of the individual transmission owner’s systems.

The existing facilities of these transmission systems were not developed under common ownership and planning, and were not designed to benefit the entire footprint of PJM. These transmission facilities were developed by the individual companies to benefit their own systems and their own customers. It is therefore consistent with principles of cost causation to

³⁰ *Id.* P 108. See also *Pub. Serv. Comm’n of Wis. v. FERC*, 545 F.3d 1058, 1062 (D.C. Cir. 2008) (noting the Commission’s established deference to regional choices on how to allocate transmission expansion costs).

³¹ ATSI Realignment Order, 129 FERC ¶ 61,249 at P 113.

³² RTEP Remand Order, 138 FERC ¶ 61,230 at n.233.

continue to allocate the costs of these facilities to the customers for whom they were constructed and whom they continue to serve to date.³³

Here, by contrast, the RTEP project costs that will be allocated to the ATSI zone were developed as part of PJM's regional planning process and are designed to benefit the entire PJM footprint over the entirety of their useful life.³⁴ Accordingly, we cannot find that PJM's tariff is unjust and unreasonable in allocating these costs to all the members of the RTO that benefit from these facilities.

31. FirstEnergy maintains that PJM's RTEP cost allocation methodology, as applied to new members, may encourage existing PJM members to leave PJM and/or discourage new members from joining. We are not persuaded that, for this reason, PJM's tariff is unjust and unreasonable. RTO participation is voluntary, as the Commission has made clear on numerous occasions.³⁵ ATSI, in considering the merits of its membership in PJM, elected to proceed and, thus, cannot now claim that PJM's RTEP cost allocation methodology created a barrier to entry. FirstEnergy, moreover, provides no basis for finding that discouraging RTO exit or encouraging RTO entry should be the goal of a cost allocation policy for RTOs. Differences between RTOs may well warrant differences in the policies that govern joining or exiting an RTO.

32. FirstEnergy and Ohio Consumers Counsel argue that Schedule 12 must be revised because, at the time that it was first proposed, its drafters did not anticipate, or failed to consider, the circumstances presented by ATSI's proposed integration. We disagree that the lack of explicit tariff language anticipating or considering new members requires the revision of Schedule 12 under FPA section 206. The issue is whether the existing tariff is just and reasonable as applied to new , and, as discussed above, we find that it is. Whether entry in general, or FirstEnergy's position in particular, was specifically on the minds of PJM and its stakeholders in drafting Schedule 12, does not render the existing tariff unjust and unreasonable.³⁶

³³ Opinion No. 494, 119 FERC ¶ 61,063 at P 42.

³⁴ See RTEP Remand Order, 138 FERC ¶ 61,230 at P 49.

³⁵ See, e.g., ATSI Realignment Order, 129 FERC ¶ 61,249 at P 113.

³⁶ Nor is it relevant that PJM may have supported FirstEnergy's complaint on this issue. PJM's stated views on this matter do not render PJM's Schedule 12 allocation methodology unjust and unreasonable. PJM is entitled, under the FPA, to propose revisions to its OATT if it believes that the current cost allocations are unfair, or improper. Such a filing, however, is not before us here.

B. Whether the ATSI Realignment Order Improperly Requires ATSI-Zone Customers to Pay Twice for Transmission Projects

33. We reject FirstEnergy's argument that, in the ATSI Realignment Order, the Commission improperly required ATSI zone customers to pay transmission project charges, as assessed by both PJM and MISO for projects planned and approved during the same period. First, we reaffirm the ATSI Realignment Order's holding that ATSI's voluntary choice to move from one RTO to another does not render PJM's allocation methodology, or MISO's allocation methodology, unjust or unreasonable, or unduly discriminatory, simply because each methodology produces a different result.³⁷

34. Second, the imposition of MISO exit fees on ATSI is a function of its obligation under the MISO transmission owner's agreement, not a finding that these costs necessarily benefit ATSI's wholesale customers.³⁸ Unless ATSI can demonstrate that the benefits of RTO realignment for its wholesale transmission customers, outweigh any claimed integration costs, including MISO transmission project costs, its customers will not be required to pay the MISO exit fees. The wholesale customers, however, are responsible for the just and reasonable transmission-related costs under PJM's tariff because they will benefit from belonging to PJM. As found above, the high voltage projects constructed in PJM will benefit ATSI and its wholesale customers and ATSI has failed to show that these charges are unjust and unreasonable.

C. Whether PJM is Required to Adopt MISO's Policy

35. We reject FirstEnergy's argument that the ATSI Realignment Order erred in retaining PJM's RTEP allocation methodology, given MISO's asserted superior allocation methodology. FirstEnergy claims, in effect, that MISO's policy is *more* just and reasonable and/or that the Commission is required to reconcile the differences between these two methodologies. However, membership in an RTO is voluntary and RTOs are not required to adopt a one-size-fits-all approach. RTOs, rather, are required to adopt tariff terms and conditions that are just and reasonable. In applying this standard, moreover, there is no "single" just and reasonable methodology for allocating transmission expansion project costs. As the Commission has made clear, regional

³⁷ ATSI Realignment Order, 129 FERC ¶ 61,249 at P 112.

