

179 FERC ¶ 61,024
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

PJM Interconnection, L.L.C.

Docket No. ER22-902-000

ORDER ACCEPTING AGREEMENT

(Issued April 14, 2022)

1. On January 27, 2022, PJM Interconnection, L.L.C. (PJM) filed, pursuant to Federal Power Act (FPA) section 205¹ and Schedule 6, section 1.5.9 of the Amended and Restated Operating Agreement of PJM (Operating Agreement),² an executed State Agreement Approach Agreement between PJM and the New Jersey Board of Public Utilities (NJ BPU), designated as Rate Schedule FERC No. 49 (SAA Agreement).³ We accept the SAA Agreement to become effective April 15, 2022, as requested.

I. Background

2. The State Agreement Approach is a supplementary transmission planning and cost allocation mechanism in PJM's Operating Agreement⁴ through which one or more state governmental entities authorized by their respective states, individually or jointly, may agree to be responsible for the allocation of all costs of a proposed transmission expansion or enhancement that addresses state public policy requirements identified or

¹ 16 U.S.C. § 824d.

² PJM, Intra-PJM Tariffs, OA Schedule 6 Sec 1.5, OA Schedule 6 Sec 1.5 Procedure for Development of the Regi (28.0.0), § 1.5.9(a) (State Agreement Approach).

³ PJM, Rate Schedules, Rate Schedule FERC No. 49, State Agreement Approach Agreement between PJM and NJ BPU (0.0.0); SAA Agreement, Appendix A, SAA Agreement, Appendix A - NJ BPU OSW Solicitation Schedule (0.0.0); SAA Agreement, Appendix B, SAA Agreement, Appendix B - Reliability Analysis (0.0.0).

⁴ State Agreement Approach, OA Schedule 6 Sec 1.5, § 1.5.9(a).

accepted by the state(s).⁵ Pursuant to the State Agreement Approach, a proposed transmission expansion or enhancement that addresses state public policy requirements identified or accepted by the state(s) in the PJM Region may be included in the recommended transmission expansion plan (RTEP) for informational purposes, as either a Supplemental Project or a state public policy project. Such transmission expansions or enhancements may not be selected in the RTEP for purposes of regional cost allocation.⁶ All costs related to the state public policy project or Supplemental Project identified pursuant to the State Agreement Approach are to be recovered from customers in a state or group of states that agrees to be responsible for the project(s).⁷ The Commission has explained that the State Agreement Approach “is not needed for Order No. 1000” compliance and therefore that it “need not find that the State Agreement Approach and corresponding cost allocation method comply with Order No. 1000.”⁸

3. In January 2020, the state of New Jersey formally set forth its state public policy to expand the transmission system to accommodate a buildout of 7,500 MW of offshore wind generation by 2035.⁹ On November 18, 2020, NJ BPU issued an order requesting that PJM, pursuant to the State Agreement Approach, open a competitive proposal window to solicit transmission proposals to interconnect and ensure deliverability of 7,500 MW of offshore wind generation by 2035.¹⁰ NJ BPU also negotiated with PJM, and filed with the Commission, a study agreement to implement this proposal.

4. On February 16, 2021, the Commission accepted a State Agreement Approach Study Agreement (Study Agreement) between PJM and NJ BPU to effectuate NJ BPU’s formal request that PJM plan transmission to integrate New Jersey’s planned offshore

⁵ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 142 (2013) (Compliance Order), *order on reh’g and compliance*, 147 FERC ¶ 61,128 (2014) (Second Compliance Order), *order on reh’g and compliance*, 150 FERC ¶ 61,038, *order on reh’g and compliance*, 151 FERC ¶ 61,250 (2015) (“PJM’s State Agreement Approach supplements, but does not conflict with or otherwise replace, PJM’s process to consider transmission needs driven by public policy requirements as required by Order No. 1000.”).

⁶ Second Compliance Order, 147 FERC ¶ 61,128 at P 92.

⁷ *See id.*; State Agreement Approach, OA Schedule 6 Sec 1.5, § 1.5.9(a).

⁸ Compliance Order, 142 FERC ¶ 61,214 at P 142; *see also id.* P 143.

⁹ Transmittal at 7.

¹⁰ *Id.* at 9-10 (citing *In the Matter of Offshore Wind Transmission*, Order, NJ BPU Docket No. QO20100630, at 7 (Nov. 18, 2020)).

wind resources pursuant to the State Agreement Approach.¹¹ The Study Agreement specifies that: (1) PJM will perform planning studies to identify system improvements to interconnect and provide for the deliverability of New Jersey's planned offshore wind generation at specific points of interconnection to the transmission system, and (2) PJM will open a competitive proposal window to solicit transmission project proposals that provide for the deliverability of New Jersey's planned offshore wind generation.¹² In its order, the Commission found that the Study Agreement provided transparency to stakeholders regarding the process milestones and inclusion of NJ BPU's requested transmission in the 2020-2021 RTEP cycle.¹³ The Commission also affirmed PJM's statement that the Study Agreement does not consent to the selection of any projects or designated entities, establish any cost allocations, or grant any transmission rights. The Commission explained that it understood that these issues may be the topic of subsequent filings.

5. On April 15, 2021, consistent with the Study Agreement, PJM opened a competitive proposal window to solicit proposals that address NJ BPU's formal request, using PJM's existing competitive proposal window process under its RTEP.¹⁴ The competitive proposal window closed on September 17, 2021, and PJM, together with NJ BPU, is currently reviewing project proposals.¹⁵ NJ BPU is separately conducting competitive solicitations (outside of PJM's competitive proposal window process) to procure 7,500 MW of offshore wind generation.¹⁶

II. Filing

6. PJM states that the SAA Agreement establishes processes for the review and selection of specific transmission projects, which may be onshore and/or offshore

¹¹ *PJM Interconnection, L.L.C.*, 174 FERC ¶ 61,090 (2021) (Study Agreement Order); PJM, PJM Service Agreements Tariff, PJM SA No. 5890, PJM SA No. 5890 among PJM and NJBPU (0.0.0).

¹² Study Agreement Order, 174 FERC ¶ 61,090 at P 12.

¹³ *Id.* P 13.

¹⁴ Transmittal at 10; PJM, Intra-PJM Tariffs, OA Schedule 6 Sec 1.5, OA Schedule 6 Sec 1.5 Procedure for Development of the Regi (28.0.0) § 1.5.8 (Development of Long-lead Projects, Short-term Projects, Immediate-need Reliability Projects, and Economic-based Enhancements or Expansions).

