**UNITED STATES OF AMERICA**

**BEFORE THE**

**FEDERAL ENERGY REGULATORY COMMISSION**

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| PJM Interconnection, LLC  Indicated PJM Transmission Owners  PJM Interconnection, LLC  Public Service Electric and Gas Company | :  :  :  : | Docket No. ER13-198-000  ER13-195-000  ER13-90-000 |

**REQUEST FOR REHEARING**

**SUBMITTED ON BEHALF OF**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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# INTRODUCTION AND BACKGROUND

On October 25, 2012, PJM Interconnection, L.L.C. (PJM) submitted to the Federal Energy Regulatory Commission (FERC), in Docket No. ER13-198-000, revisions to Schedule 6 of its Operating Agreement (OA) (Schedule 6), as well as conforming revi­sions to its OA and Open Access Transmission Tariff (OATT) to comply with the local and regional transmission planning requirements of Order No. 1000.[[1]](#footnote-1) Prior to this, on October 11, 2012, the PJM Transmission Owners had submitted, in Docket No. ER13-90-000 (PJM Transmission Owners October 11 Filing), revisions to Schedule 12 of the PJM OATT (Schedule 12) to comply with the cost allocation requirements of Order No. 1000. Also, on October 25, 2012, the Indicated PJM Transmission Owners[[2]](#footnote-2) submitted, in Docket No. ER13-195-000, a filing (Indicated PJM Transmission Owners October 25 Filing) in which they posited that Mobile-Sierra protections apply to existing rights of first refusal in PJM’s tariffs and agreements (PJM, PJM Transmission Owners, and Indi­cated PJM Transmission Owners are collectively referred to as “PJM Parties”).

On December 10, 2012, the Public Utilities Commission of Ohio (the Ohio Commis­sion) filed comments in Docket 13-198-000 that, among other things, opposed postage-stamp cost methodology and joined the Organization of PJM States, Inc. (OPSI) in support of PJM’s State Agreement Approach.

On March 22, 2013, the FERC conditionally accepted the PJM October 25 Filing, subject to further compliance filings. The FERC also conditionally accepted the PJM Transmission Owners October 11 Filing, effective February 1, 2013, subject to further compliance filings. Regarding PJM’s proposed State Agreement Approach, the FERC agreed with PJM that it is supplemental to PJM’s proposal to consider transmission needs driven by public policy requirements, and not needed for compliance with Order No. 1000. Among other things, the FERC also ordered PJM to clarify its definition of “Pub­lic Policy Requirements” to include duly enacted laws or regulations passed by a local governmental entity, such as a municipal or county government.

The Ohio Commission hereby submits its request for rehearing pursuant to Rule 713, CFR § 385.713, in response to the Order on Compliance Filings.

# STATEMENT OF ISSUES

* The FERC erred by not following the instructions of the Seventh Circuit in *Illinois Commerce Comm’n v. FERC*, 576 F.3d 470 (Seventh Cir. 2009).
* The FERC erred by abandoning rate design principles and adopting a postage-stamp analysis that is inconsistent with *Illinois Commerce Comm’n*;
* The FERC erred by not recognizing that cost shifts that result from appropri­ately aligning transmission costs with the beneficiaries is not burdensome and is appropriate and justified by record evidence.  However, unlike justified cost shifts which align costs with benefits, FERC’s decision to impose postage-stamp rates, in the context of previous transmission development in Western PJM, results in a significant unjustified cost shift and subsidy;[[3]](#footnote-3)
* The FERC erred in ruling that new high-voltage Regional Facilities (defined as a double-circuit 345kV and above transmission facilities) and Necessary Lower Voltage Facilities should be socialized across the PJM footprint, with­out regard to the actual beneficiaries, does not comply with *Illinois Commerce Comm’n* and is not supported by record evidence;[[4]](#footnote-4)
* The FERC erred by not taking into consideration all cost shifts and impacts, instead of just selective ones, thereby creating subsidies;[[5]](#footnote-5)
* The FERC erred by limiting the application of the beneficiary pays approach to only facilities below double-circuit 345kV, creating subsidies and violating the cost causation principle;[[6]](#footnote-6)
* The FERC erred by unjustly and unreasonably disallowing a beneficiary pays approach for allocating the cost of Regional Facilities and Necessary Lower Voltage Facilities by failing to establish a relationship between the costs paid and the benefits received.[[7]](#footnote-7)

