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STATE OF NEW JERSEY
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Board of Public Utilities

COMMENTS OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES

In the Matter of Notice Of Attachment H Transmission Owners Stakeholder Process For Order 1000 Regional Cost Allocation Principles

The New Jersey Board of Public Utilities ("NJBPU") welcomes the opportunity to submit these comments regarding the appropriate Cost Allocation Principles governing PJM Interconnection, Inc. ("PJM") board-approved Regional Transmission Expansion Plan ("RTEP") projects. NJBPU is the administrative agency charged under New Jersey Law with the general supervision, regulation, jurisdiction, and control over all public utilities in the State, including electric utilities and their rates and service.[1]

New Jersey is also one of 13 states and the District of Columbia located within the PJM footprint. The state accounts for approximately 12% of the total load use in PJM and represents the region's northeastern-most corner. Therefore, New Jersey maintains vested interest regarding the methodology for allocating the costs of regional

[1] N.J.S.A. 48:2-13; N.J.S.A. 48:2-21.

transmission assets.

HISTORY

In 2007, the Federal Energy Regulatory Commission ("FERC" or "Commission") issued an Order approving PJM's proposed transmission service rate design, which socializes the costs associated with new PJM-approved RTEP facilities operating above 500kV.[2]

On August 6, 2009 the United State Court of Appeals for the Seventh Circuit ("Seventh Circuit") decided two consolidated challenges to the FERC approved cost socialization paradigm.[3] The Seventh Circuit found that the Commission's Order in this matter was not a "reasoned decision based upon substantial evidence in the record" and remanded the matter to FERC for further consideration. [4]

On March 30, 2012 FERC issued its Order on remand from the Seventh Circuit, largely upholding the socialization construct provided for in the original order.[5] The Commission conceded that while other just and reasonable cost allocation methodologies may exist, the use of a static-flow-based distribution factor model ("DFAX") is unjust

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[2] *PJM Interconnection, LLC*, 119 FERC ¶ 61,063, *reh'g denied*, 122 FERC ¶ 61,082 (2007).

[3] *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470 (7th Cir. 2009).

[4] *Id.*, citing *Town of Norwood v. FERC*, 962 F.2d 20, 22 (D.C. Cir. 1992).

[5] *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230 (2012) ("Order").

and unreasonable.[6] Commissioner LaFleur dissented, in support of combining the zonal rate with aspects of DFAX. The Commissioner stated that excluding the use of DFAX for all high-voltage projects is "overbroad" and reiterated that the Order did not prejudge any proposals regarding FERC Order 1000.[7]

NATURE OF THE TOs' PROPOSAL

Pursuant to the Notice of Attachment H Transmission Owners Stakeholder Process for Order No. 1000 Regional Cost Allocation Principles, 12 of the 14 Attachment H Transmission Owners ("TOs") approved protocols to form the basis of a Federal Power Act Section 205[8] filing "designed to comply with the requirements of Order 1000."[9] Accordingly:

1. This proposal applies *only* to RTEP projects approved by the PJM Board in accordance with the Regional Transmission Expansion Planning Process on and after the effective date of the compliance filing required by Order No. 1000.
2. The following applies to Baseline Reliability and Operational Performance projects.
    a. Regional Extra High Capacity Projects: 50% Postage Stamp; 50% Solution-based

[6] Order at P. 2.

[7] *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230 (2012), LaFleur dissent at P. 1.

[8] 16 U.S.C. 824(d).

[9] Available at, http://www.pjm.com/~/media/committees-groups/committees/mrc/postings/notice-of-tos-cost-allocation-stakeholder-process.ashx. Accessed July 15, 2012 ("Notice").

DFAX.

b. All Lower Capacity Projects: 100% Solution-based DFAX.

c. Solution-based DFAX to be calculated periodically. If flows cannot be measured (such as a SVC) then an appropriate proxy will be used.