¹⁵ Transmittal at 10.

¹⁶ *Id.* at 12.

facilities, to effectuate New Jersey's public policy goals.¹⁷ PJM notes that Commission acceptance of the SAA Agreement is essential to aid New Jersey in determining whether it will voluntarily sponsor and commit its customers to pay 100% of the costs of a transmission project.¹⁸

7. PJM states that, under the SAA Agreement, it would evaluate and develop recommendations on transmission project proposals that are submitted in the competitive proposal window in order to facilitate NJ BPU-designated generation. NJ BPU would subsequently decide whether to sponsor one or more of PJM's recommended projects.¹⁹ The SAA Agreement would obligate NJ BPU to provide notice to PJM for any projects that it decides to sponsor (SAA Project), as well as to submit to the Transmission Owners Agreement Administrative Committee (TOA-AC) a proposed allocation of SAA Project costs to New Jersey customers, for the TOA-AC's consideration and filing with the Commission under FPA section 205.²⁰ PJM explains that the costs associated with the SAA Project would be assigned consistent with the State Agreement Approach in this future filing and clarifies that the instant filing is not proposing a cost allocation methodology to allocate costs of any SAA Project to New Jersey customers.²¹

8. Pursuant to the SAA Agreement, PJM states that, if NJ BPU notifies PJM that the NJ BPU has decided to select and sponsor an SAA Project, PJM would follow its RTEP process under Operating Agreement, Schedule 6, sections 1.5.8 and 1.5.9 to determine the designated entity to construct, own, and operate the SAA Project.²² PJM explains that it would track the construction progress of the SAA Project consistent with the development schedule and construction milestones detailed in a designated entity agreement. PJM also states that it would provide construction progress reports to the NJ BPU on a quarterly basis.

¹⁷ *Id.* at 2-3.

¹⁸ *Id.* at 14.

¹⁹ *Id.* at 2.

²⁰ Proposed SAA Agreement §§ 5.1, 5.4.

²¹ Transmittal at 27. PJM states that, under the State Agreement Approach, the costs of transmission facilities that a state voluntarily sponsors are recovered only from the customers in the sponsoring state and that when one or more states voluntarily select a transmission project to sponsor, they agree that the costs of such a project will be allocated only to the zones or sub-zones within such states. *Id.* at 6.

²² *Id.* at 18 (citing Proposed SAA Agreement §§ 4.1, 4.2).

9. The SAA Agreement provides that NJ BPU has the right to assign the “SAA Capability” created by an SAA Project to offshore wind generators or other public policy resources chosen in NJ BPU’s ongoing solicitation process (NJ BPU-designated generators), consistent with the NJ BPU solicitation schedule established in Appendix A to the SAA Agreement.²³ SAA Capability is defined as:

[A]ll transmission capability created by a SAA Project(s), including but not limited to the capability to integrate resources injecting energy up to the Maximum Facility Output (“MFO”), capability which may become [Capacity Interconnection Rights] through the PJM interconnection process, and any other capability or rights under the PJM Tariff and consistent with the reliability study criteria applied to the evaluation of a SAA Project(s) as set forth in Paragraph 6 of the SAA Agreement. For the avoidance of doubt, SAA Capability shall also include any incremental transmission capability that is created by a SAA Project(s) and is determined to provide Incremental Auction Revenue Rights (“IARRs”) or Incremental Capacity Transfer Rights (“ICTRs”) associated with Incremental Rights-Eligible Required Transmission Enhancements, Tariff, Schedule 12-A.²⁴

10. Further, the SAA Agreement provides that any SAA Capability not initially assigned within a period no later than two years from the last solicitation date in the NJ BPU solicitation schedule will be released for use by entities other than NJ BPU-designated generators, subject to the proposed cost sharing provision described below.²⁵

²³ Proposed SAA Agreement § 6.1.

²⁴ *Id.* § 1.2. PJM explains it will apply existing Tariff, Schedule 12-A provisions for certain rights associated with the RTEP transmission projects that add incremental capability to its transmission system. The transmission upgrades needed to achieve New Jersey’s public policy goals will be evaluated by PJM to determine if they qualify for IARRs or ICTRs associated with Incremental Rights-Eligible Required Transmission Enhancements. PJM Transmittal at 16.

²⁵ Proposed SAA Agreement § 6.2(d)(i). NJ BPU also maintains the right to reassign SAA Capability initially assigned to a NJ BPU-designated generator if that generator’s interconnection queue position is terminated or withdrawn prior to achieving commercial operation. *See id.* §§ 4.3(e), 6.2(f).

11. PJM explains that it will study NJ BPU-designated generators through the interconnection study process under the PJM Open Access Transmission Tariff (Tariff).²⁶ PJM will conduct the NJ BPU-designated generator's System Impact Study based on existing headroom associated with that generator's queue position, as well as the type and amount of SAA Capability assigned to the generator by NJ BPU.²⁷ PJM explains that NJ BPU-designated generators will be responsible to pay for the costs related to any network upgrades and interconnection-related interconnection facilities identified through the interconnection process.²⁸

12. Under the SAA Agreement, a NJ BPU-designated generator must proceed through the interconnection process and execute an interconnection service agreement to be awarded Capacity Interconnection Rights.²⁹ PJM states that the proposed procedures are modeled after existing procedures in the Tariff that permit an existing generator capacity resource to transfer its Capacity Interconnection Rights to a generator with a new interconnection request for the purpose of determining the new generator's cost responsibility.³⁰ PJM acknowledges that here it is proposing that transmission capability created by a SAA Project be transferred to generators from a transmission project developed under the RTEP process, rather than merely transferring Capacity Interconnection Rights between generators. However, PJM states that given the transparency that PJM and NJ BPU have provided on the PJM website about NJ BPU's public policy goal and development of offshore transmission, it is just and reasonable to use a similar process to perform a NJ-BPU generator's System Impact Study to award Capacity Interconnection Rights.³¹

²⁶ Transmittal at 19.

²⁷ Proposed SAA Agreement § 4.3(b).

²⁸ Transmittal at 19 n.67. Any NJ BPU-designated generator that is assigned SAA Capability will not be guaranteed full deliverability or an award of Capacity Interconnection Rights until the SAA Project and any network upgrades are completed, as well as providing a demonstration of initial commercial operation. Proposed SAA Agreement § 6.2(b).

²⁹ Proposed SAA Agreement § 4.3(d).

