

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

Pennsylvania Public Utility)	
Commission and Public Utilities)	
Commission of Ohio,)	
)	
Petitioners,)	
)	Case No. _____
v.)	
)	
Federal Energy Regulatory)	
Commission,)	
Respondent.		

**PETITION FOR REVIEW OF THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION AND PUBLIC UTILITIES
COMMISSION OF OHIO**

Pursuant to Sections 205(g) and 313(b) of the Federal Power Act, 16 U.S.C. §§ 824d(g), 825l(b), Rule 15 of the Federal Rules of Appellate Procedure, and Rule 15 of the Third Circuit Local Appellate Rules, the Pennsylvania Public Utility Commission and the Public Utilities Commission of Ohio (“Joint Commissions”) hereby petition this Court for review of the inaction of the Federal Energy Regulatory Commission (“FERC”) that allowed proposed tariff changes to take effect, as memorialized by:

PJM Interconnection L.L.C., Notice of Filing Taking Effect by Operation of Law, Docket No. ER21-2582 (September 29, 2021).

The Notice is herein provided as “Attachment A”.

On July 30, 2021, under Section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824*d*, PJM Interconnection, L.L.C. (“PJM”) filed tariff modifications concerning its Minimum Offer Price Rule, a rule setting offer prices in the regional electric wholesale capacity market that PJM oversees. The Joint Commissions timely protested the proposed tariff changes on August 20, 2021. Section 205(d) of the FPA provides FERC with a 60-day period to act upon rates filed by a public utility. 16 U.S.C. § 824*d*(d). FERC failed to issue an order accepting or denying PJM’s filing within 60 days because the Commissioners were divided two against two as to the lawfulness of the change. Therefore, the proposed tariff changes went into effect by operation of law. 16 U.S.C. § 824*d*. Under these circumstances, FERC’s failure to issue an order is treated as an order accepting the change for the purposes of rehearing. 16 U.S.C. § 824*d*(g)(1).

The Joint Commissions filed, on October 28, 2021, a timely request for rehearing of FERC’s failure to issue an order accepting or denying PJM’s proposed tariff changes. Section 205(g)(2) of the FPA provides that if FERC fails to act on the merits of a rehearing request within 30 days after it is filed, the aggrieved party may file an appeal. 16 U.S.C. § 824*d*(g)(2). FERC memorialized its failure to act on the rehearing request through a Notice of Denial of Rehearing by Operation of Law on November 29, 2021. Therefore, the Joint Commissions may seek judicial

review. 16 U.S.C. § 824d(g)(2) and 825l(b). The Notice of Denial of Rehearing by Operation of Law is herein provided as “Attachment B”.

The failure of FERC to issue an order with respect to the proposed tariff changes adversely affects the Joint Commissions. The proposed tariff changes include provisions that would allow for the unchecked exercise of buyer-side market power in PJM’s regional electric wholesale capacity market, compromising that market’s competitive structure, prices, and the crucial element of reliability. The Joint Commissions are tasked with protecting consumers from market deficiencies and ensuring that electric markets provide safe, reliable electric service in a non-discriminatory, competitive manner. *See* 66 Pa.C.S. §§ 2801-2815 and Ohio Revised Code § 4928.02.

This Petition for Review is appropriately filed in the Court of Appeals for the Third Circuit. The Joint Commissions are aggrieved by the order of the Commission. Under 16 U.S.C. § 825l(b), parties aggrieved by an order of the Commission may obtain review in any Court of Appeals in which the public utility to which the order relates is located or has its principal place of business. PJM is the public utility to which the order relates. PJM operates and has its principal place of business in Pennsylvania.

This matter is ripe for appeal. The Commission’s deemed acceptance of the PJM filing should be set aside.

Respectfully submitted,

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On behalf of the

Public Utilities Commission of Ohio

Dated: December 3, 2021

CERTIFICATE OF SERVICE

Pursuant to Rule 15(c) of the Federal Rules of Appellate Procedure, I hereby certify that I have this 3rd day of December, 2021, caused to be served copies of the foregoing Petition for Review by first class mail to:

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Robert Solomon, Solicitor
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

and by email on all parties on the Commission's service list in the underlying proceeding at Docket No. ER21-2582, attached hereto.

/s/ Aspasia V. Staevska
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Dated: December 3, 2021

ATTACHMENT A

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket No. ER21-2582-000

NOTICE OF FILING TAKING EFFECT BY OPERATION OF LAW

(September 29, 2021)

On July 30, 2021, pursuant to section 205 of the Federal Power Act (FPA),¹ PJM Interconnection, L.L.C. (PJM) filed revisions to its Open Access Transmission Tariff, regarding application of the Minimum Offer Price Rule in its capacity market.

