**UNITED STATES OF AMERICA**

**BEFORE THE**

**FEDERAL ENERGY REGULATORY COMMISSION**

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| PJM Interconnection, L.L.C. | : | Docket No. EL05-121-006 |

**REQUEST FOR REHEARING**

**SUBMITTED ON BEHALF OF**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**April 30, 2012**

INTRODUCTION AND BACKGROUND 1

STATEMENT OF ISSUES 3

DISCUSSION 4

I. FERC has not satisfied the Court’s mandates 4

II. DFAX methodology and analysis is not burdensome. 7

III. Increased Capacity and Energy Costs 10

IV. The Remand Order conflicts with Order 1000. 12

V. The RTO value analysis is flawed. 17

CONCLUSION 21

PROOF OF SERVICE 23

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# INTRODUCTION AND BACKGROUND

On August 6, 2009, the United States Court of Appeals for the Seventh Circuit (“Seventh Circuit”) remanded to the Federal Energy Regulatory Commission (FERC) the determination of the appropriate cost allocation method to be used by PJM Intercon­nection, L.L.C. (PJM) for new transmission facilities operating at or above 500 kV.[[1]](#footnote-1)  On January 21, 2010, FERC issued an Order Establishing Paper Hearing Procedure (*January 2010 Order*) in the above captioned docket in response to the Seventh Circuit decision. On May 28, 2010, the Public Utilities Commission of Ohio (Ohio Commission) submit­ted comments in response to FERC’s January 21, 2010, order and PJM’s April 13, 2010, response to FERC’s information request. On March 30, 2012, the Federal Energy Regu­latory Commission issued an Order on Remand (*Remand Order*) in the above-captioned docket. FERC’s Remand Order, again, responds to the decision by the Seventh Circuit regarding cost allocation for new transmission facilities operating at or above 500 kV.

Among other things, the Seventh Circuit found that FERC had not provided sufficient record evidence to justify its adoption of a postage-stamp cost allocation methodology for new transmission facilities operating at or above 500 kV. The Seventh Circuit also noted that FERC had not justified the allocation of costs on the basis of reliability provided to the PJM system.

In response to the Seventh Circuit, FERC’s January 2010 Order instructed PJM to supply certain information to provide other commenters a framework for their responses. Among other things, PJM was instructed to provide cost allocation comparisons for the distribution factor (DFAX) or beneficiary pays costing methodology presently utilized for new transmission facilities below 500 kV and the region-wide postage stamp costing methodology used for new 500 kV and above transmission facilities.

In Paragraph Two of its Order on Remand, FERC states that “our determination here should not be construed as preventing PJM and its stakeholders from developing other cost allocation methodologies in response to Order No. 1000 or other relevant stakeholder processes.” That FERC remains receptive to other proposals in the future is commendable. Nevertheless, the Remand Order prescribes a methodology and that order remains binding unless and until the FERC decides at some future time to adopt a different methodology. Thus, the ongoing stakeholder process does not in any way relieve FERC of its responsibility to approve just and reasonable rates in this proceeding.

FERC’s Remand Order finds that PJM’s pre-existing tariff and prac­tice of utilizing a flow-based model for allocating the costs of high voltage transmission lines is unjust and unreasonable, and that allocating costs of new transmission facilities that operate at or above 500 kV to utility zones using a postage-stamp allocation method­ology is a just, reasonable and not unduly discriminatory method of allocating costs of the new facilities.

