

ORAL ARGUMENT NOT YET SCHEDULED

**In the United States Court of Appeals
for the District of Columbia Circuit**

Nos. 17-1040 and 17-1041 (consolidated)

OLD DOMINION ELECTRIC COOPERATIVE, *ET AL.*
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

ON PETITIONS FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION

**BRIEF FOR RESPONDENT
FEDERAL ENERGY REGULATORY COMMISSION**

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October 24, 2017

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), Respondent submits:

A. Parties and Amici

The parties and intervenors appearing before this Court are identified in Petitioners' brief.

B. Rulings Under Review

- *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,096, *on reh'g*, 157 FERC ¶ 61,192 (2016)
- *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,097, *on reh'g*, 157 FERC ¶ 61,191 (2016)
- *PJM Interconnection, L.L.C.*, 156 FERC ¶ 61,030, *on reh'g*, 157 FERC ¶ 61,193 (2016)

C. Related Cases

Counsel is not aware of any related cases pending before this Court or any other court.

/s/ Lona T. Perry
Lona T. Perry

October 24, 2017

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GLOSSARY

Allocation Order	<i>PJM Interconnection, L.L.C.</i> , 154 FERC ¶ 61,096 (2016)
Allocation Rehearing Order	<i>PJM Interconnection, L.L.C.</i> , 157 FERC ¶ 61,192 (2016)
Cunningham-Dooms Order	<i>PJM Interconnection, L.L.C.</i> , 156 FERC ¶ 61,030 (2016)
Cunningham-Dooms Rehearing Order	<i>PJM Interconnection, L.L.C.</i> , 157 FERC ¶ 61,193 (2016)
Dominion	Collectively petitioners Old Dominion Electric Cooperative (Docket No. 17-1040) and Dominion Resources Services, Inc. and Virginia Electric and Power Company doing business as Dominion Virginia Power (Docket No. 17-1041)
Elmont-Cunningham Order	<i>PJM Interconnection, L.L.C.</i> , 154 FERC ¶ 61,097 (2016)
Elmont-Cunningham Rehearing Order	<i>PJM Interconnection, L.L.C.</i> , 157 FERC ¶ 61,191 (2016)
FERC or Commission	Respondent Federal Energy Regulatory Commission
LSP Transmission	Collectively intervenors for petitioners LSP Transmission Holdings, LLC and its subsidiary Northeast Transmission Development, LLC
PJM or PJM System Operator	PJM Interconnection, L.L.C. Regional Transmission Organization, operating in 13 mid-Atlantic states and the District of Columbia

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**BRIEF FOR RESPONDENT
FEDERAL ENERGY REGULATORY COMMISSION**

STATEMENT OF THE ISSUES

This appeal challenges orders issued by the Federal Energy Regulatory Commission (FERC or Commission) concerning who pays for new electric transmission reliability projects developed by a local utility to serve the needs of its system -- the customers in the utility's zone or a broader regional group of ratepayers. Petitioners,¹ transmission owners in the Dominion zone of PJM Interconnection, LLC (PJM), a regional entity operating the transmission grid in 13

¹ Petitioners are Old Dominion Electric Cooperative, Dominion Resources Services, Inc., and Virginia Electric and Power Co., doing business as Dominion Virginia Power, hereinafter collectively "Dominion."

mid-Atlantic states, challenge the Commission's decision to allocate the costs of all utility reliability projects to the utility's zone.² Petitioners favor broader regional cost sharing for the two percent of utility reliability projects that operate at high voltage and provide benefits outside the zone. They object specifically because the costs of two high voltage reliability projects planned by Dominion have been allocated to the Dominion zone: the Elmont-Cunningham line³ and the Cunningham-Dooms line.⁴

The issues presented by this appeal are:

1. Whether the Commission reasonably approved the new cost allocation where: (1) under Commission policy, regional cost allocation is intended for projects collectively selected by transmission owners in the region to meet regional needs, not projects developed by individual transmission owners to meet individual system needs; and (2) the new cost allocation is roughly commensurate with

² *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,096 (2016) (Allocation Order), JA 257, *reh'g denied*, 157 FERC ¶ 61,192 (2016) (Allocation Rehearing Order), JA 503.

³ *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,097 (2016) (Elmont-Cunningham Order), JA 269, *reh'g denied*, 157 FERC ¶ 61,191 (2016) (Elmont-Cunningham Rehearing Order), JA 532.

⁴ *PJM Interconnection, L.L.C.*, 156 FERC ¶ 61,030 (2016) (Cunningham-Dooms Order), JA 424, *reh'g denied*, 157 FERC ¶ 61,193 (2016) (Cunningham-Dooms Rehearing Order), JA 543.

project benefits as 98 percent of local reliability projects provide benefits only to the local project zone.

2. Whether the Commission reasonably applied the new cost allocation methodology to the two high voltage local criteria projects in the Dominion zone, because the projects were planned by Dominion to meet its system needs.

For their part, intervenors in support of petitioners,⁵ who are independent transmission developers, challenge the Commission’s determination on an independent ground, which raises the following additional issues:

3. Whether the Court should consider intervenors’ argument, which was not raised by petitioners.

4. Whether the Commission reasonably rejected the argument that, under the PJM tariff, high voltage local criteria projects remain eligible for regional cost allocation, where the tariff provision implementing the new cost allocation applies “notwithstanding” other provisions of the tariff.

STATUTORY AND REGULATORY PROVISIONS

Pertinent statutes and regulations are contained in the Addendum.

⁵ Intervenors in support of petitioners are LSP Transmission Holdings, LLC and its subsidiary Northeast Transmission Development, LLC, hereinafter collectively “LSP Transmission.”

STATEMENT OF THE CASE

I. THE ORDER NO. 1000 RULEMAKING IMPLEMENTING REGIONAL TRANSMISSION PLANNING AND COST ALLOCATION

In its Order No. 890 rulemaking,⁶ the Commission required public utility transmission providers to engage in coordinated, open and transparent transmission planning. *N.Y. Reg'l Interconnect, Inc. v. FERC*, 634 F.3d 581, 584 (D.C. Cir. 2011); Order No. 890 P 435. Among other things, Order No. 890 required transmission providers to coordinate at the regional level to share system plans and identify system enhancements that could relieve congestion or integrate new resources. Order No. 890 P 523.

Order No. 890 did not, however, require transmission providers to develop a regional plan to evaluate whether alternative regional projects would be more efficient or cost-effective solutions to regional transmission needs than projects identified in local transmission planning processes. Order No. 1000⁷ PP 3, 147. A

⁶ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), *on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), *on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

⁷ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Pub. Utils.*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd*, *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

local transmission planning process is one that a transmission provider performs for its individual service territory. *Id.* P 68. Local planning processes would not consider, for example, the development of transmission facilities that span multiple utility service territories that might obviate the need for transmission facilities identified in multiple local plans while simultaneously reducing regional congestion. *Id.* P 81. *See S.C. Pub. Serv. Auth.*, 762 F.3d at 67 (discussing deficiency in Order No. 890 planning).

In its Order No. 1000 rulemaking, the Commission addressed this deficiency by requiring transmission providers to participate in a regional transmission planning process that produces a regional plan. Order No. 1000 P 148. “Through the regional transmission planning process, public utility transmission providers will be required to evaluate, in consultation with stakeholders, alternative transmission solutions that might meet the needs of the transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process.” *Id.* *See S.C. Pub. Serv. Auth.*, 762 F.3d at 56 (“it is through the transmission planning process that . . . providers determine which transmission facilities will more efficiently or cost-effectively meet the needs of the region”) (quoting Order No. 1000 PP 112, 116).

Order No. 1000 also enacted cost allocation reforms providing regional cost allocation for new transmission facilities selected in a regional plan as more efficient or cost-effective solutions to regional needs. Order No. 1000 P 565, 603. “If the public utility transmission providers in the transmission planning region, in consultation with stakeholders, determine that an alternative transmission solution is more efficient or cost-effective than transmission facilities in one or more local transmission plans, then the transmission facilities associated with that more efficient or cost-effective transmission solution can be selected in the regional transmission plan for purposes of cost allocation.” Order No. 1000 P 148. Accordingly, “to be eligible for regional cost allocation, a proposed new transmission facility first must be selected in a regional transmission plan for purposes of cost allocation, which depends on a full assessment by a broad range of regional stakeholders of the benefits accruing from transmission facilities planned according to the reformed transmission planning processes.” *Id.* P 539. *See also* 1000-A P 579; *S.C. Pub. Serv. Auth.*, 762 F.3d at 83 (regional cost allocation “will be triggered only in cases in which the transmission providers in a region, in consultation with stakeholders, evaluate a given facility and determine that its benefits merit cost allocation under the regional cost allocation method(s)”).

While only projects selected by the region's transmission providers as the most efficient or cost-effective solution to a regional need are eligible for regional cost allocation, other projects may also be included in the regional plan. Order 1000 P 63. For example, a regional plan may include local facilities, which are facilities located solely within a transmission providers' service territory that are not selected in the regional plan for purposes of cost allocation. *Id.*

II. PJM'S REGIONAL TRANSMISSION EXPANSION PLAN

The PJM System Operator is a regional transmission organization that administers the wholesale transmission system on behalf of transmission-owning utilities for all or part of thirteen states and the District of Columbia. *Advanced Energy Mgmt. Alliance v. FERC*, 860 F.3d 656, 659 (D.C. Cir. 2017). (PJM is not an acronym coined for this brief; rather, it takes its name from the first three states in which it operated – Pennsylvania, New Jersey and Maryland). PJM is divided into zones, which correspond to the boundaries of transmission owner service territories. *See* PJM zonal map at <http://www.pjm.com/library/~media/about-pjm/pjm-zones.ashx>.