³⁰ Transmittal at 19-20 (citing PJM Interconnection, L.L.C., Intra-PJM Tariffs, 230.3, OATT 230.3 Loss of Capacity Interconnection Rights (6.0.0) § 230.3.3; PJM Interconnection, L.L.C., Intra-PJM Tariffs, 230.4, OATT 230.4 Transfer of Capacity Interconnection Rights: (0.0.0)). PJM states that under section 230.3.3, the transferred Capacity Interconnection Rights, along with existing headroom, are used to determine the new generator's cost responsibility. *Id.* at 20.

³¹ *Id.* at 22-23.

13. The SAA Agreement specifies that any SAA Project would be controlled by PJM and subject to its open access policies.³² However, the SAA Agreement provides that any user of an SAA Project other than a NJ-BPU-designated generator would be allocated a *pro rata* share of the total costs of the project, but reserves for a later filing the specific process for allocating such costs to future users:

[F]or a period from the date on which the PJM Board of Managers approves a SAA Project(s) for inclusion in the RTEP through twenty (20) years from the last Solicitation Award Date, subject to Paragraphs 5.2 and 10 of this Agreement, PJM shall allocate to any future user of a SAA Project(s) [other than an NJ BPU-designated generator] a *pro rata* share of the total costs of a SAA Project(s) that are attributable to those portions of any Transmission Facilities that extend the existing PJM Transmission System, such as offshore Transmission Facilities or onshore Transmission Facilities that transmit power generated offshore to any point of injection identified in Paragraph 6.2(a) above (as may be modified). Such future users may include, but shall not be limited to, the developer or any user of any offshore wind transmission “backbone” or “network” that extends a SAA Project(s) to additional states, neighboring regions or ISO/RTOs, use by hydrokinetic, offshore wind, other generators not selected by the NJ BPU as Public Policy Resources, or any other comparable user of the transmission that would interconnect to facilities that would not exist in the absence of the SAA Project(s). The specific process for allocating such costs to future users shall be memorialized in a future filing with the FERC.³³

PJM explains that this provision intends to provide that any generator not selected by the NJ BPU should equitably share in the costs of an SAA Project if it seeks to interconnect to certain “specified components of the SAA Project(s).”³⁴

14. PJM states that cost sharing provisions like the one in the proposed SAA Agreement have been accepted as a means by which an entity that is required to fund network upgrades to interconnect may share on a *pro rata* basis the cost of those

³² Proposed SAA Agreement § 6.2(g).

³³ *Id.*

³⁴ Transmittal at 32-33.

upgrades with other entities that benefit from using those upgrades.³⁵ PJM explains that the agreement preserves this equitable cost sharing concept because New Jersey is a “first mover,” funding a significant investment in transmission infrastructure that is expected to be in service for 30-40 years and could benefit other states. PJM further states that specific details of any cost sharing would be filed with and approved by the Commission and that the SAA Agreement only seeks to establish NJ BPU’s right to recover an appropriate *pro rata* share of its costs, with the exact amount subject to a future filing should an entity seek to use the SAA Project.³⁶

15. PJM requests that the Commission accept the SAA Agreement effective as of April 15, 2022.

III. Notice of the Filing and Responsive Pleadings

16. Notice of PJM’s filing was published in the *Federal Register*, 87 Fed. Reg. 5812 (Feb. 2, 2022) with interventions and protests due on or before February 17, 2022. Appendix A lists those entities filing notices of intervention and motions to intervene, as well as those entities filing comments and protests.

17. PJM, NJ BPU, and PJM TOs filed answers.

IV. Responsive Pleadings

A. Comments and Protests

18. NJ BPU, NJ Rate Counsel, Clean Energy Advocates, MAOD, and Atlantic Power filed comments in support of the SAA Agreement.

19. NJ BPU states that the SAA Agreement has been carefully developed to ensure that projects to support New Jersey’s public policy are viable, while also balancing interconnection customer rights, maintaining the integrity of the PJM interconnection queue, and protecting New Jersey ratepayers. NJ BPU states that approval of the SAA Agreement is a critical milestone in the ongoing State Agreement Approach process with PJM.³⁷ NJ BPU explains that the SAA Agreement does not require NJ BPU to select any projects and that NJ BPU can close the process without constructing any transmission facilities. NJ BPU explains that, if an SAA Project is selected, New Jersey ratepayers

³⁵ *Id.* at 33 (citing *Colton Power, L.P. v. S. Cal. Edison Co.*, 101 FERC ¶ 61,150, at P 16 (2002) (*Colton Power*)).

³⁶ *Id.* at 34.

³⁷ NJ BPU Comments at 2.

will be responsible for the project's costs and NJ BPU will work with the TOA-AC to propose and file a cost allocation methodology with the Commission. NJ BPU states that the SAA Agreement includes the cost sharing provision to protect New Jersey ratepayers from potential "free riders."³⁸ NJ BPU states that the SAA Agreement enshrines the principle that a state can seek cost contribution from future users of the offshore portion of the system and provides that the related cost-sharing mechanism will be filed with the Commission if any entity other than a NJ BPU-designated generator seeks to interconnect to the SAA Project. NJ BPU states that this is a flexible approach to accommodate emerging business models from future users of the system, other states that may elect to use the SAA Project, and/or potential federal funding opportunities.³⁹

20. NJ Rate Counsel states that the terms of the SAA Agreement sufficiently protect New Jersey ratepayers' investment in the SAA Project because the agreement: (1) allows NJ BPU to assign capacity of the SAA Project for a limited amount of time; and (2) requires future users of any SAA Project to pay a *pro rata* share of the total project costs. NJ Rate Counsel states that Commission approval of the SAA Agreement should make clear that other future users that benefit from the SAA Project will bear responsibility for their share of project costs, to be determined through future Commission proceedings.⁴⁰ NJ Rate Counsel notes that its support for the agreement depends on inclusion of the cost sharing provision.

21. Clean Energy Advocates agree that New Jersey needs to be assured that the transmission capability created by the SAA Project will be available for the purpose for which it is built. Noting that other planning regions allow specific customers priority access to transmission facilities, Clean Energy Advocates argue that the SAA Agreement strikes a reasonable balance between satisfying the State Agreement Approach and ensuring consistency with open access precedent.⁴¹ Atlantic Power states that the SAA Agreement is a necessary step to ensure that New Jersey's investment in transmission

³⁸ *Id.* at 3.

³⁹ *Id.* at 3-4.

⁴⁰ NJ Rate Counsel Comments at 6-7.