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

# 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 in not recognizing that the existing high voltage, including 500 kv and above lines, transmis­sion system benefits many in the region and violating the cost causation principle. *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992). ;
* 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*. 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)
* The FERC erred in ruling that new 500 kV and above transmission 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. *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)).;
* The FERC erred by not taking into consideration all cost shifts and impacts, instead of just selective ones thereby creating subsidies. *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).;
* The FERC erred by not treating new and existing transmission facilities equally and by giving undue weight to a distinction assigned strictly on the basis of vintage creating subsidies and violating the cost causation principle*. 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);
* The FERC erred by limiting the application of the beneficiary pays approach to only facilities below 500 kV creating subsidies and violating the cost causation principle. *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);
* The FERC erred by unjustly and unreasonably disallowing a "beneficiary pays" approach for allocating the cost of transmission projects 500 kV and above failing to establish a relationship between the costs paid and the benefits received. *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); see also *Village of Bethany v. FERC*, 276 F.3d 934, 937 (7th Cir. 2002).
* The FERC erred by deviating from its Order 1000, which previously established a beneficiary pay model for all transmission facilities, without evidence or reason­ing. *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)).;

# DISCUSSION

## FERC has not satisfied the Court’s mandates

FERC has not met its burden as required by the Seventh Circuit decision in *Illinois Commerce Comm’n* to quantify the benefits of a postage stamp methodology for new transmis­sion facilities that will operate at or above 500 kV. According to the Seventh Circuit, “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.”[[2]](#footnote-2) The postage stamp methodology cannot be approved by FERC because it assumes, on a generic basis, that such a methodology assigns benefits accurately. “Just and reasonable” rates follow the ‘cost-causation’ prin­ciple.”[[3]](#footnote-3) FERC decisions must be supported by evidence.[[4]](#footnote-4) FERC introduced no evidence into the record that this pricing scheme would not require a group of utilities (and their customers) to pay for facilities which it members receive little or no benefit. To the con­trary, FERC states that adopting a postage stamp allocation for new facilities at 500 kV and above, it does not suggest that every 500 kV project will benefit every load in PJM in equal measure. Nor does FERC believe that it must require every customer to benefit equally from every project. Rather, FERC states that it needs to find, and does find, only that the benefits of such facilities are, “sufficiently broad” that they support a postage stamp allocation.

FERC’s finding of “sufficiently broad” benefits of a postage stamp cost methodology does not meet the Seventh Circuit’s directive to demonstrate how the costs of new 500kV lines are “roughly commensurate” with the benefits received. The Court directed that FERC must also find such benefits are not “trivial” in relation to the costs shifted to its members.[[5]](#footnote-5) Indeed, by its very nature, a postage stamp methodology blurs the distinction between costs and benefits in order to socialize costs across a region. Other than general statements regarding power flow, FERC has failed to provide evidence in sup­port of its overbroad finding that the postage stamp cost methodology provides at least some benefit to those members and ratepayers that will be burdened with additional costs.

Furthermore, the postage stamp methodology is unworkable given the large size and diversity as the PJM region. FERC notes that the region includes 1600 generation resources with diverse fuel, over 56,250 miles of transmission lines, over 54 million people served in 13 states plus the District of Columbia. FERC fails to understand that in a region a large and as diverse in energy resources, an electron traveling on new 500 kV line in one state is much like a car traveling down a new multi-lane highway in a distant state, both the electron and car will have little or no benefit to customers in a different sub-region or state. Likewise, the transmission line on which the electron travels and the highway on which the car travels has little or no impact on distant states and sub-regions. The Seventh Circuit was clear, to the extent benefits exist, 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.

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. However, it must be demonstrated that a project is solely for reliability or a project that is for multiple purposes must have its reliability purpose appropriately determined in light of other purposes before a portion of costs is assigned to the reliability function. Once a reliability project or cost component is established, FERC should apply the beneficiary-pays DFAX costing methodology to most appropriately identify the customers’ relative benefit from the reliability project. In other words, the Ohio Commission would agree that the beneficiary pay approach does not preclude the spreading of costs on a region-wide basis if it can be demonstrated, through a DFAX model, that all customers in the region benefit to the same relative degree. Consistent with the Seventh Circuit’s decision in *Illinois Commerce Comm’n*, the Ohio Commission has no objection to the allocation of costs assignments beyond the application of the DFAX once (and if) FERC can demonstrate that it has arrived at these additional costs based on the quantification of specific tangible benefits to a particular sub-region or state. The postage stamp cost assignment method­ology, however, falls short of meeting this benchmark.