Among its duties, the PJM System Operator is responsible for preventing interruptions to the delivery of electricity, which PJM fulfills in part by upgrading and enhancing its system in accordance with procedures set forth in its governing agreements, including the Regional Transmission Expansion Plan in PJM's

Operating Agreement and the PJM tariff. *Pub. Serv. Elec. & Gas Co. v. FERC*, 783 F.3d 1270, 1271 (D.C. Cir. 2015).

Schedule 6 of the PJM Operating Agreement requires PJM, in developing its regional plan, to address certain reliability planning criteria, including PJM's own regional reliability criteria, North American Electric Reliability Corporation reliability standards,⁸ and individual transmission owner planning criteria as filed in FERC Form No. 715.⁹ Allocation Rehearing Order PP 3-4, JA 503-04; *id.* P 21, JA 513 (setting out Schedule 6, section 1.2(e)). The types of reliability projects included in the regional plan as relevant here include regional facilities (single-circuit facilities operating at 500 kilovolts or double-circuit facilities operating at 345 kilovolts or above) and lower voltage facilities. Elmont-Cunningham Order P 2, JA 269.

Schedule 12 of the PJM tariff establishes the cost allocation applicable to these projects. *Id.* P 3, JA 271. In 2013, the Commission approved a hybrid cost

⁸ The North American Electric Reliability Corporation has primary responsibility for creating mandatory national standards to assure an adequate level of reliability for the bulk-power system. *S.C. Pub. Serv. Auth.*, 762 F.3d at 79.

⁹ FERC Form No. 715 implements section 213(b) of the Federal Power Act, 16 U.S.C. § 824l(b), which requires that individual utilities inform the Commission annually of "available transmission capacity and known constraints." Allocation Rehearing Order P 27 & n.48, JA 517 (quoting section 213(b)). Thus, Form No. 715 planning criteria concern individual planning criteria developed by each transmission owner and not regional planning. *Id.* P 27, JA 517.

allocation method for high voltage facilities. *Id.* Under that methodology, one-half of the costs of high voltage facilities are allocated regionally on a pro rata “postage-stamp” basis and the other half are allocated to specific beneficiaries based on a flow-based benefits analysis.¹⁰ *Id.* All of the costs of lower voltage facilities are allocated using the flow-based benefits analysis. *Id.*

Once a reliability project is included in the regional plan, the PJM System Operator files with the Commission a cost assignment responsibility summary that includes the criteria violation, the criteria test (e.g., North American Electric Reliability Corporation national reliability standard, PJM regional criteria, Form No. 715 local planning criteria), the solution and the cost allocation. Allocation Rehearing Order P 8, JA 507. As an illustration, the filings that include the two specific projects at issue in this appeal, the Elmont-Cunningham line and the Cunningham-Dooms line, state that the projects are designed to address the end-of-life criteria in Dominion’s local planning criteria. *See* PJM March 20, 2015 filing, R. 2, Attachment A at 11, JA 50; PJM January 15, 2016 filing, R. 93, Attachment A at 14, JA 236.

¹⁰ To identify specific beneficiaries of a reliability project, PJM uses a distribution factor analysis methodology that evaluates the projected relative use of a reliability project by load in each zone. *See PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 P 416 (2013).

III. THE PROCEEDINGS BELOW

A. PJM Transmission Owners' Cost Allocation Proposal

On March 26, 2015, acting through the voting protocols of the PJM Consolidated Transmission Owners Agreement, the PJM transmission owners filed, under section 205 of the Federal Power Act, 16 U.S.C. § 824d, a proposal to revise Schedule 12 of the PJM tariff to change the cost allocation for reliability projects included in the regional plan solely to address individual transmission owner planning criteria. Allocation Order P 2, JA 257. The transmission owners proposed adding a new provision to Schedule 12, section (b)(xv), under which all costs of projects included in the regional plan solely to address individual planning criteria would be allocated to the project zone. Allocation Order P 1, JA 257. The transmission owners asserted that the proposed revision would better align the purpose and intent of local transmission planning criteria with the need for and beneficiaries of these projects. *Id.* P 2, JA 258.

The Commission initially rejected the transmission owners' proposal, finding that projects selected in the regional plan to address reliability criteria, including local criteria, were projects selected for purposes of cost allocation under Order No. 1000. *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,172 P 22 (2015), JA 111. Further, as to local planning criteria projects that operate at high voltage, the Commission found the proposal inconsistent with its earlier findings that high

voltage facilities provide regional benefits warranting regional cost allocation. *Id.* P 23, JA 112.

Following that order, however, the Commission convened a technical conference to address issues raised on rehearing. The conference also addressed issues regarding the proper cost allocation for Dominion's rebuild of the high voltage Elmont-Cunningham line, which was included in the regional plan based upon Dominion's local planning criteria. *See PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,197 PP 4-7 (2015), JA 182-84 (ordering technical conference).

B. The Challenged Orders Accepting Transmission Owners' Proposal And Applying The New Cost Allocation Methodology To The Elmont-Cunningham And Cunningham-Dooms Rebuilds

In the challenged orders, upon consideration of the requests for rehearing and the technical conference, the Commission granted rehearing, accepting the transmission owners' proposed section (b)(xv) of Schedule 12 as just and reasonable. Allocation Order P 1, JA 257; Allocation Rehearing Order P 9, JA 507. The Commission found that the rehearing requests and technical conference comments clarified that the proposed new section applied only to projects included in the regional plan solely to address local planning criteria, which were not selected in PJM's regional plan for purposes of regional cost allocation. Allocation Order P 13, JA 262.

As the transmission owners explained, not all projects included in the regional plan are selected for purposes of cost allocation. *Id.*; Allocation Rehearing Order P 22 n.37, JA 514. Under Order No. 1000, facilities selected in the regional plan for purposes of cost allocation are facilities that have been selected as the more efficient or cost-effective solution to regional needs. Allocation Order P 13 & n.16, JA 262 (citing Order No. 1000 P 63); Allocation Rehearing Order PP 18-19, JA 511-12. The projects included in the regional plan solely to address local planning criteria are not selected to meet regional needs, but rather the local needs of individual transmission owners. Allocation Rehearing Order PP 19, 23, JA 512, 514; Allocation Order P 13, JA 262. Any project that the PJM System Operator includes in the regional plan not only to address local planning criteria, but also PJM regional criteria or North American Electric Reliability Corporation national reliability standards, would continue to be eligible for regional cost allocation. Allocation Order P 13, JA 262; Allocation Rehearing Order P 22, JA 513.

The Commission also observed that, under a flow-based benefits analysis, 98 percent of the projects included in the regional plan solely to address local planning criteria provided no benefits outside of the project zone. Allocation Order P 14, JA 263; Allocation Rehearing Order P 23, JA 514. The Commission found that this evidence supports the conclusion that the transmission owners’

proposal results in an allocation of costs that is roughly commensurate to the projects' benefits, as, historically, the owner's zone virtually always receives the benefits provided by the local criteria project. Allocation Rehearing P 25, JA 516.

Consistent with this determination, the Commission found that the costs of Dominion's rebuild of the high voltage Elmont-Cunningham line, which was included in the regional plan solely based upon Dominion's local planning criteria, should be allocated to the Dominion zone. Elmont-Cunningham Order P 28, JA 279. On rehearing, Dominion argued that the Elmont-Cunningham rebuild provided regional benefits because the line had reached the end of its useful life and needed to be replaced to avoid violation of North American Electric Reliability Corporation reliability standards. Elmont-Cunningham Rehearing Order P 9, JA 536.

The Commission rejected this argument. Elmont-Cunningham Rehearing Order PP 16-19, JA 538-40. While the PJM System Operator found that there would be multiple North American Electric Reliability Corporation criteria violations without the Elmont-Cunningham line in service, this analysis occurs only under Dominion's local planning criteria, which includes an "end-of-life" analysis that tests reliability assuming the line is no longer in service. *Id.* P 17, JA 539. PJM regional criteria and North American Electric Reliability

Corporation criteria do not include such an “end-of-life” baseline analysis assuming the line is removed from service. *Id.*

Thus, the PJM System Operator did not conclude that the Elmont-Cunningham rebuild was needed to address its own regional planning criteria or North American Electric Reliability Corporation planning criteria. *Id.* P 16, JA 538. Instead, the Elmont-Cunningham rebuild was identified as needed solely to satisfy Dominion’s local planning criteria. *Id.* The violations related to the Elmont-Cunningham line, therefore, are solely the result of the application of Dominion’s end-of-life planning criteria, and, under the revised Schedule 12, section (b)(xv), all costs properly are assigned to the local Dominion zone. *Id.* P 17, JA 539.

The Commission also ordered that the costs of Dominion’s rebuild of the Cunningham-Dooms high voltage line be allocated to the Dominion zone, as that project likewise was included in the regional plan solely to address Dominion’s local end-of-life planning criteria. Cunningham-Dooms Order PP 6 & n.11, 19, JA 426, 430; Cunningham-Dooms Rehearing Order P 11, JA 548.

SUMMARY OF ARGUMENT

This case, like many cost allocation cases, concerns whether a smaller or larger group of ratepayers will be responsible for particular costs. Here, a small group of transmission owners in the Dominion zone objects to the cost allocation

proposed by a majority of PJM transmission owners, because they want the costs of certain reliability projects planned for and built in the Dominion zone to be spread region-wide, rather than charged solely to the Dominion zone. As is typical in cost allocation cases, the issue presented is whether, in approving the transmission owners' proposal, the Commission acceptably identified and matched project benefits and beneficiaries.

