

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Transmission Planning and Cost Allocation :
By Transmission Owning and Operating : Docket No. ER13-198-000
Public Utilities :

**COMMENTS
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

December 10, 2012

TABLE OF CONTENTS

Page

INTRODUCTION AND BACKGROUND	1
DISCUSSION.....	3
A. The Seventh Circuit Remand	3
B. State Agreement Approach and Public Policy Projects	6
C. DFAX Beneficiary-Pays vs. Postage-stamp Cost Socialization	9
D. Order No. 1000 Compliance	11
CONCLUSION	16
CERTIFICATE OF SERVICE.....	17

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INTRODUCTION AND BACKGROUND

On October 25, 2012, PJM Interconnection, L.L.C. (PJM), pursuant to section 206 of the Federal Power Act (FPA) submitted, in compliance with the Federal Energy regulatory Commission's (FERC) *Order No. 1000*,¹ revisions to definitional section and Schedule 6 of its Amended and restated Operating Agreement and Part I of its Open Access Transmission Tariff (application). Among other things, PJM's application remarks that it complies with the expanded requirements under Order 890,² procedures that provide for consideration Order No. 1000's Public Policy requirements, and

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 139 FERC ¶ 61051, Docket No. RM10-23-000; Order No. 1000, Issued July 21, 2011.

² *Preventing Undue Discrimination and Preference in Transmission Service*, 118 FERC ¶ 61,119, Docket Nos. RM05-17-000 and RM05-25-000; Order No. 890, Issued February 16, 2007.

incorporates the revisions to PJM tariff schedule 12 as proposed by the PJM transmission owners consistent with section 205 of the FPA (Docket No, ER13-90-000).

PJM's compliance filing maintains that its Regional Transmission Expansion Plan (RTEP) process currently largely complies with the requirements of *Order No. 1000*. The company's application, however, does propose, among other things, a procedure whereby transmission owners can recover costs associated with public policy projects pursuant to a "state agreement approach" cost allocation methodology. Specifically, PJM's application reflects that no costs will be recovered from customers in a state who did not agree to be responsible for such cost recovery.

PJM notes that its application complements its transmission owners' (TO) proposal for cost recovery in Docket No. ER 13-90. PJM's filing also endorses the TO *Order No. 1000* compliance filing. The PJM TO proposal makes modifications to Schedule 12 of the PJM tariff involving the allocation of costs for transmission system expansion and enhancements included in the RTEP. The PJM TO maintain that the proposed tariff amendments ensure that RTEP costs are allocated in a manner that is just, reasonable, and not unduly discriminatory or preferential, as section 205 requires, and also complies with the requirements of *Order No. 1000* regarding regional cost allocation. Generally, the PJM TO application reflects that costs be shared for high capacity³ transmission expansion projects on a 50/50 percent sharing basis between the

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Extra high capacity transmission lines are defined as double circuit 345 kV and above.

postage-stamp⁴ cost socialization approach to cost recovery and the solutions-based distribution factor analysis⁵ (DFAX), which identifies actual beneficiaries of a high-capacity transmission upgrade.

Comments in this proceeding are due on or before December 10, 2012. The Public Utilities Commission of Ohio (PUCO or Ohio Commission) hereby submits its comments responding to the PJM's proposed *Order No. 1000* compliance filing.

DISCUSSION

A. The Seventh Circuit Remand

On August 9, 2009, the United States Court of Appeals for the Seventh Circuit remanded to FERC the appropriate cost allocation method to be used by PJM for new transmission facilities operating at or above 500kV.⁶ The Seventh Circuit held that “FERC is not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities from which its members derive no benefits or benefits that are trivial in relation to the costs sought to be shifted to its members.”⁷ Further, the Seventh Circuit

⁴ The Postage-stamp methodology allocates costs equally throughout a region without identifying actual beneficiaries.

⁵ As opposed to the current static violations-based DFAX model, which is a one-time solution, the new automated, dynamic, solutions-based DFAX model can easily be updated on a periodic basis to identify relative benefits by users of new transmission facilities in each zone while accounting for modifications of the grid including, new facilities, availability of generation, and the growth and distribution of load.

⁶ *Illinois Commerce Comm'n v. FERC*, 576 F.3d 470 (7th Cir. 2009).