## DFAX methodology and analysis is not burdensome.

` Instead of creating a workable pricing methodology as directed by the Seventh Circuit, FERC continues its attack on the beneficiary-pays DFAX methodology. FERC con­cludes that the static DFAX methodology for allocating costs of lower voltage localized projects does not capture the regional reach nor accurately identify all the benefits, and beneficiaries, of PJM’s planned high voltage system, particularly with respect to trans­mission facilities that relieve multiple transmission constraints over long distances, multiple zones and long periods of time. The Ohio Commission maintains that, until FERC can arrive at an accurate and more pinpointed cost recovery scheme, FERC should use the DFAX costing methodology for all transmission facilities subject to its jurisdic­tion, including new 500 kV transmission facilities. The DFAX methodology employs modeling and data inputs to determine which customer loads created the need for new transmission capacity. These modeling results are then used to determine those who are charged a share of the cost of the new transmission facility. The beneficiary pays approach directly assigns cost responsibility for new transmission facilities to those transmission zones that PJM determines would benefit from the new facilities. All approved rates must reflect to some degree the costs actually caused by the customer who must pay them.[[6]](#footnote-6) DFAX provides just this nexus.

The Ohio Commission agrees with FERC that the electric grid is not static and evolves over time as load shifts, new transmission or generation facilities are brought on line, and/or dated or uneconomic generation is retired. To that end, the Ohio Commis­sion maintains that the DFAX study should be reviewed and evaluated on a periodic basis to determine whether the beneficiaries of transmission upgrades have changed. To the extent significant changes have occurred, the DFAX cost allocation and corresponding cost recovery should be amended accordingly. However, instead of adopting this approach, FERC simply states that performing recurring DFAX analysis over time would be difficult and administratively burdensome for PJM. FERC is not free to “disregard those factors or issues that prove difficult or inconvenient.”[[7]](#footnote-7) Furthermore, based upon statements in its White Paper[[8]](#footnote-8) the Ohio Commission does not believe that PJM has demonstrated that the administrative burdens outweigh the benefits obtained by a dynamic DFAX methodology. As FERC is well aware, PJM has created and continues to create changes to its operating manuals, tariffs and procedures to accommodate the com­plex administration of electricity markets and the transmission grid in its region. Fur­thermore, PJM includes the following information on its website:

PJM exercises a broader reliability role than that of a local electric utility. PJM system operators conduct dispatch oper­ations and monitor the status of the grid over a wide area, using an enormous amount of telemetered data from nearly 74,000 points on the grid. This gives PJM a big-picture view of regional conditions and reliability issues, including those in neighboring systems.[[9]](#footnote-9)

Thus, it seems clear that PJM continually collects data and analyzes it to determine transmission and grid impacts. Since a dynamic DFAX method­ology more closely aligns with costs and the Seventh Circuit’s directive, the Ohio Commission avers that a periodic review is well worth any administrative burden it may create for PJM. The DFAX methodology has not been shown by FERC through record evidence to be unjust,unreasonable, or burdensome and therefore the FERC cannot substitute it for the postage stamp approach.[[10]](#footnote-10)

## Increased Capacity and Energy Costs

FERC’s postage stamp cost allocation policies penalize those who had the where­withal and foresight to plan for the future by previously constructing the necessary transmission facilities. The transmission owning companies, and had them paid for through western PJM ratepayer on a state by state basis, that constructed the requisite facilities are now being required by FERC to pay for those who have not. By requiring western PJM ratepayers to subsidize the 500 kV and above transmission facilities necessary to alleviate congestion in the east, FERC, in effect has required those who have properly planned and implemented a long-term energy plan to subsidize those who have not. It is inequitable for western PJM member companies and ratepayers to pay for new transmission in areas that neglected to construct necessary facilities and are now playing catch-up. A rate design that results in some ratepayers sub­sidizing the service of others is prima facie inconsistent with cost-causation and pre­sumptively invalid.[[11]](#footnote-11)