# DISCUSSION

## Adoption of the postage-stamp portion of the transmission cost allocation proposal is unjust and unreasonable.

The Ohio Commission recognizes that FERC is progressing from its previous posi­tion that required the application of the postage-stamp cost allocation for 100 percent of a high-voltage regional transmission facility by adopting the PJM Transmission Owners’ hybrid cost allocation proposal. This proposal allocates costs for new high-capacity “Regional Facilities” and “Necessary Lower Voltage Facilities”[[8]](#footnote-8) based 50% on the postage-stamp method and 50% based on the Solution-Based DFAX method for reli­ability projects; and 50% postage stamp and 50% changes in load energy payments for economic projects. FERC’s Order, however, is not in compliance with the Seventh Circuit’s decision in *Illinois Commerce Comm’n v. FERC* [[9]](#footnote-9) because it allocates costs to customers, through the postage-stamp component, to those customers who do not directly or meaningfully benefit from a new high-capacity transmission project. For the reasons stated below, the Ohio Commission seeks rehearing of the Order to the extent that it does not adopt the Solutions-Based DFAX method for the entirety of the costs of new high-capacity Regional Facilities.[[10]](#footnote-10)

As the Ohio Commission has previously stated to FERC, the Seventh Circuit was clear, to the extent benefits exist from a new transmission facility, that FERC must quan­tify and demonstrate tangible value on a sub-region or state-by-state basis prior to shift­ing additional costs to those sub-regions or states.[[11]](#footnote-11) FERC’s Order, once again, fails to quantify the benefits of the postage-stamp methodology applied to a portion of Regional Facilities. FERC begins the discussion of benefits in paragraph 414 by stating that “the Commission and reviewing courts have consistently held that there is a presumption that transmission system enhancements benefit all members of an integrated transmission system.”[[12]](#footnote-12) At the end of this sentence, FERC includes a footnote listing previous FERC cases that it believes support its position. The cases cited by FERC are from 1999, 2001, 2003 and 2004 and none examine the specifics of the PJM territory.[[13]](#footnote-13)

The Ohio Commission submits that the cases cited by FERC not only predate the Seventh Circuit’s Court Decision but also predate much of the growth in the PJM terri­tory. In fact, PJM did not become a fully functioning RTO until 2002.[[14]](#footnote-14) Currently, PJM Interconnection coordinates the movement of electricity through all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia. The PJM region has an area of 214,000 square miles, a population of about 60 million and a peak demand of 163,848 megawatts.[[15]](#footnote-15) What is more, PJM’s region is further subdivided into many sub-regions for the purpose of calculating capacity costs. Thus, FERC’s rationale is flawed in that it doesn’t take into account the current size and diversity of PJM’s territory. FERC provides no quantifiable analysis to demonstrate how a Regional Facility built in eastern PJM, many miles away (*e.g.*, a MapQuest search indicates that there are approximately 781 miles between Chicago, IL and Newark, NJ[[16]](#footnote-16)), will have any benefit to those customers located in western PJM.

Instead of providing or demonstrating tangible benefits, as required by the Seventh Circuit, FERC states that an “advantage” of the postage-stamp method is that it captures “difficult to quantify regional benefits, such as improved reliability, reduced congestion, reduced power losses, greater carrying capacity, reduced operating reserve requirements and improved access to generation.”[[17]](#footnote-17) Far from providing quantifiable benefits, the exam­ples provided by FERC are general benefits of RTO membership, not specific bene­fits provided by a transmission expansion project. Furthermore, the aforementioned statement appears to be FERC’s entire support for finding unquantifiable “numerous” and “broad” regional benefits to justify the postage-stamp methodology.