The Commission reasonably approved allocating to the local project zone the costs of reliability projects planned solely to address the local utility's needs. Under the Commission's Order No. 1000 rulemaking, regional cost allocation is intended for projects "selected for purposes of cost allocation" by a region's transmission owners to address regional transmission needs more efficiently or cost-effectively than projects planned by individual transmission owners. Here, local criteria projects are planned by individual transmission owners to address the needs of their local service territory rather than regional needs.

Further, because the project zone primarily benefits from local criteria projects, the cost allocation proposal is roughly commensurate -- the governing standard of review identified by this and other courts -- with project benefits. Historically, under a flow-based benefits analysis, 98 percent of local criteria projects provided no benefits outside the local project zone.

Dominion argues that zonal cost allocation is not roughly commensurate with benefits for the two percent of high voltage local criteria projects that provide benefits outside the project zone, including Dominion's Elmont-Cunningham and Cunningham-Dooms lines. However, it is well settled that the Commission is not required to match costs and benefits exactly. This is particularly true where, as here, under Commission policy regional cost allocation is intended for projects planned by the region to meet regional needs rather than individual transmission owner planning requirements. As the Seventh Circuit recently held in affirming similar Commission orders, a zonal allocation of costs is roughly commensurate with project benefits -- even if the project provides benefits outside the zone -- where the zone is the primary beneficiary of the project. As the Seventh Circuit explained, zonal cost allocation would be problematic only if the zone received no or trivial benefits from the project. Dominion does not suggest that Dominion customers receive no or trivial benefits from Dominion's local criteria projects, including the Elmont-Cunningham and Cunningham-Dooms lines. Both the Elmont-Cunningham and Cunningham-Dooms lines were planned solely to address Dominion's end-of-life planning criteria, which does not exist in any applicable regional or national planning criteria.

Under its settled practice, the Court should decline to address intervenor LSP Transmission's argument because it was not raised by petitioner Dominion. If the Court reaches intervenor's argument, it is in any event without merit.

LSP Transmission argues that high voltage local criteria projects cannot be excluded from regional cost allocation under the new section of the PJM tariff, Schedule 12, section (b)(xv), because such projects remain "selected for purposes of cost allocation" under the PJM tariff. This argument is based on the fact that Schedule 12, section (b)(i), continues to define high voltage projects as regional facilities eligible for regional cost allocation, without any exception for high voltage local criteria facilities.

The Commission reasonably rejected this interpretation of the tariff. Under new section (b)(xv), zonal cost allocation applies to all local criteria projects "notwithstanding" section (b)(i). The term "notwithstanding" means that the section (b)(i) cost allocation methodology for high voltage regional facilities ceased to apply to local criteria high voltage projects on the effective date of section (b)(xv). Further, because local criteria projects are built solely in one transmission owner's service territory and are not selected in the regional plan "for purposes of cost allocation" as the better solution to regional needs, under FERC Order No. 1000 they are "local" projects that may be included in the regional plan without regional cost allocation.

ARGUMENT

I. STANDARD OF REVIEW

The Court reviews FERC orders under the Administrative Procedure Act’s arbitrary and capricious standard. *See, e.g., Williams Gas Processing-Gulf Coast Co., L.P. v. FERC*, 331 F.3d 1011, 1016 (D.C. Cir. 2003). “The ‘scope of review under the ‘arbitrary and capricious standard is narrow.’” *FERC v. Elec. Power Supply Ass’n*, 136 S.Ct. 760, 782 (2016) (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). “A court is not to ask whether a regulatory decision is the best one possible or even whether it is better than the alternatives.” *Id.* “Rather, the court must uphold a rule if the agency has “‘examine[d] the relevant [considerations] and articulate[d] a satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made.’” *Id.* (quoting *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43). “And nowhere is that more true than in a technical area like [] rate design: “[W]e afford great deference to the Commission in its rate decisions.”” *Id.* (quoting *Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527, 532 (2008)).

The Court upholds FERC’s factual findings if they are supported by substantial evidence. Federal Power Act § 313(b), 16 U.S.C. § 825l(b). “Once assured the Commission has engaged in reasoned decisionmaking, it is not for [the

Court] to reweigh the conflicting evidence or otherwise to substitute [its] judgment for that of the Commission.” *Ind. Mun. Power Agency v. FERC*, 56 F.3d 247, 254 (D.C. Cir. 1995).

II. THE COMMISSION REASONABLY APPROVED THE PJM TRANSMISSION OWNERS’ RATE FILING AS JUST AND REASONABLE.

This appeal challenges the Commission’s approval of the PJM transmission owners’ rate filing under section 205 of the Federal Power Act, 16 U.S.C. § 824d, allocating the costs of transmission projects planned solely to address local planning criteria to the local project zone. Prior to the transmission owners’ filing, as relevant here, the PJM tariff allocated cost responsibility for all reliability projects based upon whether such projects were high voltage regional facilities (single circuit facilities operating at or above 500 kilovolts or double circuit facilities operating at or above 345 kilovolts) or lower voltage facilities. *See* Elmont-Cunningham Order P 2, JA 269. Under Schedule 12 of the PJM tariff, the costs of high voltage facilities were allocated one-half to the region on a pro rata “postage stamp” basis, and one-half to the specific beneficiaries of the project, as determined through a flow-based benefits analysis.¹¹ *Id.* P 3, JA 271. *See*

¹¹ PJM uses a distribution factor analysis methodology to evaluate the projected relative use of a reliability project by load in each zone. *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 P 416 (2013). *See* Schedule 12, section (b)(iii), PJM Transmission Owner’s Tariff Filing, Docket No. ER-15-1387

Schedule 12, section (b)(i), PJM Transmission Owner's Tariff Filing, Docket No. ER-15-1387 (March 26, 2015), R. 10, Attachment A at 2-4, JA 58-60. The costs of lower voltage facilities were allocated solely to specific beneficiaries using the flow-based benefits analysis. Elmont-Cunningham Order P 3, JA 271. *See* Schedule 12, section (b)(ii), PJM Transmission Owner's Tariff Filing, Docket No. ER-15-1387 (March 26, 2015), R. 10, Attachment A at 4-5, JA 60-61.

Historically, projects included in the regional plan to address individual transmission owner local planning criteria were lower voltage facilities whose costs were allocated solely to specific beneficiaries through the flow-based benefits analysis. Allocation Order P 2, JA 257. Ninety-eight percent of the projects included in the regional plan solely to address local planning criteria had all project costs allocated to the project zone. *Id.*

Given the predominantly local nature of the benefits arising from local criteria projects, the PJM transmission owners proposed to amend the PJM tariff to allocate all costs of projects intended solely to address local planning criteria to the project zone. Specifically, transmission owners proposed adding a new section (b)(xv) to Schedule 12 of the tariff, which provides in relevant part as follows:

(March 26, 2015), R. 10, Attachment A at 5-8, JA 61-64 (setting out the distribution factor analysis for reliability projects).

Required Transmission Enhancements to Address Transmission Owner Planning Criteria

Notwithstanding Sections (b)(i), (b)(ii), (b)(iv) and (b)(v), cost responsibility for any Required Transmission Enhancements that are included in the Regional Transmission Plan, but which would not have otherwise been so included but for the fact that they address individual Transmission Owner FERC filed planning criteria as filed in FERC Form No. 715 and posted on the PJM website, shall be assigned to the Responsible Customers in the Zone of the Transmission Owner that filed such planning criteria.

Allocation Rehearing Order P 44 n.67, JA 526 (quoting Schedule 12, section (b)(xv)).

Petitioner Dominion and intervenor LSP Transmission challenge the application of this zonal cost allocation to the two percent of local criteria projects that are high voltage, which previously would have received regional cost allocation as regional facilities under Schedule 12, section (b)(i) of the PJM tariff. Specifically, Dominion contests applying this zonal cost allocation to two high voltage local criteria projects in the Dominion zone, the rebuilds of the Elmont-Cunningham and Cunningham-Dooms high voltage lines. As demonstrated below, the Commission reasonably approved the PJM transmission owners' proposed cost allocation and reasonably applied that cost allocation to the Elmont-Cunningham and Cunningham-Dooms lines.

A. The Commission Reasonably Approved Transmission Owners' Proposed Cost Allocation.

The Commission reasonably approved the transmission owners' proposal to allocate the costs of projects intended solely to address local planning criteria to the local project zone. Allocation Order P 13, JA 262; Allocation Rehearing Order P 23, JA 514. The Commission found the proposed cost allocation just and reasonable because local criteria projects -- including high voltage local criteria projects -- are included in the PJM System Operator's regional plan to address local planning criteria rather than the regional planning needs that, under Order No. 1000, give rise to regional cost allocation. Allocation Rehearing Order PP 18, 22-23, JA 511, 513-14; Allocation Order PP 13-14, JA 262-63.

Under FERC's Order No. 1000 rulemaking on transmission planning and cost allocation, "[i]n order for a transmission facility to be eligible for the regional cost allocation methods, the region must select the transmission facility in the regional transmission plan for purposes of cost allocation." Allocation Rehearing Order P 18, JA 512 (quoting Order No. 1000 P 318 n.299). Transmission facilities selected in the regional plan for purposes of cost allocation are facilities collectively selected by the region's transmission providers as a more efficient or cost-effective solution to regional transmission needs. *Id.* (citing Order No. 1000 P 63); Allocation Order P 13 & n.16, JA 262. Projects included in the PJM System Operator's regional plan solely to meet local planning criteria are not included in

the plan to address regional transmission needs (i.e., PJM region-wide reliability criteria or North American Electric Reliability Corporation reliability criteria), but rather to address local needs identified by individual transmission owners pursuant to their own planning criteria. Allocation Rehearing Order PP 19, 23, 25, JA 512, 514, 516; Allocation Order P 13, JA 262. Local criteria projects are approved by the PJM System Operator Board and included in PJM's regional plan only to ensure that they are developed in a manner that is consistent with PJM's overall regional plan. Allocation Order P 13, JA 262; Allocation Rehearing Order P 23, JA 514. To the extent a local criteria project is also found to be the more efficient or cost-effective solution to a regional transmission need, the project will remain eligible for regional cost allocation. Allocation Order P 13, JA 262; Allocation Rehearing Order P 22, JA 513.