Further, the postage stamp costing methodology will incent uneconomic decision making regarding where future generation will be located. Specifically, if transmission facilities and the resulting costs are socialized via the postage stamp methodology, gener­ation resources may have little economic incentive to site and construct facilities located closer to load, thus increasing the overall costs of new capacity. FERC’s decision creates a disincentive for distributed generation technologies and other close to load resources in favor or long-haul lines to transport power from west to east.

Economic upgrades effectuate the reduction of energy prices for certain customers in specific regions by eliminating (or reducing) congestion and thereby increasing cus­tomers’ access to lower cost generation.[[12]](#footnote-12) These projects are undertaken for the purpose of reducing congestion at a certain location in an attempt to ensure lower generation rates in that location where the constraint occurred. FERC’s 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. That is, PJM’s western members will likely experience additional energy costs through higher LMPs and capacity charges as constraints are eliminated and the ease of electricity flow increases from the west to the east.

The application of socialized costs for these projects is asking 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 is and presumptively invalid. [[13]](#footnote-13) This misguided decision requires certain customers not subject to the constraint 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. It is inconsistent with the FPA’s “just and reasonable” directives to require customers not benefiting from transmission projects to share in the cost. To realize the Seventh Circuit’s directives, when FERC determines benefits (including the lower electric rates it will incur) to a par­ticular sub-region it must also quantify and take into consideration the higher electric rates another sub-region(s) will experience.

## The Remand Order conflicts with Order 1000.

On July 21, 2011, FERC issued a Final Rule in Order 1000, regarding transmis­sion planning and cost allocation principles.[[14]](#footnote-14)  In that Rule, 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 1000 also provided six transmission cost allocation principals for transmission providers to use as a strict guide when estab­lishing a cost allocation methodology.

FERC’s Remand Order is inconsistent with Order 1000 and its transmission cost allocation principles. That is, the Remand Order changes the reasonable interpretation and the application of FERC Order 1000, which led persons to understand that for new transmission lines, FERC was moving away from cost socialization (*i.e.* postage stamp methodology) in favor of a ben­eficiary pays cost assignment structure. Instead, FERC advocates the postage stamp methodology which fails to quantify sub- regional benefits or show how they are in proportion to load. Consequently, FERC’s Remand Order should be clarified to reflect that it is not intended to be applied for the cost recovery of new 500 kV or above trans­mission expansion.

FERC Order 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 that 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 any state 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. FERC’s Remand Order largely renders moot this rule because FERC simply changed the definition of the postage stamp cost assignment to beneficiary pays from a definition that has been more closely aligned previously with cost socialization. Consequently, if the Remand Order is applied on a prospective basis, all states will be allocated a portion of all 500 kV and above transmission expansion costs regardless as to whether it has implemented any pub­lic policy mandates that have resulted in any additional costs. That is, any state that does not have a renewable portfolio standard (RPS) or, likewise, a state has taken the effort (and most likely additional expense) to meet its RPS requirements on an intrastate basis, will share equally in the cost with those who have mandated public policy programs necessitating additional transmission needs. This cost subsidization is not only incon­sistent with FERC’s purported attempt to assign costs attributed to policy mandates, 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.