FERC correctly acknowledges an issue previously raised by the Ohio Commission concerning the convergence of locational marginal prices (LMP) due to new high-voltage transmission facilities. As the Ohio Commission previously stated, such an occurrence will result in Ohio customers paying twice: once for the transmission facility that does not benefit them and then for the resulting higher LMPs. FERC, however, summarily dismisses this important point by referring to its aforementioned unquantifiable, broad, regional benefits as justification for allocating costs to these customers via the postage-stamp method. Nowhere does the decision quantify regional or subregional benefits associated with high-capacity transmission expansion. This decision results in an unjusti­fiable cost shift and subsidy which is not just and reasonable. Thus, FERC’s decision to apply the postage-stamp methodology to a portion of the transmission costs of Regional Facilities should be reversed.

## The Solutions-Based DFAX analysis is flawed.

The Ohio Commission commends FERC for recognizing the utility and improve­ment of the Solutions-Based DFAX method to identify specific beneficiaries of new transmission projects. It is one of the main advantages of the Solutions-Based DFAX model, as FERC states in paragraph 413, that “more specific benefits of projects can be identified over time.” In paragraph 427, FERC explains that “because the Solutions-Based DFAX method considers usage of the new transmission facility rather than impact on a constraint, it may reasonably be applied to a facility that resolves multiple violations. Furthermore, it may be conducted iteratively to account for changes in system topology.”

FERC stops short, however, of fully adopting this model for all costs associated with Regional Facilities as previously recommended by the Ohio Commission. Not only does FERC once again point to its broad, regional, unquantifiable, benefits argument to discount the use of Solutions-Based DFAX to identify and allocate all costs of Regional Facilities, it also appears to contradict its aforementioned statements regarding the attrib­utes of Solutions-Based DFAX in order to adopt the postage-stamp method for a portion of the costs. For example, in paragraph 414, FERC contends that the postage-stamp method is superior to identify and allocate certain costs because it “accounts for changes in system use over the lifetime of a high-voltage facility,” and, in paragraph 420, “…and users who might benefit in the future as usage of the project changes over time – through the portion based on the postage-stamp methodology.” As explained previously, FERC claims in paragraphs 413 and 427 that these are the same attributes of the Solutions-Based DFAX. FERC cannot have it both ways.

The Ohio Commission fails to understand how the postage-stamp methodology identifies specific tangible benefits over time (when, in fact, it identifies no specific bene­fits); whereas, the Solutions-Based DFAX model would calculate the use of the new facility by load in each zone and be updated annually to account for changes in use due to modification of the grid.[[18]](#footnote-18) For this reason, Solutions-Based DFAX should apply to all new transmission projects, including Regional Facilities for reliability and/or economic projects, with no exceptions. The Ohio Commission, therefore, requests rehearing of this issue and renews its recommendation that FERC adopt a Solutions-Based DFAX model to allocate 100 percent of the costs of all high-capacity Regional Facilities to the benefi­ciaries of new Regional Facilities.

# CONCLUSION

FERC’s Order is not in compliance with the Seventh Circuit’s decision in *Illinois Commerce Comm’n v. FERC* because it allocates costs to customers, through the postage-stamp component, who do not directly or meaningfully benefit from a transmission pro­ject. The Ohio Commission respectfully seeks rehearing of the Order to the extent that it does not adopt the Solutions-Based DFAX method for the entirety of the costs of new Regional Facilities.

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 April 17, 2013.