The Commission also reasonably concluded that this cost allocation was roughly commensurate with project benefits because the local project zone is the primary beneficiary of local criteria projects. Allocation Order P 16, JA 264; Allocation Rehearing Order PP 23-25, JA 514-16. It is unchallenged that, under a flow-based benefits analysis, 98 percent of the 303 projects included in the regional plan solely to address local planning criteria provided no benefits outside the project zone. Allocation Order P 16, JA 264; Allocation Rehearing Order PP 23-25, JA 514-16. This evidence "supports the PJM Transmission Owners'

assertion that, historically, the pricing zone of the individual transmission owner whose Form No. 715 planning criteria is being met virtually always receives the benefits provided by a project driven solely to address an individual transmission owner Form No. 715 local planning criterion violation.” Allocation Rehearing Order P 25, JA 516. “[T]hus, assigning 100 percent of the associated project costs to that pricing zone results in an allocation of costs that is roughly commensurate to the project’s benefits.” *Id.*

This evidence is “even more compelling” than the evidence on which the Commission relied in *Midwest Independent Transmission System Operator, Inc.*, 142 FERC ¶ 61,215 (2013) (*Midwest Operator*), *on reh’g*, 147 FERC 61,127 (2014), *aff’d*, *MISO Transmission Owners v. FERC*, 819 F.3d 329 (7th Cir. 2016). Allocation Order P 16, JA 264. In *Midwest Operator*, the Commission approved allocating all costs of baseline reliability projects (reliability projects operating at 100 kilovolts or above) to the local project zone because evidence showed that zone received most project benefits. Allocation Rehearing Order P 20 & n.35, JA 512 (citing *Midwest Operator*, 142 FERC ¶ 61,215 P 521). The record demonstrated that, under the prior Midwest Operator cost allocation methodology,¹² 80 percent of baseline reliability projects had at least 75 percent of

¹² Under the prior Midwest Operator cost allocation methodology, projects operating at 345 kilovolts or above were allocated 20 percent regionally and 80 percent to specific beneficiaries based upon a flow-based benefits analysis.

their costs allocated to the project zone. *Midwest Operator*, 142 FERC ¶ 61,215 P 487.

Dominion urges the Court to disregard this order because it was not appealed, Dominion Brief at 42, but the Seventh Circuit in fact affirmed the *Midwest Operator* order. See Allocation Rehearing Order P 25 n.47, JA 517 (citing *MISO Transmission Owners*, 819 F.3d at 336). The Seventh Circuit found that the local allocation (which gives the incumbent transmission owners a right of first refusal)¹³ “would be problematic . . . only if the benefits of a baseline reliability project were largely or entirely realized in pricing zones other than the one in which the project was to be built.” *Id.* at 336. While FERC cannot allocate project costs to utilities who derive no or trivial benefits from the project, the court found that “the spillover of benefits to other zones is modest enough to make the local allocation of costs ‘roughly commensurate’ with the allocation of benefits.” *Id.* (quoting *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009)). Similarly, here, the Commission reasonably concluded that assigning all costs of local criteria projects to the project zone was “roughly commensurate” with the

Midwest Operator, 142 FERC ¶ 61,215 P 484. Lower-voltage facilities were allocated solely on the flow-based benefits analysis. *Id.*

¹³ Order No. 1000 prohibited rights of first refusal for projects selected in the regional plan for purposes of cost allocation to address regional needs, but the Commission did not prohibit such rights for local transmission facilities not selected for regional cost allocation. *MISO Transmission Owners*, 819 F.3d at 335.

project benefits, notwithstanding the modest “spillover” of benefits to other zones from 2 percent of local criteria projects. Allocation Rehearing Order P 25 & n.47, JA 517 (quoting *MISO Transmission Owners*, 819 F.3d at 336). *See also id.* P 24, JA 515 (quoting *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1369 (D.C. Cir. 2004) (“we have never required a ratemaking agency to allocate costs with exacting precision”)).

B. The Commission’s Approval Of The Transmission Owners’ Proposal Was Fully Consistent With Cost Causation Principles.

Petitioner Dominion, favoring a broader allocation of costs that lessens its burden, argues that zonal allocation of the costs of the two percent of local criteria projects that are high voltage contravenes cost causation principles. In Dominion’s view, because those high voltage projects provide benefits outside the project zone, the Commission is compelled to allocate project costs to all beneficiaries of the projects. *See* Dominion Brief at 30-42. Dominion, however, fails to demonstrate any error in the Commission’s determination.

As a threshold matter, in evaluating transmission owners’ rate proposal under section 205 of the Federal Power Act, 16 U.S.C. § 824d, the Commission is not required to justify departing from the previously-approved cost allocation methodology as Dominion argues. *See* Dominion Brief at 45. As this Court has found, section 205 permits a utility to propose a new rate, and the Commission must approve that new rate if it is just and reasonable. Allocation Rehearing Order

P 24, JA 515. *See, e.g., So. Cal. Edison v. FERC*, 717 F.3d 177, 181 (D.C. Cir. 2013) (under section 205 the Commission must approve a proposed rate change as long as the new rates are just and reasonable); *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir. 2002) (FERC can reject proposed rates under section 205 “only if it finds the changes proposed by the public utility are not ‘just and reasonable’”).

To approve the proposed rate, the Commission is not required to find the existing rate unjust and unreasonable. Allocation Rehearing Order P 24, JA 515. *See City of Winnfield v. FERC*, 744 F.2d 871, 874-75 (D.C. Cir. 1984) (section 205 allows the Commission to approve just and reasonable proposed rates “without a showing that current rates are unjust and unreasonable”); *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74, 94 (3d Cir. 2014) (“It is *not* necessary, in a filing pursuant to § 205, that FERC find the previous rate was *unjust* or *unreasonable*.”). *See also, e.g., Advanced Energy*, 860 F.3d at 662 (when acting on a utility rate proposal under section 205, the Commission “restricts itself to evaluating the confined proposal”).

Thus, to approve the transmission owners’ proposal, the Commission was not required to find the existing allocation unjust and unreasonable, nor to find that the new proposal was superior to the existing allocation methodology. The only

issue was whether the transmission owners' allocation proposal was just and reasonable. Allocation Rehearing Order P 24, JA 515.

1. The Commission Reasonably Approved Local Allocation Of Project Costs Addressing Local Needs.

The Commission reasonably determined that allocating the costs of projects addressing solely local planning criteria to the local project zone was just and reasonable because local criteria projects are planned to address zonal, rather than regional needs, and 98 percent of such projects historically provided no benefits outside the project zone. Allocation Rehearing Order PP 23-26, JA 514-17. While Dominion would prefer a more exact alignment of costs and benefits, cost allocation has never been required to be exact, and there may be multiple just and reasonable allocations in any given factual scenario. *Id.* P 24, JA 515 (quoting *Midwest ISO Transmission Owners*, 373 F.3d at 1369 (“we have never required a ratemaking agency to allocate costs with exacting precision”)). *See also, e.g., Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002) (“FERC is not bound to reject any rate mechanism that tracks the cost-causation principle less than perfectly”).

There is, in fact, no statutory requirement “that rates precisely match cost causation and responsibility;” rates need only be just and reasonable. *Carnegie Natural Gas Co. v. FERC*, 968 F.2d 1291, 1293 (D.C. Cir. 1992) (construing analogous ratemaking provision of the Natural Gas Act). Rather than requiring an

exact matching of cost and benefits, the application of the just and reasonable standard to a proposed cost allocation method “involves important policy choices about how costs of services should be allocated among customers.” *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984). *See also, e.g., Cities of Batavia v. FERC*, 672 F.2d 64, 83 (D.C. Cir. 1982) (court defers to Commission “policy decision about how system-wide costs ought to be distributed among customer groups”). In consideration of competing policies, the Commission may “approve measures that do not best match cost responsibility and causation.” *S.C. Pub. Serv. Auth.*, 762 F.3d at 88 (quoting *Carnegie Natural Gas Co.*, 968 F.2d at 1294).

Under the Commission’s Order No. 1000 rule, regional cost allocation is premised upon transmission providers in a region collectively selecting a project as a more efficient or cost-effective solution to regional transmission needs than projects resulting from individual utility planning. Allocation Order P 13 & n.16, JA 262; Allocation Rehearing Order PP 18-19, JA 511-12. *See* Background Section I (discussing Order No. 1000 regional planning and cost allocation reforms). In affirming Order No. 1000, this Court recognized that regional cost allocation “will be triggered only in cases in which the transmission providers in a region, in consultation with stakeholders, evaluate a given facility and determine that its benefits merit cost allocation under the regional cost allocation method(s).”

S.C. Pub. Serv. Auth., 762 F.3d at 83 (citing Order No. 1000 P 539; Order No. 1000-A P 579). The intent was “to ensure that public utility transmission providers in every transmission planning region, in consultation with stakeholders, evaluate proposed alternative solutions at the regional level that may resolve the region’s needs more efficiently or cost-effectively than solutions identified in the local transmission plans of individual public utility transmission providers.” Order No. 1000 P 68. *See also id.* P 148.