³⁸ ATSI Integration Order, 135 FERC ¶ 61,198 at P 60. *See also, PJM Interconnection, LLC*, 139 FERC ¶ 61,068, at PP 76 and 79 (2012).

variation in cost allocation across RTOs is permissible, reflecting the different concerns of each RTO and its membership.³⁹

36. We also reject FirstEnergy's argument that the Commission's findings in the MISO Transmission Cost Recovery Order require us to conform PJM's allocation methodology to the MISO allocation methodology. In the MISO Transmission Cost Recovery Order, the Commission agreed with intervenors that MISO's tariff should contain a provision similar to that contained in the MISO transmission owner's agreement stating that transmission owners should honor their existing obligations.⁴⁰ PJM, in fact, has a similar provision.⁴¹ But the Commission in the MISO Transmission Cost Recovery Order said nothing about establishing a specific policy regarding the recovery of system-wide costs from transmission owners joining MISO.

D. Additional Issues

37. We deny, as moot, petitioners' requests for clarification regarding matters falling within the scope of ATSI's integration filing, in Docket No. ER11-2814-000, *et al.* Specifically, we deny petitioners' assertions that the ATSI Realignment Order was silent, vague, or otherwise requires clarification on the point that the conditional authorizations granted by the Commission did not constitute: (i) a final authorization permitting ATSI to recover any specified level of RTEP costs from its customers, (ii) a finding that ATSI's RTEP costs were prudently-incurred; or (iii) authorize ATSI to recover, from its customers, over-lapping transmission project costs applicable to its membership in PJM and prior membership in MISO. These issues were presented by ATSI's integration filing, in Docket No. ER11-2814-000, *et al.*, and were not addressed or decided by the Commission in the ATSI Realignment Order. As such, these issues are not before us here.

³⁹ Order No. 890, 118 FERC ¶ 61,119 at P 559.

⁴⁰ MISO Transmission Cost Recovery Order, 118 FERC ¶ 61,209 at P 193.

⁴¹ *See* PJM Transmission Owners Agreement at Article 42, section 3.4, ("Any Party that withdraws from, transfers, or assigns this Agreement in accordance with Sections 3.2 or 3.3 hereof, shall remain liable for any and all obligations under this Agreement that such Party incurred, that were incurred on behalf such Party, or that arose hereunder prior to the date upon which such Party's withdrawal, transfer, or assignment became effective.").

38. For this same reason, we deny the Ohio Commission's request for rehearing regarding the ATSI Realignment Order's asserted error in not addressing the entirety of ATSI's contemplated requests and required authorizations. ATSI, in submitting its filing, was entitled to frame the scope of its own requests, subject to the submission of related filings addressing other aspects of ATSI's proposed realignment. Interested parties were given the opportunity to address the related issues presented by these requests in Docket No. ER11-2814-000 (the proceeding addressed by the Commission in the ATSI Integration Order).

39. We also reject FirstEnergy's assertion that the ATSI Realignment Order denied FirstEnergy's request to revise Schedule 12, as applicable to ATSI, based on the Commission's erroneous adherence to its own precedent, i.e., based on the incorrect assumption that the Commission, in considering an entity's request to join an RTO, has required that entity to accept the RTO's tariff, without revision. FirstEnergy argues that, in fact, the Commission has approved tariff revisions in such cases, including revisions in this proceeding addressing ATSI's capacity procurement obligations.

40. As noted in the ATSI Realignment Order, ATSI was free to negotiate with PJM and the other transmission owners different terms applicable to its acceptance into PJM.⁴² Absent such negotiations, however, the RTO tariff governs. Moreover, the waivers necessary to accommodate the PJM capacity requirement, as supported by PJM, were necessary in order to assure that having missed the original base residual auction,⁴³ ATSI and other load serving entities would satisfy the PJM tariff requirement to procure sufficient capacity for the interim auctions. In contrast, ATSI's request for waiver of Schedule 12 was not designed to assure an alternative means of complying with a tariff requirement, as were the capacity waivers, but were simply designed to remove a tariff requirement entirely. We therefore find no inconsistency in accepting the capacity tariff waiver, while rejecting the request for an exemption from the system-wide cost allocation tariff requirement as applied to certain facilities.

41. Finally, we reject, as beyond the scope of this proceeding, IPL's request for a section 206 determination regarding the existing procedures used by MISO to allocate ATSI-zone project costs to MISO load. IPL argues that any such ATSI-zone project

⁴² ATSI Realignment Order, 129 FERC ¶ 61,249 at P 114.

⁴³ PJM's capacity auctions are held three years in advance of the date on which capacity needs to be procured, thus leaving three years for which ATSI and other load serving entities failed to procure capacity. The waivers received by ATSI established an alternative auction to procure capacity for these three interim years.

costs should not be allocated to IPL because the transmission projects at issue, after the ATSI zone moves to PJM, will benefit only PJM's members. IPL argues that it should not be required to shoulder ATSI costs as a remaining MISO customer. IPL's request to revisit the MISO allocation methodology, here, is outside the scope of this proceeding. Regardless, IPL fails to identify the costs it seeks to avoid, the underlying transmission projects at issue, or the MISO tariff provisions it believes should be modified.

The Commission orders:

Rehearing and clarification of the ATSI Realignment Order is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Clark is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.