⁴¹ Clean Energy Advocates Comments at 5 (citing Midcontinent Independent System Operator, FERC Electric Tariff, ATTACHMENT GGG, Merchant HVDC Transmission Connection Procedures (34.0.0) § 3.2.3 (granting injection rights to merchant HVDC Customers); Midcontinent Independent System Operator, FERC Electric Tariff, ATTACHMENT X, Generator Interconnection Procedures (155.0.0) § 16.2 (governing conversion of injection rights to network service); *Midcontinent Indep. Sys. Operator Corp.*, 165 FERC ¶ 61,016 (2018)).

infrastructure will directly support the state's clean energy goals.⁴² MAOD states that generation developers require transparency and regulatory certainty for these processes prior to committing to financing such projects and that the SAA Agreement facilitates such project financing.⁴³

22. Ohio FEA and PJM TOs protest the cost sharing provision of the SAA Agreement. Ohio FEA states that NJ BPU rightfully acknowledges that if New Jersey decides to voluntarily proceed with the State Agreement Approach, its ratepayers will bear the costs of any projects that are developed.⁴⁴ Ohio FEA states that the Commission must prohibit shifting the costs of New Jersey's public policies to non-sponsoring states due to claims that the SAA Project provides incremental reliability benefits to non-sponsoring states.⁴⁵ Additionally, Ohio FEA states that, while it supports additional entities being able to seek to participate in the proposed SAA Project and share in the costs and benefits as a result, it is concerned that the language of the cost sharing provision is unreasonably broad.⁴⁶ In particular, Ohio FEA argues that the "shall not be limited to" clause renders the cost sharing provision's limits on "future users" meaningless:

such *future users* may include, but *shall not be limited to*, the developer or any user of any offshore wind transmission 'backbone' or 'network' that extends a SAA Project(s) to additional states, neighboring regions or ISO/RTOs, use by hydrokinetic, offshore wind, other generators not selected by the NJ BPU as Public Policy Resources, or any other comparable user of the transmission that would interconnect to facilities that would not exist in the absence of the SAA Project(s).⁴⁷

23. Ohio FEA states that any designation of a future user, and the associated allocation of costs thereof, must occur only on a voluntary basis and argues that no costs should be

⁴² Atlantic Power Comments at 4.

⁴³ MAOD Comments at 3.

⁴⁴ Ohio FEA Protest at 3.

⁴⁵ *Id.* at 4.

⁴⁶ *Id.* at 5.

⁴⁷ Proposed SAA Agreement § 6.2(g).

allocated to an entity or ratepayers of a jurisdiction that did not explicitly choose to join the proposed State Agreement Approach.

24. PJM TOs similarly argue that PJM does not define how it would determine a “comparable user of the transmission,” which leaves the reference to future users in the cost sharing provision overly broad. As a result, PJM TOs contend that the cost sharing provision would allow costs to be allocated to other states and neighboring regions or ISOs/RTOs, contrary to the State Agreement Approach.⁴⁸

25. PJM TOs further argue that, because the SAA Agreement establishes that costs would be recovered over a 20-year period on a *pro rata* basis, the agreement is a matter of cost allocation that relates to transmission rate design under the PJM Tariff. Therefore, PJM TOs argue that the Commission must reject the SAA Agreement as a matter of law because the PJM TOs have exclusive section 205 filing authority over transmission rate design.⁴⁹

26. In addition, PJM TOs argue that the cost sharing provision seeks to allocate the costs of SAA Projects to future users without regard to where they are located or when they start using the SAA Project.⁵⁰ PJM TOs argue that the cost sharing provision appears to require that capital costs be paid on a full *pro rata* basis and therefore requires later entrants to pay capital costs back to year 1 even if they begin using the SAA Project in year 20. PJM TOs assert that this cost allocation would be inconsistent with cost causation principles and could also act as a barrier to open access. PJM TOs note that, while PJM states that the Commission has found cost sharing provisions to be just and reasonable for interconnection customers, this finding was based on cost sharing provisions that recognize multiple generators who initiate service around the same time and contribute to the need for the upgrades.⁵¹ PJM TOs argue that such a scenario is not the case here.

⁴⁸ PJM TOs Protest at 6-7.

⁴⁹ *Id.* at 3-5 (citing PJM Interconnection, L.L.C., Intra-PJM Tariffs, 9.1, OATT 9.1 Rights of the Transmission Owners (2.1.0) §§ 9.1(a), (g); *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 10-11 (D.C. Cir. 2002)).

⁵⁰ *Id.* at 5.

⁵¹ *Id.* at 6 (citing *Colton Power*, 101 FERC ¶ 61,150 at P 16).

27. PJM TOs also argue that because the cost sharing provision creates an exemption for NJ BPU-designated generators, the provision may confer upon these generators an undue preference.⁵²

28. Finally, PJM TOs argue that the cost sharing provision violates the PJM Tariff, which prescribes that new interconnection customers are only responsible for the cost of the minimum amount of local and network upgrades that would not have been needed “but for” their interconnection request.⁵³ PJM TOs state that, once the costs of the SAA Project are included in RTEP, later interconnection customers are only responsible for paying the network upgrades required for their specific interconnection. PJM TOs state that to allocate some of the SAA Project costs to future users may be appropriate but that doing so would require modification to interconnection processes under the PJM Tariff.

B. Answers

29. PJM and NJ BPU argue that protests related to the cost sharing provision of the SAA Agreement are premature, as future filings will include the details of how costs will be recovered from entities that seek to interconnect or utilize the offshore transmission facilities portion of the SAA Project.⁵⁴

30. PJM states that it would not have opened a competitive proposal window to solicit proposals to build offshore transmission facilities but for New Jersey’s SAA request. PJM states that a necessary component to meeting New Jersey’s public policy goals is that ratepayers receive the benefit of what they are paying for, i.e., the ability to deliver power from offshore wind facilities to New Jersey load. PJM argues that the cost sharing provision does not conflict with the Operating Agreement or Tariff but recognizes that New Jersey ratepayers should be able to petition the Commission to seek cost recovery from future users of the offshore transmission system that PJM would not have planned but for New Jersey’s public policy goals.⁵⁵

31. PJM and NJ BPU state that another entity’s decision to use the SAA Project would be entirely voluntary, and they explain that the costs of the SAA Project will not be borne

⁵² *Id.* (citing 16 U.S.C. § 824d(b)).

⁵³ *Id.* at 7 (citing PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT 217.3, OATT 217.3 Local and Network Upgrades (3.0.0) § 217.3(a); PJM Interconnection, L.L.C., Intra-PJM Tariffs, 217.7, OATT 217.7 Regional Transmission Expansion Plan: (0.0.0) § 217.7.1).