Unlike other high voltage facilities, local criteria high voltage facilities are not selected by the region’s transmission providers as the more efficient or cost-effective solution to regional needs (i.e., PJM region-wide reliability criteria or North American Electric Reliability Corporation standards), but rather are included in the regional plan solely to address individual utility local planning criteria. Allocation Order P 13 & n.16, JA 262; Allocation Rehearing Order PP 18-19, 22-23, 25, JA 511-12; 513-14, 516. The Commission found it just and reasonable to allocate the costs of such projects to the local project zone. Allocation Order P 13, JA 262; Allocation Rehearing Order PP 18-19, JA 511-12. The Commission noted that, if a project addressing local planning criteria also was found to more efficiently or cost-effectively address a regional transmission need, it would remain eligible for regional cost allocation. Allocation Order P 13, JA 262; Allocation Rehearing Order P 22, JA 513. *See, e.g., PJM Interconnection, L.L.C.*, 157 FERC

¶ 61,152 (2016) (granting Dominion regional cost allocation for the rebuild of a high voltage line where PJM determined that the project would satisfy both Dominion local criteria and PJM region-wide reliability criteria).

Accordingly, local planning criteria projects “are a different class of projects from the projects that PJM plans to meet regional transmission needs.” Allocation Rehearing Order P 28, JA 518. *See, e.g., FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 355 (D.C. Cir. 2014) (affirming different cost allocation for projects built solely for the benefit of an individual transmission owner’s system and projects developed as part of the PJM regional planning process that “are designed to benefit the entire PJM footprint.”). Because they are different classes of projects, transmission owners’ proposal to apply different cost allocation to the two classes of projects was not unduly discriminatory. Allocation Rehearing Order P 28, JA 518. *See* Dominion Brief at 40-41 (arguing no basis exists to differentiate between high voltage facilities “regardless of how the need for it is identified”); *id.* at 49-50 (arguing that the differing treatment of high voltage local criteria projects is unduly discriminatory). “The Court will not find a Commission determination to be unduly discriminatory if the entity claiming discrimination is not similarly situated to others.” *Advanced Energy*, 860 F.3d at 670 (quoting *Transmission Agency of N. Cal. v. FERC*, 628 F.3d 538, 549 (D.C. Cir. 2010)). Among the valid reasons for disparate treatment are differences “relevant to the achievement of

permissible policy goals.” *Black Oak Energy, LLC v. FERC*, 725 F.3d 230, 239 (D.C. Cir. 2013). *See also, e.g., Advanced Energy*, 860 F.3d at 670-71 (deferring to the Commission’s policy judgment in disparate treatment of different types of capacity resources).

Dominion argues that individual utility planning criteria filed in FERC Form No. 715 incorporate regional information as well as local information, and therefore no distinction should be made for reliability projects selected under this criteria. Dominion Brief at 41-42. *See infra* n.9 (discussing FERC Form No. 715). The Commission found that, merely because individual utilities may need to take regional load flow into account in completing Form No. 715, “does not indicate that the transmission planning criteria in Form No. 715 reflects regional planning.” Allocation Rehearing Order P 27, JA 517. “Dominion points to no statement or other support that Form No. 715 is anything other than what it purports to be: individual planning criteria for each transmission owner.” *Id.*

Further, while Dominion claims that the Commission “determined that the criteria were appropriate,” Dominion Brief at 32, *see also id.* at 48, in the cited order the Commission in fact simply found that “the record indicates that Dominion followed the appropriate procedures to update [] its planning criteria.” *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,197 P 15 (2015), JA 186.

“Specifically, after Dominion presented its proposal to add end of life criteria to its

individual transmission planning criteria at a PJM Planning Committee meeting, Dominion adopted the proposed criteria in its FERC Form No. 715.” *Id.*

Thus, simply because local planning criteria are included in the regional plan criteria, and the PJM System Operator Board approves local criteria projects, *see, e.g.*, LSP Transmission Brief at 23-24, does not mean that local criteria projects are selected by the region as the more efficient or cost-effective solution to regional transmission needs. Allocation Rehearing Order PP 22-23, JA 513-15. Rather, local criteria projects are included in the regional plan and approved by the PJM Board only to ensure that they are developed in a manner that is consistent with PJM’s overall regional plan. Allocation Order P 13, JA 262; Allocation Rehearing Order P 23, JA 514.

2. The Record Supported Finding The Allocation Of Costs Roughly Commensurate With Benefits.

The Commission also reasonably determined, consistent with its precedent, that allocating all costs of local criteria projects to the local project zone was roughly commensurate with project benefits, where 98 percent of local criteria projects historically provided no benefits outside the project zone. Allocation Order P 16, JA 264; Allocation Rehearing Order PP 23-26, JA 514-17.

In meeting the cost causation standard, the Commission was not compelled to allocate the costs of the local criteria projects “to all users throughout the region that benefit from them.” Dominion Brief at 33. *See also id.* at 34 (Commission

must allocate costs to all users benefitting from projects). This Court has rejected arguments that the Commission is compelled to assure exact cost allocations by allocating costs to all beneficiaries. In *S.C. Pub. Serv. Auth.*, 762 F.3d at 87-88, this Court affirmed the Order No. 1000 requirement that regions may not allocate costs to “out-of-region” project beneficiaries without their consent, notwithstanding that such beneficiaries may escape cost responsibility. The Court found that “nothing requires the Commission to ensure full or perfect cost causation. Rather, the cost causation principle requires that ‘all approved rates reflect to some degree the costs actually caused by the customer who must pay them.’” *Id.* at 88 (quoting *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992)) (emphasis added by the Court). Citing the same precedent, this Court in *Public Service Commission of Wisconsin v. FERC*, 545 F.3d 1058, 1066 (D.C. Cir. 2008), affirmed retaining local cost allocation for already-planned transmission upgrades, notwithstanding their regional benefits. *See id.* at 1067 (finding the Commission was not required to “allocate costs with exacting precision”) (quoting *Midwest ISO Transmission Owners*, 373 F.3d at 1369).

As the Commission found, the data here was “even more compelling” than the data on which the Commission relied in its *Midwest Operator* order, affirmed by the Seventh Circuit in *MISO Transmission Owners*. Allocation Order P 16, JA 264 (citing *Midwest Operator*, 142 FERC ¶ 61,215 P 521); Allocation

Rehearing Order PP 20 & n.35, 25 & n.47, JA 512, 516. In *MISO Transmission Owners*, the Seventh Circuit found local cost allocation just and reasonable where “the spillover of benefits to other zones is modest enough to make the local allocation of costs ‘roughly commensurate’ with the allocation of benefits.” *Id.* The Seventh Circuit found the spillover “modest” where 80 percent of baseline reliability projects had at least 75 percent of their costs allocated to the project zone under a flow-based benefits analysis. *Midwest Operator*, 142 FERC ¶ 61,215 P 487. As the Commission found, there is less “spillover” here than in *MISO Transmission Owners*, where 98 percent of local criteria projects had all costs allocated to the local project zone under a flow-based benefits analysis. Allocation Order P 16, JA 264; Allocation Rehearing Order PP 25-26, JA 516-17.

Indeed, the Seventh Circuit held that local cost allocation would be “problematic” only if the benefits of a project “were largely or entirely realized in pricing zones other than the one in which the project was to be built.” *MISO Transmission Owners*, 819 F.3d at 336. Here, Dominion does not argue that Dominion ratepayers receive no or trivial benefits from Dominion’s high voltage local criteria projects.

Dominion attempts to distinguish the Commission’s *Midwest Operator* order on the ground that high-voltage baseline reliability projects may qualify as multi-value projects under the *Midwest Operator* tariff, which would permit them to

receive regional cost allocation. Dominion Brief at 42-43. As the Seventh Circuit recognized, however, the “sole purpose” of baseline reliability projects is “to solve problems of reliability,” which distinguishes them from multi-value projects.

MISO Transmission Owners, 819 F.3d at 335. As the name implies, multi-value projects must serve other purposes in addition to reliability, such as addressing public policy mandates or providing economic benefits. *See, e.g., Ill. Commerce Comm’n v. FERC*, 721 F.3d 764, 774 (7th Cir. 2013). Thus, merely because a baseline reliability project is high voltage does not make it a multi-value project; in fact, 17 of the 78 baseline reliability projects approved at the time of the first *Midwest Operator* order operated at 345 kilovolts or above. *See Midwest Operator*, 142 FERC 61,215 PP 484, 487. This is analogous to the situation here, where projects that address local criteria may remain eligible for regional cost allocation if they also are found to more efficiently or cost-effectively address PJM regional criteria or North American Electric Reliability Corporation criteria. *See Allocation Order* PP 13-14, JA 262-64; *Allocation Rehearing Order* P 22, JA 513.

Dominion argues that the Commission orders are invalid under the Seventh Circuit’s decisions in *Illinois Commerce Commission v. FERC*, 576 F.3d 470 (7th Cir. 2009), and *Illinois Commerce Commission v. FERC*, 756 F.3d 556 (7th Cir. 2014). Dominion Brief at 34-37. In *MISO Transmission Owners*, however, the Seventh Circuit specifically held that its *Illinois Commerce Commission* precedent

did not prohibit zonal allocation of project costs where there is a modest spillover of benefits to other zones. *MISO Transmission Owners*, 819 F.3d at 336 (citing *Ill. Commerce Comm’n*, 576 F.3d at 476). In the *Illinois Commerce Commission* decisions, the court rejected a pro rata “postage stamp” allocation of high voltage project costs across the entire PJM region based upon assumed benefits to the entire regional grid, when the evidence showed that the lines primarily would benefit utilities in the eastern part of PJM. *Ill. Commerce Comm’n*, 576 F.3d at 474-75; *Ill. Commerce Comm’n*, 756 F.3d at 564. As the Seventh Circuit found, these cases teach 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.” *MISO Transmission Owners*, 819 F.3d at 336 (quoting *Ill. Commerce Comm’n*, 576 F.3d at 476). These cases do not preclude allocating all costs of a project to a zone that receives most of the project benefits. *Id.*

3. Dominion Did Not Demonstrate That The Elmont-Cunningham And Cunningham-Dooms Projects Were Planned To Address Regional Reliability Issues.