⁷ *Id.*

found that “the Commission had not adequately supported its conclusion that the postage-stamp methodology was just and reasonable.”⁸

In the Order on Remand, issued on March 30, 2012, FERC found that it was just and reasonable for PJM to use the postage-stamp methodology for new transmission facilities operating at or above 500kV. Rather than providing specific examples to support its conclusion, FERC simply maintained that the Seventh Circuit does not require the Commission “to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars.”⁹ It stated that “the planned 500kV and above facilities will provide sufficient benefits to the entire PJM region to justify a regional allocation of those costs.”¹⁰

The Ohio Commission submitted a request for rehearing after FERC issued the Order on Remand in RM10-23 because FERC failed to show that the postage-stamp methodology meets the Seventh Circuit’s requirement that high capacity levels must be roughly commensurate with the benefits received.¹¹ The Ohio Commission stated that “by its very nature, a postage-stamp methodology blurs the distinction between costs and benefits in order to socialize costs across a region.”¹² Further, the Ohio Commission found that “the postage-stamp methodology cannot be approved by FERC because it

⁸ *Id.*

⁹ FERC Order on Remand at 60 (March 30, 2012).

¹⁰ *Id.* at 27.

¹¹ Request for Rehearing Submitted on Behalf of the Public Utilities Commission of Ohio at 5 (April 30, 2012).

¹² *Id.* at 6.

assumes, on a generic basis, that such a methodology assigns benefits accurately.”¹³

FERC granted the rehearing for reconsideration on May 29, 2012.

No merit decision has been issued. As a result, this problem has been unresolved for more than three years. In the meantime, FERC has issued more than 1,275 pages of decisions regarding other cost allocation policy matters.¹⁴ It is improper for FERC to move forward with these other decisions without issuing a rehearing for EL-05-121, because all of these problems are related. Because FERC has not moved forward with the rehearing, it has not been determined whether the postage-stamp cost allocation method is proper.

Specifically, PJM’s compliance filing supports the TO proposal to use a hybrid methodology for allocating the costs of regional facilities.¹⁵ This hybrid approach would partially rely on the postage-stamp methodology. The PJM TO *Order No. 1000* compliance filing explains that the hybrid methodology and the solution-based DFAX comply with the definition of benefits that is presented in the Order on Remand.¹⁶ The argument assumes the outcome of the remand. It cannot be known whether the PJM’s compliance filing and TO application in ER13-90 complies with the Order on Remand

¹³ *Id.* at 5.

¹⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Docket No. RM10-23-000, Order No. 1000, issued July 21, 2011, 136 FERC ¶ 61,051; RM10-23-001, Order No. 1000-A, issued May 17, 2012, 139 FERC ¶ 61,132; and Docket No. RM10-23-002; Order No. 1000-B, issued October 18, 2012, 141 FERC ¶ 61,044.

¹⁵ PJM Transmission Owners’ Order 1000 Compliance Filing at 8, Docket No. ER13-90 (October 11, 2012).

¹⁶ *Id.*

until there *is* an order on remand. Consequently, FERC cannot move forward to approve either PJM's or the TO compliance filings with tariff revisions of this magnitude without issuing its rehearing decision.

B. State Agreement Approach and Public Policy Projects

PJM proposes to revise Schedule 6 of its tariff to add a process to allow for the development of a state public policy project(s) through a State Agreement Approach. The State Agreement Approach would supplement PJM's existing transmission planning process to allow for state-identified projects to be included in RTEP even though such projects may not be economical or needed for system reliability.

Specifically PJM's Transmittal Letter attached to its compliance filing indicates the following:

State public policy projects are not much different from a Supplemental Project except that if a state or group of states wishes to include a project in the RTEP for cost allocation purposes under the State Agreement Approach as a state public policy project it may do so pursuant to a FERC-accepted cost allocation proposed by agreement of one or more states and voluntarily agreed to by those states. *The costs of a state public policy project will be recovered from customers in the sponsoring state(s) only. No costs will be recovered from customers in a state that did not agree to be responsible for such cost allocation.*¹⁷

PJM's application appropriately reflects that transmission expansion costs for state public policy projects should only be allocated to the state(s) sponsoring the projects,

¹⁷

PJM Compliance Filing Transmittal Letter, Docket No. ER13-198-000, at 47-48 (October 25, 2012) (emphasis added).

which is consistent with, and largely tracks, the Organization of PJM States, Inc.'s (OPSI) June 12, 2012, position letter to PJM which, in part, reads as follows:

A Public Policy Project may be comprised of transmission lines, transmission equipment, or other transmission facilities. Participation by a state in a Public Policy Project shall include an allocation of the total cost of the project. Each sponsoring state shall be responsible for its share of the total costs of the Public Policy Project. For these state-sponsored projects, all costs related to the Public Policy Project shall be recovered from customers in the sponsoring state(s) under a FERC-approved rate. No Public Policy Project costs may be allocated for recovery from the residents of non-sponsoring states.