⁵⁴ PJM Answer at 2-3; NJ BPU Answer at 5.

⁵⁵ PJM Answer at 5-6.

by another state or load that does not voluntarily elect to use the facilities and accept a share of the cost.⁵⁶ PJM and NJ BPU assert that the cost sharing provision merely contemplates that future users could be asked to pay their share of costs, and they clarify that the share of costs would be determined in a future filing with the Commission. NJ BPU notes that it is committed to pay the full costs of the SAA Project if no other state or entity voluntarily agrees to share in the costs.⁵⁷ NJ BPU states that it understands Ohio FEA's concerns that states could be asked to share SAA Project costs even if they do not choose to, and NJ BPU explains that the SAA Agreement only contemplates that entities that voluntarily use the SAA Project in the future will share the costs.⁵⁸

32. PJM and NJ BPU contend that the PJM TOs' argument that a user in year 20 would be required to bear capital costs back to year 1 is speculative.⁵⁹ PJM and NJ BPU state that, although *pro rata* share means a proportional share, the cost sharing provision does not establish that costs will be calculated to include costs from the SAA Project's first year. PJM and NJ BPU contend that addressing the PJM TOs' argument on this point would require that the Commission pre-judge how costs would be shared in future situations.

33. NJ BPU states that, if an entity seeks to voluntarily use the SAA Project, NJ BPU will work with PJM and stakeholders to develop a proposal to share the costs, and the Commission will consider whether that proposal is just and reasonable. NJ BPU argues that there is no need at this point for the Commission to determine whether such a cost allocation methodology violates the cost-causation principle or is unjust and unreasonable. Further, PJM and NJ BPU explain that they do not propose a fixed methodology for allocating costs in the SAA Agreement due to the current uncertainty surrounding national efforts to fund offshore wind transmission, including how the Department of Energy may make federal funding available to support such projects.⁶⁰

34. PJM and NJ BPU state that the cost sharing provision of the SAA Agreement does not conflict with the Operating Agreement because costs would only be allocated to

⁵⁶ NJ BPU Answer at 5; PJM Answer at 6-7. PJM states that the cost sharing provision is capped at 20 years and applies only to the offshore transmission facilities that would be built for New Jersey's public policies and would not exist but for New Jersey's SAA Request. PJM Answer at 7 n.25.

⁵⁷ NJ BPU Answer at 4.

⁵⁸ *Id.* at 7.

⁵⁹ PJM Answer at 8-9; NJ BPU Answer at 5.

⁶⁰ PJM Answer at 8-9; NJ BPU Answer at 4-5.

future users if the Commission accepts a future cost allocation filing.⁶¹ NJ BPU argues that it should have the full opportunity to support whether a future cost sharing proposal is just and reasonable, and whether any future users can be considered an “interconnection customer.” Furthermore, NJ BPU argues that, even if the Commission determines that there is a “violation” with the Operating Agreement, “the terms and conditions set forth in the PJM Tariff and Operating Agreement shall control” if the SAA Agreement is inconsistent with any specific provision.⁶²

35. Finally, PJM and NJ BPU argue that there is no conflict between the proposed cost sharing provision of the SAA Agreement and PJM TOs’ section 205 filing rights.⁶³ PJM argues that the cost sharing provision is not a rate change but is consistent with PJM’s existing authority to allocate (1) costs of PJM Board-approved RTEP projects under Schedule 12 of the Tariff that would be subject to these charges, which transmission owners would then recover through their transmission revenue requirement, and (2) costs associated with network upgrades to generators seeking to interconnect to its transmission system. PJM argues that the cost sharing provision is neither a transmission owner revenue requirement nor a change to regional rate design as provided under Schedule 12 of the Tariff, and therefore the provision does not intrude on PJM TOs’ section 205 filing rights.

36. PJM TOs state, however, that the cost sharing provision prematurely imposes terms and conditions on a future cost allocation filing. PJM TOs argue that the cost sharing provision introduces the potential to shift costs and does not clearly specify what constitutes an entity or voluntary agreement to use the SAA Project and therefore should be rejected. PJM TOs state that a provision to prevent free ridership may be necessary, but a cost sharing provision should be part of a comprehensive filing to address all components of cost allocation.⁶⁴

37. PJM TOs argue that NJ BPU does not clarify how an entity would be determined to be a voluntary user and that the SAA Agreement should state whether a party will not be assessed costs unless it affirmatively agrees to those costs.⁶⁵ PJM TOs argue that the services paid for are not defined in the cost sharing provision, but PJM TOs assert that PJM tries to clarify that this includes users who voluntarily choose to connect to the SAA

⁶¹ PJM Answer at 11; NJ BPU Answer at 6.

⁶² NJ BPU Answer at 7.

⁶³ PJM Answer at 12-13; NJ BPU Answer at 3-4.

⁶⁴ PJM TOs Answer at 2-3.

⁶⁵ *Id.* at 5.

Project or use SAA Capability. PJM TOs also note that PJM tries to clarify that the *pro rata* share of “total costs of the transmission facilities” that NJ BPU may seek to share with future users could be more than capital costs—i.e., the full revenue requirement.⁶⁶ PJM TOs state that PJM’s admission that the cost sharing provision does not prohibit New Jersey from seeking recovery of costs from the original SAA Project development shows that the SAA Agreement must conform to existing interconnection provisions in the Tariff or revise the Tariff.⁶⁷

V. Commission Determination

A. Procedural Matters

38. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

39. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2021), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept PJM’s, NJ BPU’s, and PJM TOs’ answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

40. We find that the proposed SAA Agreement is just and reasonable and not unduly discriminatory or preferential. The State Agreement Approach in PJM’s Operating Agreement permits states, either individually or jointly, to “agree voluntarily to be responsible for the allocation of all costs of a proposed transmission expansion or enhancement that addresses state Public Policy Requirements identified or accepted by the state(s) in the PJM Region.”⁶⁸ The State Agreement Approach also requires that “[a]ll costs related to a state public policy project or Supplemental Project included in the Regional Transmission Expansion Plan to address state Public Policy Requirements pursuant to this Section shall be recovered from customers in a state(s) in the PJM Region that agrees to be responsible for the projects.”⁶⁹

⁶⁶ *Id.* (citing PJM Answer at 7 n.26).

⁶⁷ *Id.* at 5-6.

⁶⁸ State Agreement Approach, OA Schedule 6 Sec 1.5, § 1.5.9(a).