Dominion argues that the rebuild of the Elmont-Cunningham and Cunningham-Dooms lines addressed regional reliability issues, and therefore should receive regional cost allocation. Dominion Br. 31-33, 40, 50. With regard to the Elmont-Cunningham line, Dominion specifically points to the Commission’s

statement that the project “must go into service within three years or less in order to avoid several **regional** Reliability Criteria . . .” *Id.* at 32 (quoting Elmont-Cunningham Order P 27, JA 278) (emphasis added by Dominion).

The Commission reasonably rejected this argument. Elmont-Cunningham Rehearing Order PP 16-19, JA 538-40. While the PJM System Operator found that there would be multiple North American Electric Reliability Corporation criteria violations without the Elmont-Cunningham line in service, Dominion Brief at 31-32, this analysis occurred only under Dominion’s individual transmission planning criteria, which include an end-of-life analysis. Elmont-Cunningham Rehearing Order P 17, JA 539. Under Dominion’s end-of-life criteria, the base case used for reliability tests consists of the existing system with the facility removed. *Id.* (citing Dominion Transmission Planning Criteria at 18 (Version 11, effective March 27, 2015)). Neither PJM regional reliability criteria nor North American Electric Reliability Corporation criteria establish a base case analysis with a line removed from service. *Id.* The PJM System Operator has not in fact established regional end-of-life criteria, *id.* P 17 n.26, JA 539, nor have some of the other individual transmission owners in PJM. Allocation Rehearing Order P 28 n.53, JA 519 (describing unique nature of each individual utility’s planning criteria). The rebuild of the Cunningham-Dooms line similarly was included in the regional plan

solely to address Dominion's end-of-life planning criteria. Cunningham-Dooms Order PP 6 & n.11, 19, JA 427, 430.

Thus, the PJM System Operator did not find the projects necessary to address PJM's regional planning criteria or North American Electric Reliability Corporation criteria. *See* Elmont-Cunningham Rehearing Order P 16, JA 538; Cunningham-Dooms Order PP 6 & n.11, 19, JA 426, 430. Had PJM concluded that the projects were needed under any of its regional planning criteria or North American Electric Reliability Corporation criteria, the projects would have been eligible for regional cost allocation. Elmont-Cunningham Rehearing Order P 16, JA 538. For example, in *PJM Interconnection, L.L.C.*, 157 FERC ¶ 61,152 (2016), the Commission granted Dominion regional cost allocation for the rebuild of a high voltage line because PJM found that the project addressed both Dominion's local planning criteria and region-wide PJM reliability criteria. *See id.* PP 21-22. Here, however, PJM identified the projects as needed only to satisfy Dominion's local planning criteria. Elmont-Cunningham Rehearing Order P 16, JA 538; Cunningham-Dooms Order PP 6 & n.11, 19, JA 426, 430. Accordingly, under the PJM tariff these projects were not required for any reason other than the individual transmission owner local planning criteria, and thus, under the revised PJM tariff, 100 percent of the costs of the project properly are assigned to the Dominion zone. *See* Elmont-Cunningham Rehearing Order P 17, JA 539.

Even though Dominion is of the opinion that its end-of-life analysis is necessary for prudent planning, Dominion Brief at 51-54, and should be adopted by PJM region-wide, *id.* at 48, the fact remains that neither the PJM System Operator nor the North American Electric Reliability Corporation has found it necessary to adopt such an analysis to assure reliability. Elmont-Cunningham Rehearing Order P 17, JA 539. Dominion’s end-of-life analysis therefore remains solely the product of Dominion’s unilaterally-determined local planning criteria.

Id.

C. Intervenor LSP Transmission’s Arguments Should Not Be Considered And, In Any Event, Are Without Merit.

1. The Court Should Disregard LSP Transmission’s Arguments As They Were Not Raised By Dominion.

Intervenor LSP Transmission contends that, under the revised PJM System Operator tariff, high voltage local criteria projects remain projects “selected for purposes of cost allocation” that under FERC Order No. 1000 must be eligible for regional cost allocation. LSP Transmission Brief at 17-27. *See also supra* Argument section (C)(2) (further explaining LSP Transmission’s argument, based on language of two sections of the PJM tariff). Petitioner Dominion did not make this argument; as LSP Transmission itself points out, Dominion argued that FERC’s acceptance of the transmission owners’ cost allocation proposal “contravenes the cost causation principle.” LSP Transmission Brief at 12.

Because intervenor LSP Transmission is making an argument not raised by Dominion, under its settled procedure, the Court should not consider Intervenor LSP Transmission's argument.

This Court has repeatedly held that, “‘absent extraordinary circumstances, intervenors ‘may join only on a matter that has been brought before the court’ by a petitioner.’” *East Ky. Power Coop., Inc. v. FERC*, 489 F.3d 1299, 1305 (D.C. Cir. 2007) (quoting *Cal. Dep’t of Water Res. v. FERC*, 306 F.3d 1121, 1126 (D.C. Cir. 2002)). *See also Nat’l Ass’n of Clean Water Agencies v. EPA*, 734 F.3d 1115, 1161 (D.C. Cir. 2013); *Ala. Mun. Distrib. Group v. FERC*, 300 F.3d 877, 879 (D.C. Cir. 2002); *Rio Grande Pipeline Co. v. FERC*, 178 F.3d 533, 539 (D.C. Cir. 1999). “[A]n intervenor is admitted to the proceeding as it stands, and in respect of the pending issues, but is not permitted to enlarge those issues or compel an alteration of the nature of the proceeding.” *Vinson v. Washington Gas Light Co.*, 321 U.S. 489, 498 (1944). *See also, e.g., Time Warner Entertainment Co., L.P. v. FCC*, 56 F.3d 151, 202 (D.C. Cir. 1995) (having foregone the opportunity to file its own petition for review, intervenor “is barred from protesting the Commission’s regulations on grounds not presented by the petitioners”).

This Court has made an exception to this rule where the intervenor “satisfies the statutory requirements for a petitioner to seek judicial review of the Commission’s order.” *Cal. Dep’t*, 306 F.3d at 300. Here, however, Intervenor

LSP Transmission filed its motions to intervene in these appeals on March 1, 2017, outside the statutory 60-day period for filing petitions for review of the December 9, 2016 Allocation Rehearing Order, Elmont-Cunningham Rehearing Order and Cunningham-Dooms Rehearing Order. *See* Federal Power Act § 313(b), 16 U.S.C. § 825l(b); *Cal. Dep't*, 306 F.3d at 301 (intervenor who did not intervene within 60 days of the rehearing order did not satisfy statutory requirements for judicial review). LSP Transmission has “thus failed to satisfy a statutory requirement to guarantee judicial review of [its] claim.” *East Ky.*, 489 F.3d at 1305 (citing *Cal. Dep't*, 306 F.3d at 1126-27).

2. LSP Transmission Fails To Demonstrate That Local Criteria Facilities Are Selected In The Regional Plan For Purposes Of Regional Cost Allocation.

LSP Transmission contends that, under the revised PJM System Operator tariff, local criteria projects remain “selected in the regional plan for purposes of cost allocation” and therefore, under Order No. 1000, such projects must be eligible for regional cost allocation. LSP Transmission Brief at 20-21, 24. This argument rests on the fact that under Schedule 12, section (b)(i) of the PJM tariff, high voltage facilities are still defined as regional facilities eligible for regional cost allocation, without any exception for local criteria projects. The new cost allocation provision approved in the challenged orders (Schedule 12, section (b)(xv)), states that “notwithstanding” section (b)(i), cost responsibility for local

criteria projects shall be assigned to the project zone. *Id.* at 20-21. In LSP Transmission’s view, this means that high voltage local criteria facilities are still regional facilities “selected for the purpose of cost allocation” under section (b)(i), that are then excluded from regional cost allocation by section (b)(xv). *Id.* at 20-22. LSP contends that Order No. 1000 prohibits “[t]his sort of post-selection exclusion from regional cost allocation.” *Id.* at 21 (quoting Order No. 1000 P 690 (a “transmission provider must have a regional cost allocation method for any transmission facility selected in a regional transmission plan for purposes of cost allocation”).

The Commission reasonably rejected this interpretation of the tariff, finding that the new section (b)(xv) provides a new cost allocation for local criteria projects that overrides any preexisting provisions from its effective date, including the section (b)(i) cost allocation for high voltage regional projects. Allocation Rehearing Order P 44, JA 525. The Commission found that “[s]ection (b)(xv) of Schedule 12 provides the allocation of all costs incurred for projects included in the [regional plan] solely to address individual transmission owner Form No. 715 local planning criteria after it became effective.” Allocation Rehearing Order P 44, JA 525. That section states that “notwithstanding” tariff sections (b)(i), (b)(ii), (b)(iv) and (b)(v) of Schedule 12, “cost responsibility for any transmission projects that are included in the [regional plan], but which would not have otherwise been

so included but for the fact that they address an individual transmission owner Form No. 715 local planning criteria, must be assigned to the zone of the transmission owner that filed such planning criteria.” *Id.* (quoting section (b)(xv)). *See id.* n. 67, JA 526 (setting out the language of section (b)(xv)).

“Therefore, section (b)(xv) of Schedule 12 does not envision that the prior cost allocation methodologies will continue to apply; rather, it provides that ‘notwithstanding’ such prior cost allocations, starting from the effective date of the proposed provision, PJM will assign future cost responsibility for projects needed solely to address [local planning criteria] 100 percent to the individual transmission owner’s zone consistent with the rate on file in section (b)(xv) of Schedule 12.” Allocation Rehearing Order P 44, JA 525. *See also id.* P 32, JA 520 (section (b)(xv) states, without exception, “that ‘notwithstanding’ the other cost allocation provisions of the Tariff, all individual transmission owner Form No. 715 projects are to be allocated solely to the individual transmission owner’s zone.”).