The letter not only demonstrates the significant efforts that have been made by the OPSI members in realizing consensus regarding the implementation of the state agreement approach, it also shows that a majority of OPSI's members are resistant to cost socialization of transmission expansion necessitated by public policy projects.¹⁸ In addition, on November 12, 2012, the OPSI Board passed a resolution¹⁹ directing OPSI to file comments in this proceeding supporting PJM's State Agreement Approach. The Ohio Commission joins OPSI's filing and concurs with its comments regarding PJM's proposed language and urges FERC to approve PJM's State Agreement Approach.

¹⁸ The language to PJM was supported by Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, Virginia, and West Virginia. The motion was opposed by Delaware with the District of Columbia, Maryland, and Pennsylvania abstaining from the vote.

¹⁹ The OPSI November 21, 2012 Resolution was supported by the District of Columbia Public Service Commission, Indiana Utility Regulatory Commission, Kentucky Public Service Commission, Michigan Public Service Commission, New Jersey Board of Public Utilities, North Carolina Utilities Commission, Public Utilities Commission of Ohio, Pennsylvania Public Utility Commission, Virginia State Corporation Commission and the Public Service Commission of West Virginia.

Likewise, costs associated with federal public policy mandates must be assigned based on specific, tangible, and quantifiable assessments of actual benefits and correspondingly assigned to those who gain actual benefits from the project. Overly broad or vague societal benefits are not specific, tangible, or readily quantifiable. In addition, any cost allocation resulting from a federal public policy mandate or product must be further filtered by determining whether an individual state in that zone has a need for the federal public policy product. If no need is demonstrated for that federally mandated product, then no cost allocation should be assigned to that state. For example, if the federally mandated product is renewable energy and a particular state has no renewable portfolio standards (RPS), or is meeting its RPS requirements on an intrastate basis, no cost allocation should be made to that state because no demonstration of need has been made.

PJM's application is reticent with regard to the instance where a particular state's public policy requirements necessitate an interstate upgrade to the transmission system but the state refuses to voluntarily acknowledge or assume its share of the costs of the upgrade. To ensure that other state(s) are not burdened by costs not attributed to it, PJM's application should be amended to include a provision that PJM is responsible for affirming and quantifying tangible benefits associated with a proposed public policy project based on a state or federal requirements via the application of the solutions-based DFAX.

C. DFAX Beneficiary-Pays vs. Postage-stamp Cost Socialization

As noted earlier, the Ohio Commission observes that PJM's compliance filing endorses the PJM Tproposal for RTEP expansion cost recovery, which includes a 50 percent cost postage-stamp cost socialization component. The Ohio Commission opposes use of the postage-stamp costing methodology as it is inconsistent with the Seventh Circuit's Remand and patently unfair to the ratepayers of the State of Ohio. To this end, the Ohio Commission maintains that all high capacity RTEP transmission expansion projects subject to the beneficiary-pays approach to cost recovery via use of a solutions-based DFAX methodology. Any cost allocation based upon the postage-stamp methodology is tantamount to cost socialization and should be rejected as inequitable to those customers who do not directly or meaningfully benefit from a transmission expansion project in PJM.

In addition, it must also be noted that high capacity economic upgrades effectuate the reduction of energy prices for certain customers in specific regions by eliminating (or reducing) congestion and thereby increasing some customers' availability to lower cost generation. The postage-stamp methodology does not take into consideration the higher locational marginal prices (LMP) and capacity prices that the customers located in western PJM will eventually pay once these facilities are constructed. The application of socialized costs for these projects requires one group of customers to fund or subsidize a significant portion of the transmission constructed for those customers who are to benefit from lower rates. That is, customers not subject to the higher rates caused by the

constraint will be asked to pay twice: first for the constructed facilities associated with the constraint relief and second, through higher capacity prices and LMPs once the facilities are built.

The DFAX-based, beneficiary-pays costing methodology is a more equitable method for assigning costs roughly commensurate to benefits. Unlike the postage-stamp methodology, the DFAX methodology measures who benefits from any major modification to the transmission system. To do otherwise is inconsistent with the Court's Remand and the Federal Power Act's (FPA) requirement for just and reasonable rates. With regard to projects that would ensure that region-wide reliability standards are met, the Ohio Commission understands that costs might need to be spread to those who benefit from such enhanced reliability. In other words, the Ohio Commission would agree that the beneficiary-pays approach does not preclude the spreading of costs on a region-wide basis if it can be demonstrated that, via the use of the solution-based DFAX model, all customers in the region benefit from the solution to the same relative degree.