⁶⁹ *Id.*

41. Sections 5.1 and 5.4 of the SAA Agreement make clear that NJ BPU would be committing New Jersey customers for the cost of any SAA Projects that NJ BPU elects to sponsor.⁷⁰ Nevertheless, section 6.2(g) introduces the concept of a future allocation of costs to potential users other than New Jersey customers. The parties in this proceeding debate the weight and significance of this cost sharing provision, with some parties arguing that the provision establishes a cost allocation method for future users, whereas other parties maintain that the provision identifies that there could be a future agreement to address such hypothetical scenarios.

42. We agree with PJM and NJ BPU that, although section 6.2(g) mentions a *pro rata* allocation to potential future users, approval by the Commission of a subsequent cost allocation filing is necessary to implement such an allocation. Indeed, both PJM's and NJ BPU's answers⁷¹ and the SAA Agreement itself⁷² explain that no costs will be allocated to customers outside of New Jersey unless and until the Commission accepts a future cost allocation filing as just and reasonable.⁷³ Based on PJM's and NJ BPU's representations and the text of the SAA Agreement, we find that the cost sharing provision "merely contemplates that future users of the SAA Project could be asked to pay their fair share of costs...[that] will be defined in a future filing with the Commission"⁷⁴ and provides that the "[NJ BPU] is able to commit to partnering with all other states or entities in the future"⁷⁵ in a future cost allocation filing that will *consider* allocation to "future users" not contemplated by sections 5.1 and 5.4 of the SAA Agreement, with the important limitation set forth in P 43 below. Further, while the cost sharing provision states "PJM *shall allocate*" costs to future users, this provision, in light of the entirety of the agreement, does

⁷⁰ Proposed SAA Agreement § 5.1 ("NJ BPU must notify PJM whether it wishes to sponsor a SAA Project(s) and, if so, which SAA Project(s) it will commit New Jersey customers to be responsible for the allocation of costs associated with a SAA Project(s), § 5.4 ("NJ BPU shall submit...the proposed allocation of such SAA Project costs among New Jersey customers...").

⁷¹ See PJM Answer at 8-9, 11; NJ BPU Answer at 4-5.

⁷² Proposed SAA Agreement, § 6.2 (g) ("The specific process for allocating such costs to future users shall be memorialized in a future filing with the FERC.").

⁷³ To be clear, the SAA Agreement does not establish a cost allocation to New Jersey customers, but rather the proposed allocation of costs for an SAA Project to customers in New Jersey will be the subject of a future filing as described in Section 5.4 of the SAA Agreement.

⁷⁴ PJM Answer at 8.

⁷⁵ NJ BPU Answer at 4.

not provide a right for recovery on behalf of New Jersey customers as any such allocation depends upon the submittal, and Commission acceptance, of an additional filing. We find that the “shall allocate” language indicates only that PJM, as transmission provider, will be the entity administering cost allocation, but does not establish that PJM will file the future cost allocation. Accordingly, while a *pro rata* cost allocation methodology may be just and reasonable and not unduly discriminatory or preferential, it would be premature to make any such determination before a cost allocation method is filed with the Commission.

43. While we therefore can make no determination as to any future cost allocations arrangements here, and, as a result, we similarly do not speculate as to the identity of any “future users,” this Commission need not speculate as to who *cannot be among the future users* in any future cost sharing arrangement: the future users may not include a state other than New Jersey or that state’s customers unless that state, consistent with the State Agreement Approach, voluntarily agrees to make its customers responsible for any costs. Any attempt otherwise is contrary to the basic tenets of the State Agreement Approach and is not accepted by the Commission in this order. We note that PJM and NJ BPU agree with this premise and explain that in any such future cost allocation filing, consistent with the requirements of the Operating Agreement, those “future users” contemplated by the cost sharing provision would not include customers of a state that has not voluntarily agreed to be responsible for such costs.⁷⁶ We base our acceptance of the SAA Agreement on our understanding in this regard.

44. Our finding in the previous paragraphs is sufficient to resolve a number of the remaining protests. First, because the SAA Agreement does not establish a cost allocation methodology, we find that PJM TOs’ and Ohio FEA’s concern regarding how costs from initial years, e.g., year 1, of the SAA Project would be allocated to users in final years, e.g., year 20, is premature. Any cost allocation to “future users” is contingent on the Commission reviewing and accepting a future cost allocation filing.⁷⁷ Unless and until the Commission accepts a future cost allocation filing, the provisions of the PJM Operating Agreement related to cost allocation of State Agreement Approach transmission projects and the provisions of the PJM Tariff defining interconnection customers’ cost responsibility will remain in effect for facilities covered by the SAA Agreement.

45. Second, in the absence of a filed cost allocation method, we find premature the PJM TOs’ argument that the cost sharing provision necessarily reflects a transmission rate design that is covered by their exclusive FPA section 205 filing rights authority. Moreover, the SAA Agreement makes clear that NJ BPU will submit its proposed

⁷⁶ See PJM Answer at 6-7; NJ BPU Answer at 4, 7.

⁷⁷ PJM TOs Protest at 7; Ohio FEA Protest at 5.

allocation to New Jersey customers of SAA Project costs to the TOA-AC for the PJM TOs' consideration and filing with the Commission pursuant to FPA section 205, while reserving NJ BPU's right to oppose such a proposal or file a complaint pursuant to FPA section 206.⁷⁸ The cost allocation methodology will be the subject of a future filing. Nothing in this filing impairs the PJM TOs' FPA section 205 filing rights. Nothing herein shall be construed as pre-approving any future filing that is inconsistent with the State Agreement Approach.

46. Finally, we find that excluding NJ BPU-designated generators from the set of "future users" considered in the cost sharing provision is not unduly discriminatory or preferential. As noted, the SAA Project implements New Jersey's public policy, would not have been planned but for NJ BPU's decision to pursue the State Agreement Approach, and will be paid for by New Jersey customers.⁷⁹ NJ BPU's designation of certain generators to receive the immediate benefit of the state's investment in the SAA Project is sufficient to distinguish them from other generators for purposes of the SAA Agreement.⁸⁰ Other generators are not similarly situated to those designated by New Jersey because only the latter address New Jersey's Public Policy Requirements under the State Agreement Approach. As result, it is not unduly discriminatory or preferential for New Jersey, via NJ BPU, to exclude generators from the set of "future users" considered in the cost sharing provision.

The Commission orders:

⁷⁸ Proposed SAA Agreement § 5.4.

⁷⁹ As discussed earlier, the State Agreement Approach contemplates state public policy requirements such as New Jersey's requirement for NJ BPU-designated generators and permits a state to voluntarily be responsible for the costs of transmission expansions or enhancements to address such requirements.

⁸⁰ The essence of open access transmission service is to provide the holder of transmission capacity the ability to choose among suppliers. *See, e.g., Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities*, Order No. 888-A, Stats. & Regs. ¶ 31,048, at 30,353-54 (1997) (cross-referenced at 75 FERC ¶ 61,080) ("As a result of Order No. 888, wholesale requirements customers that previously were captive customers of their public utility suppliers (i.e., they had no choice but to take bundled sales and transmission services from their suppliers) will be able at the expiration of their contracts to take unbundled transmission service (i.e., transmission-only service) from their former suppliers in order to reach new suppliers.")

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The SAA Agreement is hereby accepted, effective April 15, 2022, as discussed in the body of this order.

By the Commission. Commissioner Danly is dissenting with a separate statement attached.
Commissioner Christie is concurring with a separate statement attached.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

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Appendix A

Notices of Interventions

Pennsylvania Public Utility Commission
North Carolina Utilities Commission
NJ BPU (also filed comments)

Timely Motions to Intervene

Delaware Division of the Public Advocate
Rockland Electric Company
American Electric Power Service Corporation
Exelon Corporation
PJM Power Providers Group
LSP Transmission Holdings II, LLC
Old Dominion Electric Cooperative
NextEra Energy Transmission MidAtlantic Indiana, Inc.
Jersey Central Power & Light Company
FirstEnergy Service Company, as agent for its regulated affiliates Ohio Edison Company,
The Cleveland Electric Illuminating Company, The Toledo Edison Company,
Pennsylvania Power Company, Pennsylvania Electric Company, Metropolitan
Edison Company, West Penn Power Company, Monongahela Power Company
and The Potomac Edison Company
Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New
York, Inc., New York Power Authority, New York State Electric & Gas
Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange
and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation
(together, Indicated NYTOs)
NGV US, LLC
Neptune Regional Transmission System, LLC
Hudson Transmission Partners, LLC
PSEG Renewable Transmission LLC and Public Service Electric and Gas Company
American Municipal Power, Inc.
Long Island Lighting Company d/b/a Power Supply Long Island
Dominion Energy Services, Inc.
Duquesne Light Company
Atlantic Shores Offshore Wind, LLC
Equinor Wind US LLC
RWE Renewables Americas, LLC
Vistra Corp.
Dynegy Marketing and Trade, LLC
North Carolina Electric Membership Corporation.

Timely Motions to Intervene and Comments or Protests

Mid-Atlantic Offshore Development, LLC (MAOD)

Atlantic Power Transmission, LLC (Atlantic Power)

N.J. Division of Rate Counsel (NJ Rate Counsel)

Natural Resources Defense Council, Sustainable FERC Project, Advanced Energy Economy, American Clean Power Association, and Union of Concerned Scientists (together, Clean Energy Advocates).

Ohio Federal Energy Advocate (Ohio FEA)

American Electric Power Service Corporation⁸¹; The Dayton Power and Light Company; Duke Energy Corporation on behalf of its affiliates Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., and Duke Energy Business Services LLC; PPL Electric Utilities Corporation; and Virginia Electric and Power Company d/b/a Dominion Energy Virginia (together, PJM TOs).

⁸¹ Filing on behalf of its affiliates: Appalachian Power Company; Indiana Michigan Power Company; Kentucky Power Company; Kingsport Power Company; Ohio Power Company; Wheeling Power Company; AEP Appalachian Transmission Company, Inc.; AEP Indiana Michigan Transmission Company, Inc.; AEP Kentucky Transmission Company, Inc.; AEP Ohio Transmission Company, Inc.; and AEP West Virginia Transmission Company, Inc.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket No. ER22-902-000

(Issued April 14, 2022)

DANLY, Commissioner, *dissenting*:

1. I dissent from this order¹ because the new rate, the so-called “State Agreement Approach Agreement,”² includes an unnecessary and premature “cost sharing provision”³ that bakes in a cost allocation that would entitle PJM to later require unwilling states’ ratepayers to pay for New Jersey’s new transmission project. The State Agreement Approach Agreement’s “cost sharing provision” also usurps transmission owners’ reserved rights to propose rates in PJM.

2. The “cost sharing provision” states that “PJM *shall allocate to any future user of a [State Agreement Approach] Project . . . a pro rata share of the total costs.*”⁴ This language is unambiguous. The State Agreement Approach Agreement binds ratepayers and any other “future user”—as determined by PJM—to pay for New Jersey “or more states” that request “transmission facilities that would assist [New Jersey or more states] in implementing their public policy goals.”⁵

3. The majority “find[s] that the cost sharing provision ‘merely contemplates that future users . . . could be asked to pay their fair share of costs’” to be defined later and thus we need not worry about Paragraph 6.2(g)’s actual language or the protests focused on it.⁶ We are further promised that New Jersey commits to “partnering with all other

¹ *PJM Interconnection, L.L.C.*, 179 FERC ¶ 61,024 (2022).

² PJM, Rate Schedules, Rate Schedule FERC No. 49, State Agreement Approach Agreement between PJM and NJ BPU (0.0.0); State Agreement Approach Agreement, Appendix A, State Agreement Approach Agreement, Appendix A - NJ BPU OSW Solicitation Schedule (0.0.0); State Agreement Approach Agreement, Appendix B, State Agreement Approach Agreement, Appendix B - Reliability Analysis (0.0.0) (“State Agreement Approach Agreement”).

³ See *PJM Interconnection, L.L.C.*, 179 FERC ¶ 61,024 at P 42.

⁴ State Agreement Approach Agreement, Paragraph 6.2(g) (emphasis added).

⁵ Transmittal at 2.

⁶ *PJM Interconnection, L.L.C.*, 179 FERC ¶ 61,024 at P 42 (quoting PJM March 4,

states or entities in the future' in a future cost allocation filing.”⁷ Indeed, the majority exhausts two paragraphs finding that the seven words “PJM shall allocate to any future user” do not mean what they say.

4. Mere contemplation of partnering aside, the cost sharing provision settles the single most important cost allocation detail: whether anyone besides the ratepayers in New Jersey can have the costs of a state “public policy” project foisted upon them. The answer to that question is “yes,” the costs of a state’s pet project can be passed on to other states’ ratepayers. Thus, notwithstanding lukewarm reassurances that “under the [State Agreement Approach] process, the costs of transmission facilities that a state voluntarily sponsors are recovered only from the customers in the sponsoring state(s),”⁸ the *actual language* of the State Agreement Approach Agreement provides otherwise: that PJM “shall allocate” to “[f]uture users,” including ratepayers potentially outside of New Jersey, “a *pro rata* share of the total costs” of the New Jersey projects.