The Commission’s reasonable interpretation of the tariff comports with the courts’ consistent interpretation of “notwithstanding” clauses. *See, e.g., Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993) (“the use of a ‘notwithstanding’ clause clearly signals the drafter’s intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other section”) (citing cases); *Multi-State Communications, Inc. v. FCC*, 728 F.2d 1519, 1525

(D.C. Cir. 1984) (the phrase “notwithstanding any other provision of law” overrides inconsistent statutory provisions). The Commission’s reasonable interpretation of the tariff deserves deference. *See, e.g., Koch Gateway Pipeline Co. v. FERC*, 136 F.3d 810, 814 (D.C. Cir. 1998) (The Court gives substantial deference to FERC’s interpretation of filed tariffs even if the issue simply involves the proper construction of language.).

Thus, the PJM transmission owners’ proposal created a category of projects that would not be selected in the regional plan for purposes of cost allocation, “rather than an exclusion for projects selected in the regional transmission plan for purposes of cost allocation with a subsequent reallocation of their costs to the zone of the individual transmission owner.” Allocation Rehearing Order P 7, JA 506. *See also id.* P 19, JA 512 (the revised tariff language “created a category of projects that are included in the [regional plan] solely to address individual transmission owner Form No. 715 local planning criteria, and are not selected in the [regional plan] for purposes of cost allocation as the more efficient or cost-effective transmission solutions to regional transmission needs”).

Under the theory that high voltage local criteria projects remain “selected for purposes of cost allocation” under the revised tariff, LSP Transmission also argues that high voltage local criteria projects are not “local” projects under FERC Order No. 1000 that can be included in the regional plan but excluded from regional cost

allocation. *See* LSP Transmission Brief at 25-27. Under Order No. 1000, “[a] local transmission facility is a transmission facility located solely within a public utility transmission provider’s retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation.” Allocation Rehearing Order P 23 n.39, JA 515 (quoting Order No. 1000 P 63); Allocation Order P 13 n.16, JA 262. Here, local criteria facilities are within one utility’s distribution area, and they are “not selected in the regional transmission plan for purposes of cost allocation” because they are not selected by public utility transmission owners in the region as the more efficient or cost-effective solution to regional transmission needs. Allocation Order P 13 n.16, JA 262; Allocation Rehearing Order PP 18-23, JA 511-15. *See* Background Section I (describing Order No. 1000 regional planning and cost allocation reforms).

LSP Transmission argues that Dominion did not choose to build its project as a local project. LSP Transmission Brief at 26-27. But regional cost allocation is determined by all the public utility transmission providers in the region, not the individual provider. Allocation Rehearing Order P 13 & n.16, JA 262. “With respect to cost allocation for a proposed transmission facility located entirely within one public utility transmission owner’s service territory, we find that a public utility transmission owner may not unilaterally apply the regional cost allocation method or methods developed pursuant to this Final Rule.” Order No.

1000 P 564. “However, a proposed transmission facility located entirely within a public utility transmission owner’s service territory could be determined by public utility transmission providers in the region to provide benefits to others in the region and thus the cost of that transmission facility could be allocated according to that region’s regional cost allocation method.” *Id.* Here, the PJM transmission owners did not conclude that local criteria project costs should be allocated according to the regional cost allocation method.

CONCLUSION

For the foregoing reasons, the petitions for review should be denied.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C) and Circuit Rule 32(a), I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 10,534 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in Times New Roman 14-point font using Microsoft Word 2013.

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ADDENDUM

Statutes

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TRANSFER OF FUNCTIONS

Executive and administrative functions of Securities and Exchange Commission, with certain exceptions, transferred to Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 824d. Rates and charges; schedules; suspension of new rates; automatic adjustment clauses

(a) Just and reasonable rates

All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) Preference or advantage unlawful

No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Schedules

Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Notice required for rate changes

Unless the Commission otherwise orders, no change shall be made by any public utility in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after sixty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the sixty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Suspension of new rates; hearings; five-month period

Whenever any such new schedule is filed the Commission shall have authority, either upon

complaint or upon its own initiative without complaint, at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of such five months, the proposed change of rate, charge, classification, or service shall go into effect at the end of such period, but in case of a proposed increased rate or charge, the Commission may by order require the interested public utility or public utilities to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require such public utility or public utilities to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

(f) Review of automatic adjustment clauses and public utility practices; action by Commission; "automatic adjustment clause" defined

(1) Not later than 2 years after November 9, 1978, and not less often than every 4 years thereafter, the Commission shall make a thorough review of automatic adjustment clauses in public utility rate schedules to examine—

(A) whether or not each such clause effectively provides incentives for efficient use of resources (including economical purchase and use of fuel and electric energy), and

(B) whether any such clause reflects any costs other than costs which are—

(i) subject to periodic fluctuations and

(ii) not susceptible to precise determinations in rate cases prior to the time such costs are incurred.

Such review may take place in individual rate proceedings or in generic or other separate proceedings applicable to one or more utilities.

(2) Not less frequently than every 2 years, in rate proceedings or in generic or other separate proceedings, the Commission shall review, with respect to each public utility, practices under

any automatic adjustment clauses of such utility to insure efficient use of resources (including economical purchase and use of fuel and electric energy) under such clauses.

(3) The Commission may, on its own motion or upon complaint, after an opportunity for an evidentiary hearing, order a public utility to—

(A) modify the terms and provisions of any automatic adjustment clause, or

(B) cease any practice in connection with the clause,

if such clause or practice does not result in the economical purchase and use of fuel, electric energy, or other items, the cost of which is included in any rate schedule under an automatic adjustment clause.

(4) As used in this subsection, the term “automatic adjustment clause” means a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include any rate which takes effect subject to refund and subject to a later determination of the appropriate amount of such rate.

(June 10, 1920, ch. 285, pt. II, §205, as added Aug. 26, 1935, ch. 687, title II, §213, 49 Stat. 851; amended Pub. L. 95-617, title II, §§207(a), 208, Nov. 9, 1978, 92 Stat. 3142.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-617, §207(a), substituted “sixty” for “thirty” in two places.

Subsec. (f). Pub. L. 95-617, §208, added subsec. (f).

STUDY OF ELECTRIC RATE INCREASES UNDER FEDERAL POWER ACT

Section 207(b) of Pub. L. 95-617 directed chairman of Federal Energy Regulatory Commission, in consultation with Secretary, to conduct a study of legal requirements and administrative procedures involved in consideration and resolution of proposed wholesale electric rate increases under Federal Power Act, section 791a et seq. of this title, for purposes of providing for expeditious handling of hearings consistent with due process, preventing imposition of successive rate increases before they have been determined by Commission to be just and reasonable and otherwise lawful, and improving procedures designed to prohibit anti-competitive or unreasonable differences in wholesale and retail rates, or both, and that chairman report to Congress within nine months from Nov. 9, 1978, on results of study, on administrative actions taken as a result of this study, and on any recommendations for changes in existing law that will aid purposes of this section.

§ 824e. Power of Commission to fix rates and charges; determination of cost of production or transmission

(a) Unjust or preferential rates, etc.; statement of reasons for changes; hearing; specification of issues

Whenever the Commission, after a hearing held upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classi-

fication is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order. Any complaint or motion of the Commission to initiate a proceeding under this section shall state the change or changes to be made in the rate, charge, classification, rule, regulation, practice, or contract then in force, and the reasons for any proposed change or changes therein. If, after review of any motion or complaint and answer, the Commission shall decide to hold a hearing, it shall fix by order the time and place of such hearing and shall specify the issues to be adjudicated.

(b) Refund effective date; preferential proceedings; statement of reasons for delay; burden of proof; scope of refund order; refund orders in cases of dilatory behavior; interest

Whenever the Commission institutes a proceeding under this section, the Commission shall establish a refund effective date. In the case of a proceeding instituted on complaint, the refund effective date shall not be earlier than the date of the filing of such complaint nor later than 5 months after the filing of such complaint. In the case of a proceeding instituted by the Commission on its own motion, the refund effective date shall not be earlier than the date of the publication by the Commission of notice of its intention to initiate such proceeding nor later than 5 months after the publication date. Upon institution of a proceeding under this section, the Commission shall give to the decision of such proceeding the same preference as provided under section 824d of this title and otherwise act as speedily as possible. If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. In any proceeding under this section, the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant. At the conclusion of any proceeding under this section, the Commission may order refunds of any amounts paid, for the period subsequent to the refund effective date through a date fifteen months after such refund effective date, in excess of those which would have been paid under the just and reasonable rate, charge, classification, rule, regulation, practice, or contract which the Commission orders to be thereafter observed and in force: *Provided*, That if the proceeding is not concluded within fifteen months after the refund effective date and if the Commission determines at the conclusion of the proceeding that the proceeding was not resolved within the fifteen-month period primarily because of dilatory behavior by the public utility, the Commission may order refunds of any or all amounts paid for the period subsequent to the refund effective date and prior to the conclusion of the proceeding. The refunds

The Energy Policy Act of 1992, referred to in subsec. (i)(2)(A)(III), (B)(i), is Pub. L. 102-486, Oct. 24, 1992, 106 Stat. 2776. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of Title 42, The Public Health and Welfare and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-486, §722(1), added subsec. (a) and struck out former subsec. (a) which related to determinations by Commission.

Subsec. (b). Pub. L. 102-486, §722(1), struck out subsec. (b) which required applicants for orders to be ready, willing, and able to reimburse parties subject to such orders.