As noted earlier, the Ohio Commission has long advocated for the DFAX methodol­ogy which is a more equitable method for assigning costs roughly commensu­rate with benefits. Unlike the postage stamp methodology, the DFAX methodology measures the relative contribution of different loads to the constraint and is able to rea­sonably identify beneficiaries of specific projects. Until FERC can pinpoint and quantify the actual sub-regional (or state-by-state) benefits associated with each transmission expansion project, FERC must continue to use as its default ratemaking policy the DFAX costing methodology. To do otherwise is inconsistent with the Court’ Remand and FERC’s obligations under the FPA to ensure just and reasonable rates. All approved rates reflect to some degree the costs actually caused by the customer who must pay them.[[15]](#footnote-15)

Likewise, if FERC’s Remand Order applies to new transmission expansion it 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 Remand Order 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 nominal or no tangible benefits realized. The impact of the Remand Order’s postage stamp cost socialization policy on the State of Ohio customers is enormous. As noted in the Ohio Commission’s May 28, 2010 comments to FERC in this 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 the postage stamp methodology, DP&L is rendered charges equal to approximately $162.62 million. FERC’s Remand Order 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.

The Ohio Commission further observes that FERC adopted the following Cost Allo­cation Principle 3 for regional a cost allocation:

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 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.”

The Ohio Commission maintains that FERC’s Remand Order, if applied on a pro­spective basis, renders the application of this test useless for the justification of transmis­sion expansion for 500 kV and above facilities because FERC elected not to arrive at a specific formula to estimate benefits for 500 kV and above transmission expansion pro­jects. Facilities of this immense scope and extreme cost are exactly those projects to which this standard and analysis should apply. 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.

Because FERC chose to move forward with its cost socialization polices and fur­ther elected not to develop a specific model or any detailed analysis to identify specific benefits among the various regions within an RTO, the application of Principle 3 is meaningless. Until FERC makes an effort to comply with the Seventh Circuit’s Remand to arrive a methodology quantifying more specific benefits by RTO sub-regions (or states), the application of Principle 3 cannot be made because FERC has over generalized the definition of benefit and, and a result, no specific numeric value for benefits can be applied in the analysis.

Finally, the Ohio Commission observes that the Remand Order is contrary to FERC Order 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.” FERC’s analy­sis provides no transparency because FERC elected to rely largely on un-vetted overly-broad studies and reports upon arriving at its analysis and justification to use the postage stamp costing methodology to conclude that all RTO customers benefit from 500kV and above transmission expansion. The Ohio Commission is hard pressed to determine to what extent Ohio’s customers have (or will) benefit from transmission expansion projects based on FERC’s vague and overly broad analysis. To realize the transparency criterion, prior to moving forward, FERC must determine how customers in each state will benefit from a new transmission expansion project as compared to that project’s cost.

## The RTO value analysis is flawed.

FERC’s Remand Decision observes that as part of the 2011 ISO/RTO Metrics Report, PJM estimates that planning for future reliability needs on a region-wide rather than a utility-by-utility or state-by-state basis results in an estimated $390 million in annual savings. In addition to the benefits identified in the ISO/RTO Metrics Report, FERC maintains that PJM’s high voltage system allows for annual savings from decreased service interruptions and power quality disturbances, reduced line losses, and reduced congestion.

On March 5, 2010, the PUCO filed comments in FERC Docket No. AD10-5-000, indicating that FERC’s proposed metrics are insufficient to evaluate whether RTO pric­ing policies for wholesale services are providing value to consumers. Consequently, the Ohio Commission proposed that the RTO performance metrics be expanded to include additional criteria and evaluation to determine whether the pricing of wholesale services is providing value to customers.

On October 21, 2010, FERC issued its Staff report regarding its RTO/ISO per­formance metrics. Among other things, FERC’s Staff declared the Ohio PUC position to be “a criticism of the Commission’s… rate policy,” “beyond the scope of the per­formance metric initiative,” “and not an ISO/RTO performance issue,” “but an energy policy decision not under the control of RTOs”. Consequently, FERC’s Staff concluded that, “ISOs/RTOs can only implement the Commission-approved, market-based rate design for their organized markets. Therefore, it is appropriate to evaluate the per­formance of ISOs/RTOs based on the market design that the Commission [FERC] has approved.”