Pursuant to section 205 of the FPA, in the absence of Commission action on or before September 28, 2021, PJM's proposal became effective by operation of law. Accordingly, the effective date of the proposed tariff sheets is September 29, 2021.

The Commission did not act on PJM's filing because the Commissioners are divided two against two as to the lawfulness of the change. Consistent with section 205(g)(1)(B) of the FPA, any written statement explaining the views of a Commissioner with respect to PJM's filing will be added to the record of the Commission in the captioned proceeding.

Kimberly D. Bose,
Secretary.

¹ 16 U.S.C. § 824d.

ATTACHMENT B

177 FERC ¶ 62,105
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket No. ER21-2582-001

NOTICE OF DENIAL OF REHEARING BY OPERATION OF LAW

(November 29, 2021)

On September 29, 2021, the Secretary of the Commission issued a Notice of Filing Taking Effect by Operation of Law in this proceeding for PJM Interconnection, L.L.C.'s (PJM) proposed revisions to its Open Access Transmission Tariff, filed pursuant to section 205 of the Federal Power Act. 16 U.S.C. § 824d. As explained in that Notice, in the absence of Commission action on or before September 28, 2021, PJM's proposal became effective by operation of law on September 29, 2021. The Commission did not act on PJM's filing because the Commissioners were divided two against two as to the lawfulness of the change.

Section 205(g) of the Federal Power Act provides that, in such circumstances, a party may seek rehearing of the Commission's "failure to issue an order accepting or denying" the proposed tariff revisions. 16 U.S.C. § 824d(g)(1)(A). Rehearing has been requested in this proceeding.

In the absence of Commission action on the requests for rehearing within 30 days from the date the requests were filed, the requests for rehearing may be deemed to have been denied. 16 U.S.C. § 825l(a); 18 C.F.R. § 385.713(f) (2020); *Allegheny Def. Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020) (en banc).

Debbie-Anne A. Reese,
Deputy Secretary.

ATTACHMENT C


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PENNSYLVANIA PUBLIC UTILITY COMMISSION;

PUBLIC UTILITIES COMMISSION OF OHIO,

Petitioners

v.

FEDERAL ENERGY REGULATORY COMMISSION

PATRICIA S. DODSZUWEIT

CLERK



OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS

21400 UNITED STATES COURTHOUSE
601 MARKET STREET

PHILADELPHIA, PA 19106-1790

Website: www.ca3.uscourts.gov

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December 6, 2021

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RE: Pennsylvania Public Utility Co, et al v. FERC

Case Number: 21-3243

Agency Case Number: ER21-2582-000

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Effective December 15, 2008, the Court implemented the Electronic Case Files System. Accordingly, attorneys are required to file all documents electronically. See 3d Cir. L.A.R. 113 (2008) and the Court's CM/ECF website at <https://www.ca3.uscourts.gov/forms>.

To All Parties:

Enclosed is the case opening information regarding the above-captioned petition for review filed by **Pennsylvania Public Utility Commission, Public Utilities Commission of Ohio**, docketed at **No. 21-3243**. The petition was received on **December 3, 2021**. All inquiries should be directed to your Case Manager in writing or by calling the Clerk's Office at 215-597-2995. This Court's rules, forms and case information are available on our website at <http://www.ca3.uscourts.gov>.

Pursuant to Fed. R. App. P. 17 (a), the agency must file the record with this Court within forty (40) days after being served with the petition for review, unless the statute authorizing review provides otherwise.

Attached is a copy of the full caption. Please review the caption carefully and promptly advise this office in writing of any discrepancies.

Counsel for Petitioner(s) must file:

1. Application for Admission (if applicable);
2. Appearance Form

3. Disclosure Statement (except governmental entities);
4. Docketing Statement.

These forms must be filed **within 14 days of the date of this letter.**

Failure of Petitioner(s) to comply with any of these requirements by the deadline will result in the DISMISSAL of the case without further notice. 3rd Cir. LAR Misc. 107.2.

Counsel for Respondent(s) must file:

1. Application for Admission (if applicable);
2. Appearance Form
3. Disclosure Statement (except governmental entities).

These forms must be filed **within 14 days of the date of this letter.**

For the Court,

s/ Patricia S. Dodszeit,
Clerk

s/ pdb for kr Case Manager
267-299-4911

cc:

Federal Energy Regulatory Commission,
Jared Fish, Esq.

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

12/6/2021 12:58:45 PM

in

Case No(s). 21-7000-EL-FAD

Summary: Petition for Review of the Pennsylvania Public Utilities Commission and Public Utilities Commission of Ohio electronically filed by Mrs. Kimberly M. Naeder on behalf of PUCO