Subsec. (e). Pub. L. 102-486, §722(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) related to utilization of interconnection or wheeling authority in lieu of other authority and limitation of Commission authority.

Subsecs. (g) to (k). Pub. L. 102-486, §722(3), added subsecs. (g) to (k).

STATE AUTHORITIES; CONSTRUCTION

Nothing in amendment by Pub. L. 102-486 to be construed as affecting or intending to affect, or in any way to interfere with, authority of any State or local government relating to environmental protection or siting of facilities, see section 731 of Pub. L. 102-486, set out as a note under section 796 of this title.

§ 824l. Information requirements

(a) Requests for wholesale transmission services

Whenever any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale makes a good faith request to a transmitting utility to provide wholesale transmission services and requests specific rates and charges, and other terms and conditions, unless the transmitting utility agrees to provide such services at rates, charges, terms and conditions acceptable to such person, the transmitting utility shall, within 60 days of its receipt of the request, or other mutually agreed upon period, provide such person with a detailed written explanation, with specific reference to the facts and circumstances of the request, stating (1) the transmitting utility's basis for the proposed rates, charges, terms, and conditions for such services, and (2) its analysis of any physical or other constraints affecting the provision of such services.

(b) Transmission capacity and constraints

Not later than 1 year after October 24, 1992, the Commission shall promulgate a rule requiring that information be submitted annually to the Commission by transmitting utilities which is adequate to inform potential transmission customers, State regulatory authorities, and the public of potentially available transmission capacity and known constraints.

(June 10, 1920, ch. 285, pt. II, §213, as added Pub. L. 102-486, title VII, §723, Oct. 24, 1992, 106 Stat. 2919.)

STATE AUTHORITIES; CONSTRUCTION

Nothing in this section to be construed as affecting or intending to affect, or in any way to interfere with, authority of any State or local government relating to environmental protection or siting of facilities, see section 731 of Pub. L. 102-486, set out as a note under section 796 of this title.

§ 824m. Sales by exempt wholesale generators

No rate or charge received by an exempt wholesale generator for the sale of electric energy shall be lawful under section 824d of this title if, after notice and opportunity for hearing, the Commission finds that such rate or charge results from the receipt of any undue preference or advantage from an electric utility which is an associate company or an affiliate of the exempt wholesale generator. For purposes of this section, the terms “associate company” and “affiliate” shall have the same meaning as provided in section 16451 of title 42.¹

(June 10, 1920, ch. 285, pt. II, §214, as added Pub. L. 102-486, title VII, §724, Oct. 24, 1992, 106 Stat. 2920; amended Pub. L. 109-58, title XII, §1277(b)(2), Aug. 8, 2005, 119 Stat. 978.)

REFERENCES IN TEXT

Section 16451 of title 42, referred to in text, was in the original “section 2(a) of the Public Utility Holding Company Act of 2005” and was translated as reading “section 1262” of that Act, meaning section 1262 of subtitle F of title XII of Pub. L. 109-58, to reflect the probable intent of Congress, because subtitle F of title XII of Pub. L. 109-58 does not contain a section 2 and section 1262 of subtitle F of title XII of Pub. L. 109-58 defines terms.

AMENDMENTS

2005—Pub. L. 109-58 substituted “section 16451 of title 42” for “section 79b(a) of title 15”.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-58 effective 6 months after Aug. 8, 2005, with provisions relating to effect of compliance with certain regulations approved and made effective prior to such date, see section 1274 of Pub. L. 109-58, set out as an Effective Date note under section 16451 of Title 42, The Public Health and Welfare.

STATE AUTHORITIES; CONSTRUCTION

Nothing in this section to be construed as affecting or intending to affect, or in any way to interfere with, authority of any State or local government relating to environmental protection or siting of facilities, see section 731 of Pub. L. 102-486, set out as a note under section 796 of this title.

§824n. Repealed. Pub. L. 109-58, title XII, § 1232(e)(3), Aug. 8, 2005, 119 Stat. 957

Section, Pub. L. 106-377, §1(a)(2) [title III, §311], Oct. 27, 2000, 114 Stat. 1441, 1441A-80, related to authority regarding formation and operation of regional transmission organizations.

§824o. Electric reliability

(a) Definitions

For purposes of this section:

(1) The term “bulk-power system” means—

(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and

(B) electric energy from generation facilities needed to maintain transmission system reliability.

The term does not include facilities used in the local distribution of electric energy.

¹ See References in Text note below.

ation, management, and control of all facilities for such generation, transmission, distribution, and sale; the capacity and output thereof and the relationship between the two; the cost of generation, transmission, and distribution; the rates, charges, and contracts in respect of the sale of electric energy and its service to residential, rural, commercial, and industrial consumers and other purchasers by private and public agencies; and the relation of any or all such facts to the development of navigation, industry, commerce, and the national defense. The Commission shall report to Congress the results of investigations made under authority of this section.

(June 10, 1920, ch. 285, pt. III, §311, as added Aug. 26, 1935, ch. 687, title II, §213, 49 Stat. 859.)

§ 825k. Publication and sale of reports

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and is authorized to sell at reasonable prices copies of all maps, atlases, and reports as it may from time to time publish. Such reasonable prices may include the cost of compilation, composition, and reproduction. The Commission is also authorized to make such charges as it deems reasonable for special statistical services and other special or periodic services. The amounts collected under this section shall be deposited in the Treasury to the credit of miscellaneous receipts. All printing for the Federal Power Commission making use of engraving, lithography, and photolithography, together with the plates for the same, shall be contracted for and performed under the direction of the Commission, under such limitations and conditions as the Joint Committee on Printing may from time to time prescribe, and all other printing for the Commission shall be done by the Public Printer under such limitations and conditions as the Joint Committee on Printing may from time to time prescribe. The entire work may be done at, or ordered through, the Government Printing Office whenever, in the judgment of the Joint Committee on Printing, the same would be to the interest of the Government: *Provided*, That when the exigencies of the public service so require, the Joint Committee on Printing may authorize the Commission to make immediate contracts for engraving, lithographing, and photolithographing, without advertisement for proposals: *Provided further*, That nothing contained in this chapter or any other Act shall prevent the Federal Power Commission from placing orders with other departments or establishments for engraving, lithographing, and photolithographing, in accordance with the provisions of sections 1535 and 1536 of title 31, providing for interdepartmental work.

(June 10, 1920, ch. 285, pt. III, §312, as added Aug. 26, 1935, ch. 687, title II, §213, 49 Stat. 859.)

CODIFICATION

“Sections 1535 and 1536 of title 31” substituted in text for “sections 601 and 602 of the Act of June 30, 1932 (47 Stat. 417 [31 U.S.C. 686, 686b])” on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 825l. Review of orders

(a) Application for rehearing; time periods; modification of order

Any person, electric utility, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, electric utility, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any entity unless such entity shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b) of this section, the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Judicial review

Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the United States court of appeals for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the

hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(c) Stay of Commission's order

The filing of an application for rehearing under subsection (a) of this section shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(June 10, 1920, ch. 285, pt. III, §313, as added Aug. 26, 1935, ch. 687, title II, §213, 49 Stat. 860; amended June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85-791, §16, Aug. 28, 1958, 72 Stat. 947; Pub. L. 109-58, title XII, §1284(c), Aug. 8, 2005, 119 Stat. 980.)

CODIFICATION

In subsec. (b), "section 1254 of title 28" substituted for "sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347)" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109-58 inserted "electric utility," after "Any person," and "to which such person," and substituted "brought by any entity unless such entity" for "brought by any person unless such person".

1958—Subsec. (a). Pub. L. 85-791, §16(a), inserted sentence to provide that Commission may modify or set aside findings or orders until record has been filed in court of appeals.

Subsec. (b). Pub. L. 85-791, §16(b), in second sentence, substituted "transmitted by the clerk of the court to" for "served upon", substituted "file with the court" for "certify and file with the court a transcript of", and inserted "as provided in section 2112 of title 28", and in third sentence, substituted "jurisdiction, which upon the filing of the record with it shall be exclusive" for "exclusive jurisdiction".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

§ 825m. Enforcement provisions

(a) Enjoining and restraining violations

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper District Court of the United

States or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this chapter or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who, in his discretion, may institute the necessary criminal proceedings under this chapter.

(b) Writs of mandamus

Upon application of the Commission the district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder.

(c) Employment of attorneys

The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work, or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the Commission in any case in court; and the expenses of such employment shall be paid out of the appropriation for the Commission.

(d) Prohibitions on violators

In any proceedings under subsection (a) of this section, the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as the court determines, any individual who is engaged or has engaged in practices constituting a violation of section 824u of this title (and related rules and regulations) from—

- (1) acting as an officer or director of an electric utility; or
- (2) engaging in the business of purchasing or selling—
 - (A) electric energy; or
 - (B) transmission services subject to the jurisdiction of the Commission.

(June 10, 1920, ch. 285, pt. III, §314, as added Aug. 26, 1935, ch. 687, title II, §213, 49 Stat. 861; amended June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, §32(b), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 109-58, title XII, §1288, Aug. 8, 2005, 119 Stat. 982.)

CODIFICATION

As originally enacted subsecs. (a) and (b) contained references to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted "the district court of the United States for the District of Columbia" for "the Supreme Court of the District of Columbia", and act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia". However, the words "United States District Court for the District of Columbia" have been deleted entirely as superfluous in

Old Dominion Electric Cooperative, et al.
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D.C. Cir. No. 17-1040 and 17-1041 (consolidated)

CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d), and the Court's Administrative Order Regarding Electronic Case Filing, I hereby certify that I have, this 24th day of October 2017, served the foregoing upon the counsel listed in the Service Preference Report via the Court's CM/ECF system or U.S. Mail, as indicated below.

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