1. *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh’g*,Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012). [↑](#footnote-ref-1)
2. The Indicated PJM Transmission Owners consist of: Exelon Corporation; Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, and American Transmission Systems, Incorporated (collectively, the FirstEnergy Companies); Pepco Holdings, Inc. on behalf of its affiliates Potomac Electric Power Company, Delmarva Power & Light Company and Atlantic City Electric Company (collectively, PHI Companies); PPL Electric Utilities Corporation; Public Service Electric and Gas Company; UGI Utilities, Inc. – Electric Division; and Virginia Electric and Power Company, doing business as Dominion Virginia Power. [↑](#footnote-ref-2)
3. *Sea Robin Pipeline Co. v. FERC*, 795 F.2d 182, 188 (D.C. Cir. 1986); *Nat’l Ass’n of Sec. Dealers, Inc. v. SEC*, 801 F.2d 1415, 1420 (D.C. Cir. 1986). [↑](#footnote-ref-3)
4. *City of Kaukauna, Wis. v. FERC*, 214 F.3d 888, 894-95 (7th Cir. 2000) (citing *Cent. Ill. Pub. Serv. Co. v. FERC*, 941 F.2d 622, 627 (7th Cir. 1991), and *Peoples Gas Light and Coke Co. v. FERC*, 742 F.2d 1109, 1111-12 (7th Cir. 1984)). [↑](#footnote-ref-4)
5. *Sea Robin Pipeline* , 795 F.2d at 188; *Nat’l Ass’n of Sec. Dealers, Inc.*, 801 F.2d at 1420. [↑](#footnote-ref-5)
6. *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992),  *Sea Robin Pipeline Co. v. FERC*, 795 F.2d 182, 188 (D.C. Cir. 1986); *Nat’l Ass’n of Sec. Dealers, Inc. v. SEC*, 801 F.2d 1415, 1420 (D.C. Cir. 1986) [↑](#footnote-ref-6)
7. *K N Energy, Inc.*, 968 F.2d at 1300 (D.C. Cir. 1992); *see also Village of Bethany v. FERC*, 276 F.3d 934, 937 (7th Cir. 2002) [↑](#footnote-ref-7)
8. PJM Transmission Owners define high-capacity Regional Facilities as double-circuit 345 kV facilities and above transmission lines adopted by PJM for either economic or reliability projects. Necessary Lower Voltage Facilities are defined as those lower voltage facilities that must be constructed or strengthened to support new Regional Facilities (hereafter collectively referred to as “Regional Facilities”). While the PJM Transmission Owners’ definition of high-capacity Regional Facilities does not include sub-regional expansions, for the purposes of this pleading, the Ohio Commission’s use of the term Regional Facilities includes both sub-regional and regional high-capacity facilities. [↑](#footnote-ref-8)
9. *Illinois Commerce Comm’n v. FERC*, 576 F.3d 470 (7th Cir. 2009). [↑](#footnote-ref-9)
10. As noted previously in footnote 3, the PJM Transmission Owners describe Regional Facilities without reference to sub-regional transmission projects and upgrades. The Ohio Commission also objects to the socialization of sub-regional projects. [↑](#footnote-ref-10)
11. *Illinois Commerce Comm’n*, 576 F.3d at 470. [↑](#footnote-ref-11)
12. FERC Order on Compliance Filings, Docket No. ER13-198-000, ¶ 414 (March 22, 2013). [↑](#footnote-ref-12)
13. FERC Order on Compliance Filings at n. 717, Docket No. ER13-198-000 (March 22, 2013). [↑](#footnote-ref-13)
14. See [www.pjm.com](http://www.pjm.com). Last visited on April 4, 2013. [↑](#footnote-ref-14)
15. *Id*. [↑](#footnote-ref-15)
16. See [www.mapquest.com](http://www.mapquest.com). Last visited on April 2, 2013. [↑](#footnote-ref-16)
17. FERC Order on Compliance Filings at ¶414, Docket No. ER13-198-000 (March 22, 2013). [↑](#footnote-ref-17)
18. FERC Order on Compliance Filings at ¶ 348, Docket No. ER13-198-000 (March 22, 2013). [↑](#footnote-ref-18)