

149 FERC ¶ 61,233  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

PJM Interconnection, L.L.C.

Docket No. EL05-121-009

ORDER ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 18, 2014)

1. On June 25, 2014, the Court of Appeals for the Seventh Circuit (Seventh Circuit or Court) remanded the Commission's determination regarding the cost allocation methodology for certain transmission facilities that operate at 500 kV and above in PJM Interconnection, L.L.C. (PJM).<sup>1</sup> In this order, we establish hearing and settlement judge procedures to determine the assignment of cost allocation for the projects at issue in this proceeding.

**I. Background**

2. On April 19, 2007, the Commission issued Opinion No. 494, an order on an initial decision concerning PJM's transmission rates for the allocation of costs for existing and new transmission facilities contained in PJM's then-current Open Access Transmission Tariff (Tariff).<sup>2</sup> In Opinion No. 494, the Commission found the existing methodology for cost recovery for existing facilities to be just and reasonable.<sup>3</sup> Under that methodology, known as the "license plate" rate design, a customer pays the cost of transmission facilities that are located in the same zone as the customer. The Commission also found PJM's existing methodology for cost recovery for new facilities operating below 500 kV

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<sup>1</sup> *Illinois Commerce Comm'n, et al. v. FERC*, 756 F.3d 556 (7<sup>th</sup> Cir. 2014) (June 25, 2014 Remand).

<sup>2</sup> *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007), *order on reh'g*, Opinion No. 494-A, 122 FERC ¶ 61,082 (2008).

<sup>3</sup> *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,063 at P 3.

to be just and reasonable.<sup>4</sup> Under that methodology, costs are allocated to customers according to PJM's analysis of which loads contribute to the reliability violation that creates a need for the new facility.

3. Lastly, the Commission accepted PJM's proposal to fully allocate, on a region-wide basis, the costs of new, centrally-planned transmission facilities that operate at or above 500 kV.<sup>5</sup> In so doing, the Commission found that the existing record demonstrated that the benefits of new facilities at or above 500 kV are sufficiently broad that a region-wide cost allocation is just and reasonable. The accepted cost allocation methodology, known as a "postage-stamp" methodology, assigns costs to all customers in PJM according to each customer's share of the region's load.

4. Parties sought review of Opinion No. 494 in the Seventh Circuit. The Court affirmed the Commission's determination that the cost allocation methodology for existing facilities was reasonable. The Court, however, granted the petition for review regarding the use of a postage-stamp cost allocation methodology for new transmission facilities that operate at or above 500 kV and remanded the case to the Commission for further proceedings.<sup>6</sup>

5. In the Order on Remand, the Commission affirmed the postage-stamp cost allocation methodology for new transmission facilities that operate at 500 kV and above.<sup>7</sup> The Commission found that, while there is imprecision in valuing the benefits of new 500 kV and above facilities, the benefits of such facilities are sufficiently shared across the PJM region to justify regional cost allocation. The Commission listed a number of benefits provided by new 500 kV and above facilities, including moving large amounts of power to multiple zones of the region, addressing multiple reliability violations over wide areas, readily accommodating changing power flows and needs of the region, and protecting all parts of the region from significant disruptions. Parties again filed petitions for review with the Seventh Circuit, and the Court has remanded the Commission's determination that the costs of certain transmission facilities that operate at or above 500 kV should be allocated among all PJM transmission zones on a postage-stamp basis.

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<sup>4</sup> *Id.* P 4.

<sup>5</sup> *Id.*

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

<sup>7</sup> *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230 (2012) (Order on Remand), *order on reh'g*, 142 FERC ¶ 61,216 (2013).