Moreover, the Ohio Commission strongly supports the going-forward use of the newly-developed, solutions-based DFAX model contained within the PJM TO application. This is consistent with the Ohio Commission's recommendation to employ a dynamic DFAX methodology to identify beneficiaries of transmission upgrades.²⁰ Further, because the solutions-based DFAX model is based on the new facility's flow analysis, it can be updated annually to capture changes in the distribution of benefits in a

²⁰ *In re PJM Interconnection, L.L.C.*, FERC Docket No. EL05-121-006 (Request for Rehearing of the Public Utilities Commission of Ohio at 8-10) (April 30, 2012).

manner that avoids abrupt shifts in cost responsibility. The solutions-based DFAX model addresses the concerns made by FERC in its Seventh Circuit Remand Order, specifically FERC's statement that performing a recurring DFAX analysis over time would be difficult and administratively burdensome for PJM.²¹ The Ohio Commission questions the need for any of the socialization policies when the solution-based DFAX model can accurately and efficiently identify the actual beneficiaries of any transmission upgrade. That is, the dynamic solutions-based DFAX model renders moot FERC's belief that cost socialization is necessary because it is too difficult to identify all beneficiaries and that customers' use of the transmission system changes over time.²² Thus, the Ohio Commission recommends that the solutions-based DFAX model be employed to identify beneficiaries of all transmission upgrades; not just those facilities or portion of facilities identified within the PJM TOs' application.

D. Order No. 1000 Compliance

Consistent with the Ohio Commission's Order on Remand Petition for Rehearing to FERC, cost socialization, via the application of the postage-stamp costing methodology, is in direct conflict with several of *Order No. 1000's* cost recovery principles.

²¹ FERC Order on Remand at 45 (March 30, 2012).

²² FERC Order on Remand at 38-44 (March 30, 2012).

On July 21, 2011, FERC issued its *Order No. 1000*, regarding transmission planning and cost allocation principles.²³ In that decision, FERC required all transmission providers, including PJM, to have in place a methodology for allocating the costs of new facilities in a regional transmission plan. *Order No. 1000* also provided six transmission cost allocation principals for transmission providers to use as a strict guide when establishing a cost allocation methodology.

The use of the postage-stamp methodology is inconsistent with *Order No. 1000* and its transmission cost allocation principles. Postage-stamp cost socialization changes the reasonable interpretation and the application of FERC *Order No. 1000*, which the various parties to the RM10-23 proceeding were led to understand that, for new high voltage transmission expansion, FERC was moving away from cost socialization in favor of a beneficiary-pays cost assignment structure. Instead, FERC perversely determined that the postage-stamp methodology, which fails to quantify sub-regional benefits or show how they are in proportion to load, is now tantamount to a beneficiary-pays costing approach. The postage-stamp costing methodology equals cost socialization, which is directly in contrast to, and in conflict with, a beneficiary-pays approach to assigning costs. Consequently, any and all requests for authority to implement a postage-stamp costing scheme must be rejected by FERC to be consistent with FERC *Order No. 1000's* costing principles. Specifically, the Ohio Commission maintains that the PJM's and the

²³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Pub. Utils.*, Order No. 1000, Docket No. RM10-23-000 (136 FERC ¶ 61,051) (July 21, 2011).

TO applications, to the extent they advocate cost socialization, are in conflict with four of *Order No. 1000*'s six costing principles as will be discussed in the following paragraphs.

Order No. 1000's Regional Cost Allocation Principle 1 reads as follows: The cost of transmission facilities must be allocated to those within the transmission planning region who benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits. In determining the beneficiaries of transmission facilities, a regional transmission planning process may consider benefits including, but not limited to, the extent to which transmission facilities, individually or in the aggregate, provide for maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting Public Policy Requirements.

Among other things, the original intent of Cost Allocation Principle 1 was to ensure that mandated public policy requirement that drives interstate transmission needs or expansions results in that state paying its fair share of the associated costs and to ensure that there are no "free riders" on the transmission system. The implementation of a postage-stamp cost recovery mechanism to meet Federal public policy initiatives renders moot this principle, which directly conflicts with any endeavor to more closely align costs with tangible benefits. Cost subsidization is not only inconsistent with FERC's purported attempt to assign costs attributed to policy mandates consistent with Principle 1, but is also contrary to the FPA's mandate to ensure just and reasonable rates and the Seventh Circuit's Remand, which directs FERC to more closely align costs with cost causation.