As noted in the Ohio Commission’s comments to FERC regarding the RTO met­rics investigation,[[16]](#footnote-16) FERC’s analysis of RTO value is flawed because it does not evaluate the entire ambient of RTO value.[[17]](#footnote-17) Consequently, the analysis upon which FERC relies is unsound because it does not address FERC-approved RTO pricing policies and whether those policies are inuring to the benefit of customers via lower prices than those rates that would have otherwise been provided pursuant to cost-based, rate-of-return reg­ulation.

The Ohio Commission continues to maintain that FERC’s Staff report falls short of adopting adequate mechanisms to demonstrate RTO value and that the metrics adopted by FERC provide little assistance in evaluating whether FERC’s goals to ensure lower prices are being accomplished. FERC cannot rely on analysis that only takes into consid­eration one half of the picture regarding RTO value. Likewise, FERC cannot use half of the picture to advance its objective to socialize transmission rates especially in light of the fact that many customers will realize only trivial benefits as compared to the cost being allocated, which is inconsistent with the Seventh Circuit’s remand and FERC’s FPA obligation to ensure just and reasonable rates.

In addition, FERC’s Remand Order relies on PJM’s value analysis which has been produced and periodically updated in an attempt to demonstrate overall value to custom­ers. FERC’s Remand Order, however, fails to recognize that this analysis has been fiercely contested since its inception. Specifically, as early as December 17, 2007, 41 various entities submitted a pleading to FERC in its organized markets proceeding[[18]](#footnote-18) requesting that FERC it expand its narrowly-tailored RTO investigation to address numerous “deep systematic problems with RTO-run centralized markets.” These criti­cisms have not subsided. As recent as March 2012, the American Public Power Associa­tion (“APPA”) and the Electric Market Reform Initiative (“EMRI”) published reports that customers are paying substantial sums resulting from RTO policies, but are getting very little in return. FERC’s Remand Order fails to acknowledge these criticisms. Moreover, FERC has not taken any action, to date, to comprehensively address these concerns. Consequently, FERC cannot take into consideration only a portion of those data that lend support to its decision to socialize 500 kV and above transmission expansion. FERC must take all available data into consideration upon arriving at RTO value. To do other­wise, only results in a skewed and inaccurate analysis.

FERC’s analysis also fails to take into consideration the significant size of PJM’s service territory and that its territory should be divided into subzones to determine those customers that are realizing actual benefit from a transmission expansion project. For example, the Ohio Commission notes that customers in Ohio will realize very little or no tangible benefit from a 500 kV project built for the benefit of customers located in PJM east. To draw a comparison to a transmission expansion project, if a sixteen lane high­way were constructed between Philadelphia and Washington, D.C. to relieve traffic con­gestion in those metropolitan areas, it would be beyond any reasonable stretch of the imagination to conclude that Ohio’s traffic patterns would even marginally benefit. The same holds true for a 500 kV and above projects built for the benefit of the east in that Ohio’s ratepayers would experience virtually no measurable benefit. The Ohio Commis­sion, therefore, questions why it should be required to participate in the significant fund­ing of a project built for the benefit of PJM east when the State of Ohio has already built and paid for its own super highway. As noted earlier, FERC’s cost socialization policies are penalizing those who have already planned for the future by asking Ohio (and simi­larly situated states) to subsidize those who have not. Such action by FERC is unfair and is in direct conflict with FERC’s FPA mandate to ensure that rates are just and reason­able.

# CONCLUSION

In a 206 proceeding, the FERC may only change a rate when the existing rate has been shown to be unjust or unreasonable. There is no evidence demonstrating the DFAX methodology to be unreasonable. Therefore, the FERC cannot replace the DFAX methodology. Even if the FERC had the ability to replace DFAX, and it does not, the postage stamp methodology violates the basic cost causation principle, creates illegal subsidies, and is not supported by evidence. The postage stamp methodology creates unjust and unreasonable rates and should, there­fore, be rejected.

Respectfully submitted,

*/s/ Thomas G.Lindgren*

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**On behalf of**

**The Public Utilities Commission of Ohio**

# PROOF 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 G. Lindgren*

**Thomas G. Lindgren**

Dated at Columbus, Ohio this April 30, 2012.