## II. June 25, 2014 Remand

6. In the June 25, 2014 Remand, the Court faults the Order on Remand for failing to quantitatively justify the application of a postage-stamp cost allocation for the transmission facilities at issue. The Court states that cost-benefit analysis is the standard method of valuation for large public or commercial projects, but that the Commission has not provided a quantitative estimate of the benefits of the new transmission facilities or even demonstrated that a rough estimate of the benefits is impossible to establish.<sup>8</sup> The Court finds that the Commission assumed, but did not demonstrate, that the benefits of the transmission facilities, which are all located in the eastern portion of PJM's territory, are proportionate to the total electric power output of each PJM utility, regardless of the geographic proximity of the facility to the utility to which the costs are assigned.<sup>9</sup>

7. The Court contrasts its decision in this case with its decision affirming the use of a postage-stamp cost allocation methodology for the transmission lines required to bring western wind-generated electrical power to Midcontinent Independent System Operator (MISO) utilities.<sup>10</sup> The Court notes that, in that proceeding, there was evidence that the transmission lines would not yield highly disparate benefits to the utilities asked to contribute to their costs, and that indeed the Commission determined that the benefits from the new transmission facilities would be spread almost evenly across all of the utilities. The Court states that the Commission made no such determination in the case of the PJM transmission facilities that operate at or above 500 kV.

## III. Discussion

8. At the outset, we note that, on October 11, 2012, and in compliance with Order No. 1000,<sup>11</sup> PJM Transmission Owners proposed a hybrid cost allocation methodology for new high voltage transmission facilities planned and approved on or after February 1, 2013. The Commission accepted the proposed compliance in an order

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<sup>8</sup> *Illinois Commerce Comm'n, et al. v. FERC*, 756 F.3d 556 (7<sup>th</sup> Cir. 2014) at 561-62.

<sup>9</sup> *Id.* at 561.

<sup>10</sup> *Id.* at 561-62 (citing *Illinois Commerce Comm'n v. FERC*, 721 F.3d 764 (7<sup>th</sup> Cir. 2013)).

<sup>11</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

dated March 22, 2013.<sup>12</sup> As a result, the cost allocation methodology approved in this proceeding now applies only to those facilities planned and approved by PJM before February 1, 2013. In addition, the costs to be allocated under the postage-stamp cost allocation methodology have been significantly reduced by the cancellation of several 500 kV transmission upgrades, including the Branchburg-Roseland-Hudson, the Potomac Appalachian Transmission Highline (PATH), and the Mid-Atlantic Power Pathway (MAPP) projects.<sup>13</sup> At the time of the Order on Remand, there were approximately \$6.6 billion in new 500 kV and above facilities at issue. The cancellation of projects reduces the estimated costs of the new 500 kV and above facilities from approximately \$6.6 to \$2.7 billion. Even with inclusion of construction work-in-progress and abandonment costs, however, estimated costs at issue are roughly half of the original \$6.6 billion.

9. We will establish hearing and settlement judge procedures to determine the appropriate cost allocation for the projects that remain at issue in this proceeding,<sup>14</sup> as discussed below. Recognizing that the Seventh Circuit rejected the Commission's cost allocation for new 500 kV and above facilities because the Commission had failed to "quantify" the benefits,<sup>15</sup> at the hearing, we expect the parties to support their respective proposals for cost allocations for these projects with quantitative evidence, or at least an estimate of the benefits, adjusted as necessary to reflect any uncertainty in benefit allocation among the PJM utilities.

10. While we are setting this matter for trial-type evidentiary hearing procedures, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>16</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

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<sup>12</sup> *PJM Interconnection, LLC*, 142 FERC ¶ 61,214 (2013). The approved Order No. 1000 hybrid cost methodology, which is applied prospectively from February 1, 2013, allocates 50 percent of the costs according to the postage-stamp method and 50 percent of the costs according to a new, solutions-based DFAX method.

<sup>13</sup> See PJM Transmission Expansion Advisory Committee, August 2012 (<http://www.pjm.com/committees-and-groups/committees/teac.aspx>).

<sup>14</sup> The PJM OATT distinguishes between these projects at PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (a)(v) (Transmission Enhancement Charges) (5.1.0).

<sup>15</sup> 756 F.3d 556, at 561.

<sup>16</sup> 18 C.F.R. § 385.603 (2014).

otherwise, the Chief Judge will select a judge for this purpose.<sup>17</sup> The settlement judge shall report to the Chief Judge and the Commission within ninety (90) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge may provide the parties with additional time to continue their settlement discussions.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure, and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the assignment of cost responsibility for the new 500 kV and above transmission facilities at issue in this proceeding. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (B) and (C) below.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(C) Within ninety (90) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and with the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report every thirty (30) days thereafter until the settlement discussions conclude.

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<sup>17</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).

(D) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.