5. The claims of PJM and New Jersey that no costs will be passed on to ratepayers in states that do not voluntarily agree to participate in a share of the costs are not supported by the plain language of the State Agreement Approach Agreement, which is the actual rate on file. Promises and good intentions in pleadings are no substitute for, nor do they inform the rights or obligations created by, filed rates. The language in the State Agreement Approach Agreement says nothing about the voluntary participation of other states and appears to conflict with other previously approved tariff provisions.⁹

6. This order cannot be written off as a mere punt of an issue to a future filing because the now-approved tariff language *decides* a critical question. Many in the industry have been concerned that certain states might seek to shift or socialize the costs of the transmission projects that will be required to achieve their bold (some might say “brash”) renewable portfolio goals to the ratepayers in other states. Now, the filed rate allows that very result. The State Agreement Approach Agreement states that PJM “shall allocate” these costs to “future users,” as detailed in future filings. The majority codifies an answer to this critical question even as it argues that protests are premature because, although the issue is now decided, the details are yet to come.

7. To add insult to injury, the tariff revisions approved today contradict other provisions of the tariff. The establishing agreements that created PJM reserved rate filing

2022 Answer at 8).

⁷ *Id.* (quoting New Jersey Board of Public Utilities March 4, 2022 Answer at 4).

⁸ Transmittal at 6.

⁹ *See* Indicated PJM Transmission Owners February 17, 2022 Protest at 7-8.

rights to incumbent transmission owners.¹⁰ The majority sets this issue aside because—again—the commitment that “PJM shall allocate . . . costs” is deemed insufficient to constitute a proposed rate.¹¹ To “allocate . . . costs” is the core stuff of ratemaking, and while the language may be imprecise, it is also expansive. PJM will decide how to “allocate . . . costs,” not the Transmission Owners. The majority again tries to explain its way out of the plain language of the State Agreement Approach Agreement by “find[ing] that the ‘shall allocate’ language indicates only that PJM, as transmission provider, will be the entity administering cost allocation, but does not establish that PJM will file the future cost allocation.”¹² Unfortunately, the State Agreement Approach Agreement does not actually say any of that.

8. I see no reason for the State Agreement Approach Agreement to include the cost sharing provision in Paragraph 6.2(g). I agree with the Federal Energy Advocate of the Public Utilities Commission of Ohio statement that “the proposed language . . . is unreasonably broad” and that “any ‘future user’ of [a State Agreement Approach] Project, and the associated allocation of costs thereof, must only occur on a strictly voluntary basis . . . and that no costs shall be allocated to . . . the ratepayers of a jurisdiction that did not explicitly choose to join the proposed [State Agreement Approach]” Project.¹³ That is not what the State Agreement Approach Agreement provides. I am at a loss for why the majority approves a provision that plainly contradicts the meanings the majority ascribes to it.

For these reasons, I respectfully dissent.

James P. Danly
Commissioner

¹⁰ *See id.* at 1, 4-5.

¹¹ *See PJM Interconnection, L.L.C.*, 179 FERC ¶ 61,024 at P 45.

¹² *Id.* P 42.

¹³ Ohio Federal Energy Advocate February 17, 2022 Protest at 5.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket No. ER22-902-000

(Issued April 14, 2022)

CHRISTIE, Commissioner, *concurring*:

1. I write separately to emphasize an important part of today's Order. The Order properly does not attempt to answer – potentially many years in advance – speculative questions about the details of any cost-sharing or cost-allocation proposals that may come to this Commission. The only proposal on the table now is New Jersey's State Agreement Approach (SAA)¹ Agreement, which does not allocate any costs to customers, wholesale or retail, in states other than New Jersey.

2. This Order explicitly recognizes that:

[A]lthough section 6.2(g) mentions a pro rata allocation to potential future users, approval by the Commission of a subsequent cost allocation filing is necessary to implement such an allocation. Indeed, both PJM's and NJ BPU's answers and the SAA Agreement itself explain that *no costs will be allocated to customers outside of New Jersey unless and until the Commission accepts a future cost allocation filing as just and reasonable.*²

3. Moreover – and importantly – the very next paragraph of today's Order makes clear that while the Order does not attempt to answer any questions about whether any

¹ As noted in the Order, the State Agreement Approach is a mechanism by which states pay for their own public policy-driven transmission projects. *See, e.g., PJM Interconnection, L.L.C.*, 179 FERC ¶ 61,024, at P 2 (2022). The SAA was proposed by PJM with its Order No. 1000 compliance filing and its use was approved by this Commission. *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at PP 142-143 (2013), *order on reh'g and compliance*, 147 FERC ¶ 61,128, at P 92 (2014); *order on reh'g and compliance*, 150 FERC ¶ 61,038, *order on reh'g and compliance*, 151 FERC ¶ 61,250 (2015); PJM, Intra-PJM Tariffs, Operating Agreement, sched. 6, section 1.5.9(a) (State Agreement Approach).

² *PJM Interconnection, L.L.C.*, 179 FERC ¶ 61,024 at P 42 (emphasis added) (citations omitted).

future cost allocations are just and reasonable, it does answer that such proposed allocation *must* be consistent with the State Agreement Approach:

While we therefore can make no determination as to any future cost allocations arrangements here, and, as a result, we similarly do not speculate as to the identity of any “future users,” this Commission need not speculate as to who *cannot be among the future users* in any future cost sharing arrangement: the future users may not include a state other than New Jersey or that state’s customers unless that state, consistent with the State Agreement Approach, voluntarily agrees to make its customers responsible for any costs. Any attempt otherwise is contrary to the basic tenets of the State Agreement Approach and is not accepted by the Commission in this order. We note that PJM and NJ BPU agree with this premise and explain that in any such future cost allocation filing, consistent with the requirements of the Operating Agreement, those “future users” contemplated by the cost sharing provision would not include customers of a state that has not voluntarily agreed to be responsible for such costs. We base our acceptance of the SAA Agreement on our understanding in this regard.³

4. I agree with this representation by PJM and NJ BPU and the Commission’s finding in this Order is based on that representation. Any other representation by PJM and NJ PBU would be inconsistent with the State Agreement Approach. It is based on this representation and this Order’s finding in this regard, that I therefore concur with the Order.

For these reasons, I respectfully concur.

Mark C. Christie
Commissioner

³ *Id.* P 43 (emphasis in original) (citations omitted).

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