1. *Illinois Commerce Comm’n v. FERC*, 576 F.3d 470 (7th Cir. 2009). [↑](#footnote-ref-1)
2. Illinois Commerce Comm’n v. FERC, 576 F.3d 470 (7th Cir. 2009). [↑](#footnote-ref-2)
3. *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992). [↑](#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. Illinois Commerce Comm’n v. FERC, 576 F.3d 470 (7th Cir. 2009). [↑](#footnote-ref-5)
6. *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); see also *Village of Bethany v. FERC*, 276 F.3d 934, 937 (7th Cir. 2002). [↑](#footnote-ref-6)
7. *Tenneco Gas v. FERC*, 969 F.2d 1187, 1214 (D.C. Cir. 1992) [↑](#footnote-ref-7)
8. PJM Interconnection, L.L.C., Docket No. EL05-121-006, Response of PJM Interconnection, L.L.C. to Information Requests (April 13, 2010) [↑](#footnote-ref-8)
9. PJM Online: [http://www.pjm.com/about-pjm/who-we-are/company-over­view.aspx](http://www.pjm.com/about-pjm/who-we-are/company-overview.aspx) (April 17, 2012). [↑](#footnote-ref-9)
10. *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002). [↑](#footnote-ref-10)
11. 8. *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-11)
12. Reliability upgrades are imposed by an RTO when it foresees a threat to promul­gated reliability standards. Economic upgrades are instituted in an attempt to reduce energy prices for certain customers located in certain regions by increasing their access to lower-cost generation via constraint relief. [↑](#footnote-ref-12)
13. *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-13)
14. *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). [↑](#footnote-ref-14)
15. *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); see also *Village of Bethany v. FERC,* 276 F.3d 934, 937 (7th Cir. 2002). [↑](#footnote-ref-15)
16. On February 3, 2010, the FERC issued a Notice in Docket No. AD10-5 (RTO/ISO Performance Metrics) inviting comments regarding the construction of RTO performance metrics in response to the Government Accountability Office’s (GAO’s) September 8, 2008 report entitled “*Electricity Restructuring: FERC Could Take Addi­tional Steps to Analyze Regional Transmission Organizations’ Benefits and Per­formance*” (GAO Report). Among other things, FERC’s Notice requested comments on whether the proposed performance metrics will effectively track the performance of ISO/RTO operations and markets. [↑](#footnote-ref-16)
17. Docket No. AD10-5 (RTO/ISO Performance Metrics), February 3, 2010 Notice inviting comments regarding RTO performance metrics in response to the Government Accountability Office’s (GAO’s) September 8, 2008 report entitled “*Electricity Restruc­turing: FERC Could Take Additional Steps to Analyze Regional Transmission Organiza­tions’ Benefits and Performance*” (GAO Report). The Government Accountability Office’s (GAO’s) Report to the Committee on Homeland Security and Governmental Affairs, U.S. Senate issued September 2008 observed that FERC has not conducted an empirical analysis of RTO performance or developed a comprehensive set of publically available, standardized measures to evaluate RTO performance. The GAO furthered observed that that electricity prices are heavily dependent on fuel and that many point to the increases in fuel costs as significant contribution to the price of wholesale electricity. Specifically, GAO indicates that it is not possible to draw conclusions about what impact the establishment of RTOs has had on electricity prices without properly accounting for and isolating the impacts of other factors, such as the cost of fuels used to generate elec­tricity, changes in the fuel mix, and changes in consumer demand. (GAO Report at Page 7, 14, 43, 48 and 54). [↑](#footnote-ref-17)
18. RM07-19-000 and AD07-7-000, Wholesale Competition in Regions with Org­anized Electric Markets, Advanced Notice of Proposed Rulemaking, issued June 22, 2007. [↑](#footnote-ref-18)