3. The following applies to Baseline Market Efficiency Projects directed by PJM in accordance with Schedule 6 (including Schedule 6 modifications accepted by FERC pursuant to the filing of February 29, 2012).

   a. Regional Extra High Capacity Projects: 50% Postage Stamp; 50% to the zones that benefit from the project through decreased load payments.

   b. All Lower Capacity Projects: 100% to the zones that benefit from the project through decreased load payments.

   c. Need to consider whether complementary revisions to the method used by PJM to determine benefits (specifically for Regional Extra High Capacity Projects) for project selection and approval purposes are necessary.

4. Cost allocation of a double circuit 345 kV project as a Regional Extra High Capacity Project will not begin until such project is energized as a double circuit facility. Any CWIP permitted to be recovered prior to the facility being energized will be allocated as a Lower Capacity Project, provided, however, that any CWIP permitted to be recovered after the project is approved in an RTEP as a double circuit 345 kV project and prior to the facility being energized as a double circuit facility will be allocated as a Regional Extra High Capacity Project.

5. Network upgrade projects for generation and merchant transmission interconnections

will continue to be charged on a “but for” basis.

6. Project cost incurred due to state RPS requirement will be allocated to the PJM loads in that state (or states, if applicable).
7. Aging infrastructure projects are allocated to the zone of the TO that owns the aging infrastructure unless the aging infrastructure is replaced as part of a PJM directed project needed for Baseline Reliability, Operational Performance, or Market Efficiency. If PJM modifies the manner in which aging infrastructure projects are included in an RTEP, such that the portion of the project associated with the replacement of aging infrastructure is separately identified from the portion needed for Baseline Reliability, etc., the potential for changes in this principle will be addressed.
8. Notwithstanding the above, all projects with an estimated cost of greater than $5 million are charged to the zone in which they are located.
9. As previously agreed, cost allocation for multi-driver, critical mass, public policy, or other still undefined planning criteria will be addressed upon development of that planning criteria, if any.
10. Direct Current transmission lines are not addressed by this proposal and will be addressed at a later time.
11. These Principles will be reflected in necessary, more detailed revisions to the PJM Open Access Transmission Tariff and a FERC filing under section 205 of the Federal Power Act, to be developed by the Attachment H Transmission Owners, subject to a vote under section 7.2 of the Consolidated Transmission Owners Agreement.

BOARD POSITION

NJBPU has long advocated for continued use of the socialization paradigm approved by FERC in Orders 949 and 949-A.[10] Accordingly, NJBPU has concerns as to why the TOs would deviate from this accepted methodology. While the TOs couch their proposal as a hard-fought meeting-of-the-minds contentiously hashed-out in light of conflicting FERC policy; it seems counterintuitive to assume FERC would outright abandon the socialization paradigm after spelling out its legitimate and well-reasoned justification pursuant to the Seventh Circuit's remand. Indeed, this argument seems to rest largely upon Commissioner LaFleur's dissent, which, respectfully, is not binding Commission precedent. NJBPU questions the TOs' motivation for retreating from this well-founded position and adopting a novel "solutions based DFAX" criterion while larger cost allocation issues under the Order 1000 construct loom, as of yet, unresolved. NJBPU encourages the parties to attempt to resolve these more critical matters before revisiting additional settled precedent at FERC.

Nevertheless, NJBPU is inclined to cautiously support the negotiated outcome reached by the represented stakeholders. The inclusion of double-circuit 345 kV transmission assets within the socialization paradigm helps ensure that the grid remains adequately robust, while appropriately recognizing the regional benefits associated with these projects. Moreover, the proposed solutions based DFAX methodology may ensure

[10] *PJM Interconnection, L.L.C.*, 119 F.E.R.C. 61,063 (2007) ("Order 494"), rehearing denied, 122 F.E.R.C. 61,082 (2008) ("Order 494-A").

that those parties receiving the benefit of an asset pay their proportional share. NJBPU also believes that this transition away from the previous DFAX model satisfies the Seventh Circuit's requirement that transmission development costs be rationally allocated to those parties receiving the associated benefit.

In conclusion, while NJBPU remains concerned as to the application of the novel transmission cost allocation methodology proposed by the TOs, the agency cautiously supports the outcome as negotiated by the parties. NJBPU further recommends that the parties now focus their efforts on reaching an amicable solution to the remaining cost allocation issues surrounding post-Order 1000 policy and reliability based planning.