Likewise, the cost socialization aspects to the PJM TO application will render moot Cost Allocation Principle 2, which states, “[t]hose that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those transmission facilities.” The TO proposed 50 percent socialization approach to cost recovery, which PJM’s application endorses, ensures that those customers who will only experience trivial benefits will be unduly burdened with transmission expense because many customers will incur significant costs as compared to nominal or no tangible benefits realized. The impact associated with any degree of implementation of a postage-stamp cost socialization policy on the State of Ohio customers is significant to Ohio’s ratepayers. As noted in the Ohio Commission’s May 28, 2010 comments to FERC in the Seventh Circuit Remand Proceeding, when using the DFAX costing methodology, at the time of our previous comments, the impact to the Dayton Power and Light Company (DP&L) was approximately \$0.92 million. Under a 100 percent postage-stamp methodology, DP&L is rendered charges equal to approximately \$162.62 million. A 50 percent cost socialization methodology does not demonstrate a corresponding proportionate benefit to DP&L’s customers equal to the magnitude of difference between the DFAX and the postage-stamp costing methodologies.

Cost Allocation Principle 3 for regional cost allocation reads as follows:

If a benefit to cost threshold is used to determine which transmission facilities have sufficient net benefits to be selected in a regional transmission plan for the purpose of cost allocation, it must not be so high that transmission facilities with significant positive net benefits are excluded from

cost allocation. A public utility transmission provider in a transmission planning region may choose to use such a threshold to account for uncertainty in the calculation of benefits and costs. If adopted, such a threshold may not include a ratio of benefits to costs that exceeds 1.25 unless the transmission planning region or public utility transmission provider justifies and the Commission approves a higher ratio.

In addition, *Order No. 1000* states, “[t]hat allowing for a transparent benefit to cost ratio may help certain transmission planning regions to determine which transmission facilities have sufficient net benefits to be selected in the regional transmission plan for purposes of cost allocation.”

A 50 percent cost socialization methodology renders the application of Principle 3 useless for the justification of transmission expansion for double 345 kV and above facilities, because the application does not arrive at a specific formula to estimate benefits for double 345kV and above transmission expansion projects. Facilities of this immense scope and considerable cost are exactly those projects to which this standard and analysis should apply through the application of a solutions-based DFAX. Without the application of any concrete test, it is impossible to determine whether a project’s benefits will exceed its costs and whether the project should be built at all. Under a postage-stamp cost socialization scheme, the application of Principle 3 is meaningless until the PJM and its TO make an effort to arrive at a methodology quantifying more specific benefits by RTO sub-regions (or states) consistent with the Seventh Circuit’s Remand Decision. That is, the application of Principle 3 cannot be made because cost socialization over generalizes the quantification and definition of benefits and, as a result, no measureable numeric value for these purported benefits can be applied in the analysis.

Finally, the implementation of a cost socialization construct, is contrary to FERC *Order No. 1000's* Principle 5, which requires that “[t]he cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow for a stakeholder to determine how they were applied to a proposed transmission facility.” The 50 percent postage-stamp cost recovery mechanism, advocated by PJM and its TO, provides no level of transparency. To realize the transparency criterion, PJM must be required to arrive at a mechanism demonstrating how customers in each state will benefit from a new high voltage transmission expansion project as contrasted to that project’s cost.

CONCLUSION

The Ohio Commission thanks FERC for the opportunity to provide comments on PJM’s proposed Order 1000 compliance filing.

Respectfully submitted,

/s/ Thomas W. McNamee

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**On behalf of
The Public Utilities Commission of Ohio**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing have been served in accordance with 18 C.F.R. Sec. 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Thomas W. McNamee

Thomas W. McNamee

Dated at Columbus, Ohio this December 10, 2012.

Submission ID 390399

Submission Description Comments submitted on behalf of the Public Utilities Commission of Ohio under ER13-198-000.

Submission Date 12/10/2012 3:01:46 PM

Filed Date 12/10/2012 3:01:46 PM

Current Status Pending

Dockets	Docket	Description
	ER13-198-000	PJM Interconnection, L.L.C. submits tariff filing per 35: PJM submits OATT Order No. 1000 Compliance Filing (RM10-23) submitted on 10/25/2012 4:54:22 PM, Filing Type code: 80

Files	Security Level	Filename
	Public	Comments 121012.pdf

Filing Party/Contacts	Filing Party	Signer (Representative)	Other Contacts (Principal)
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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/10/2012 3:26:53 PM

in

Case No(s). 93-7000-EL-FAD

Summary: Comments submitted on December 10, 2012 by Assistant Attorney General Thomas McNamee on behalf of the Public Utilities Commission of Ohio to the Federal Energy Regulatory Commission to be filed in FERC Docket No. ER13-198-000, In re Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities. electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio