



Public Service Commission

Public Service Commission
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July 20, 2015

SENT VIA ELECTRONIC FILING
Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. EL15-18-000 - Consolidated Edison
Company of New York, Inc. v. PJM Interconnection,
L.L.C.

Dear Secretary Bose:

For filing, please find the Request for Rehearing of the New York State Public Service Commission in the above-entitled proceeding. The parties have also been provided with a copy of this filing, as indicated in the attached Certificate of Service. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

A handwritten signature in black ink that reads "s/ David G Drexler". The signature is written in a cursive, slightly slanted style.

David G. Drexler
Assistant Counsel

Attachment
cc: Service List

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

| | | |
|------------------------------|---|------------------------|
| Consolidated Edison Company |) | |
| Of New York, Inc., |) | |
| Complainant |) | |
| |) | |
| v. |) | Docket No. EL15-18-000 |
| |) | |
| PJM Interconnection, L.L.C., |) | |
| Respondent |) | |

**REQUEST FOR REHEARING OF THE
NEW YORK STATE PUBLIC SERVICE COMMISSION**

INTRODUCTION AND SUMMARY

Pursuant to Section 313 of the Federal Power Act (16 U.S.C. §8251) and Rule 713 of the Federal Energy Regulatory Commission's (FERC or Commission) Rules of Practice and Procedure (18 C.F.R. §385.713), the New York State Public Service Commission (NYPSC) respectfully requests rehearing of the Commission's June 2015 Order.¹ The June 2015 Order denied Consolidated Edison Company of New York, Inc's (Con Edison) Complaint, filed on November 10, 2014, seeking to remedy PJM Interconnection, L.L.C.'s (PJM) unjust and unreasonable

¹ Docket No. EL15-18-000, et al., Consolidated Edison Company of New York, Inc. v. PJM Interconnection, L.L.C., Order Denying Complaint, Denying Rehearing, and Accepting Compliance Filing, 151 FERC ¶61,227 (issued June 18, 2015) (June 2015 Order).

allocation of Regional Transmission Expansion Project (RTEP) costs to Con Edison (Complaint).²

As discussed below, the Commission erred in its June 2015 Order by failing to ensure PJM's allocation of such costs is roughly commensurate with the benefits, and is thus just and reasonable. Despite Public Service Electric and Gas Company (PSE&G) being the primary beneficiary of the RTEP upgrades, PJM allocated approximately 94% of the cost to other parties interconnected with PJM (78.6% of which were to Con Edison), and only 6% to PSE&G. This result is patently unjust and unreasonable.

The Commission also erred in finding that PJM properly complied with its tariff, notwithstanding the facts that PJM failed to provide a preliminary determination of cost responsibility to Con Edison, or to apply an appropriate substitute proxy method to ensure a reasonable allocation of costs to Con Edison, as required under the PJM tariff. The Commission should grant rehearing of the June 2015 Order in order to remedy these errors.

² The NYPSC submitted its Notice of Intervention and Comments in this proceeding on December 1, 2014. The views expressed herein are not intended to represent those of any individual member of the NYPSC. Pursuant to Section 12 of the New York Public Service Law, the Chair of the NYPSC is authorized to direct this filing on behalf of the NYPSC.

BACKGROUND

On January 10, 2014, PJM filed proposed tariff revisions to allocate system upgrade costs that were included in PJM's updated RTEP (PJM Filing). The PJM Filing assigned approximately \$680 million (or 78.6% of the costs) to Con Edison for upgrades in PSE&G service territory, even though PSE&G is the primary beneficiary of the upgrades.³ On February 10, 2014, the NYPSC submitted a Notice of Intervention and Protest to the PJM Filing because the filing sought to allocate a disproportionate and unreasonable share of the upgrade costs to Con Edison.

On April 9, 2014, FERC accepted the PJM Filing based on the Commission's finding that PJM provided sufficient notice to Con Edison and properly applied the allocation methodology in its tariff, including the "DFAX" formula,⁴ to compute the cost allocation to Con Edison (April 2014 Order).⁵ On June 9, 2014,

³ PSE&G will be the primary beneficiary of the Bergen-Linden Corridor upgrades, which Con Edison will only use incidentally, and the Sewaren Project upgrades, which are designed to address local reliability issues through storm hardening, resolving short circuit violations, and rebuilding PSE&G's local system that was damaged during Superstorm Sandy.

⁴ Under the solution-based DFAX method, the projected relative use of the new facility is supposed to be evaluated by the load of each transmission zone or merchant facility and costs are to be allocated based on the forecast usage.

⁵ Docket No. ER14-972-000, PJM Interconnection, L.L.C., Order on Tariff Revisions and Cost Allocation (issued April 9, 2014) (April 2014 Order).

the Commission issued an Order Granting Rehearing For Further Consideration in order to afford additional time for consideration of the matters raised in the timely-filed requests for rehearing, including the request filed by the NYPSC on May 9, 2014.

On November 10, 2014, Con Edison filed its Complaint challenging PJM's allocation of various RTEP costs for new transmission projects to Con Edison. Con Edison's Complaint, which was filed pursuant to section 206 of the FPA, requested that the Commission establish a refund effective date of November 10, 2014, and set aside PJM's proposed cost allocation in favor of Con Edison's suggested proxy cost allocations. Alternatively, Con Edison requested that the Commission establish a refund effective date of November 10, 2014, and set the matter for a full evidentiary hearing. The June 2015 Order denied Con Edison's Complaint, and the Requests for Rehearing, including the NYPSC's, of the April 2014 Order.

REQUEST FOR REHEARING

I. STATEMENT OF ISSUES

- A. Whether the Commission erred in failing to determine that PJM's formula rate resulted in a just and

reasonable allocation of costs to Con Edison that were roughly commensurate with the benefits.⁶

- B. Whether the Commission erred in finding that PJM correctly applied its tariff in allocating costs to Con Edison.⁷

II. DISCUSSION

- A. The Commission Should Grant Rehearing Because The June 2015 Order Failed to Determine That The Allocation of Costs to Con Edison Was Just and Reasonable

Pursuant to the Federal Power Act, FERC must ensure that the rates charged by utilities are "just and reasonable."⁸ While, in exercising its statutory authority, FERC may accept a rate devised through application of a pre-determined formula, it cannot abdicate its statutory responsibility by merely relying on a utility's unsupported assertion that it did, in fact, properly apply such a formula. But that is exactly what FERC has done in this case by accepting the rote calculation PJM performed under its formula without any meaningful analysis of the outcome. Even though PJM's formula itself may be just and reasonable in theory, the resulting charges may still be excessive and unfair if use of the formula does not fit actual

⁶ In reviewing agency determinations, courts shall "hold unlawful and set aside agency action, findings, and conclusions found to be...arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,...or, unsupported by substantial evidence." 5 U.S.C. §706; see also, supra, notes 7-14 and accompanying text.

⁷ 5 U.S.C. §706; see also, supra, notes 15-19 and accompanying text.

⁸ 16 U.S.C. §824d.

circumstances. Therefore, FERC has held that "the transmission owner 'continues to bear the burden of demonstrating the justness and reasonableness of the rate resulting from its application of the formula,' consistent with the filed formula rate."⁹

FERC has further explained that, "[t]he Commission's long-standing precedent is that, under formula rates, parties have the right to challenge the inputs to or the implementation of the formula at whatever time they discover errors in the inputs to or implementation of the formula."¹⁰ In contrast to this affirmation that unthinking and erroneous reliance on a formula cannot excuse an irrational outcome, FERC's June 2015 Order failed to determine that PJM's allocation of costs to Con Edison were roughly commensurate with the benefits and therefore just and reasonable. As a consequence, FERC impermissibly failed to address arguments that clearly demonstrated the rates resulting from application of the DFAX methodology were not just and reasonable.

By summarily and improperly concluding that the only issue is whether PJM properly applied a formula previously

⁹ Midwest Independent Transmission System Operator, Inc, et al., 143 FERC ¶61,149 (2013), P 120; Docket No. ER13-90-000, PJM TOs Compliance Filing (dated July 22, 2013); Delmarva Power and Light Company, 145 FERC ¶61,055, ¶23; PPL Electric Utilities Corporation, 125 FERC ¶61,121, ¶28 (2008).

¹⁰ Arkansas Public Service Commission v. Entergy Corporation, 142 FERC ¶61,012 (2013), ¶27.

approved, FERC failed to perform its own assessment of the reasonableness of the costs allocated under the formula. If it had done so, it would have realized it had a duty to deploy an appropriate proxy as a substitute for a formula that yielded an unreasonable result. Instead, FERC accepted an outcome that is in direct contravention of its previous policy on use of a formula,¹¹ without adequate explanation for the deviation.

PJM has failed to demonstrate, and there is no record support for FERC to conclude, that allocating to Con Edison approximately 79% of the costs of upgrades PSE&G would construct almost entirely for its own benefit -- and of almost no benefit to Con Edison -- is somehow just and reasonable. FERC merely notes Con Edison's wheeling arrangements with PJM have "reliability benefits to New York City,"¹² but does not attempt to quantify any such benefits or recognize that the PSE&G upgrades are not needed to furnish service to Con Edison. It is undisputed that PSE&G would have to install the upgrades regardless of whether Con Edison continues to take wheeling service from PSE&G. As a result, installation of the upgrades is clearly being driven by PSE&G's local reliability needs in its service territory. The allocation of costs must follow the benefit, which is to PSE&G and not to Con Edison.

¹¹ See cases cited supra note 8.

¹² June 2015 Order, ¶55.

In its Order No. 1000, FERC clearly articulated the straightforward principle that the costs of regional facilities must be allocated "at least roughly commensurate with estimated benefits."¹³ Thus, a beneficiary must bear the costs incurred when upgrades are installed in response to its reliability needs. In contrast, FERC cannot impose costs on customers who derive no benefits from an upgrade, or whose benefits are trivial in relation to the allocated costs.¹⁴ In this case, PJM has failed to demonstrate, and FERC has failed to ensure, the allocation of costs to Con Edison is "roughly commensurate" with the benefits it receives.

Again, in its Order No. 1000, FERC established that making a regional cost allocation requires that "[t]he cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility."¹⁵ In order to satisfy the Commission's pronouncement, PJM's Filing where it first presented its

¹³ Order No. 1000, ¶623.

¹⁴ Illinois Commerce Commission v. FERC, 576 F.3d 470 (7th Cir. 2009); KN Energy, Inc. V. FERC, 968 F.2d 1295 (DC Cir. 1992).

¹⁵ Docket No. RM10-23-000, Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000 (issued July 21, 2011), 136 FERC ¶61,051, at ¶586.

application of its formula in allocating estimated costs to Con Edison should have explained the irrational outcome. It failed to do so. Therefore, PJM failed to adhere to Order No. 1000.

B. The Commission Should Grant Rehearing Because The June 2015 Order Failed to Find That PJM Incorrectly Applied its Tariff in Allocating Costs to Con Edison

PJM's tariff requires that PJM "make a preliminary cost responsibility determination for each Required Transmission Enhancement...at the time such Required Transmission Enhancement is included in the Regional Transmission Plan."¹⁶ No such preliminary determination was ever presented, and consequently PJM gave no advance notice to Con Edison of its alleged cost responsibility. PJM's direct and obvious violation of its tariff cannot be excused. However, FERC failed to address this violation in the June 2015 Order.

PJM's failure to comply with its tariff was not trivial. It deprived Con Edison and other stakeholders of a meaningful opportunity to participate in the planning process. Had interested parties known the potential magnitude of their cost responsibility, they would have been able to test PJM's assumptions in the planning process and point out the erroneous estimated cost allocations prior their filing with the Commission. Moreover, interested parties would have had an opportunity to influence the project design such that Con Edison

¹⁶ PJM OATT, Schedule 12(b)(iii)(J).

might actually have been able to derive a meaningful benefit. Most importantly, because Con Edison would have known the proposed cost allocation to it was unreasonable, the "substitute proxy" that is authorized under the PJM tariff could have been pursued.

The PJM tariff explicitly directs PJM to "use an appropriate substitute proxy" for the DFAX analysis where the "results of such DFAX analysis are objectively unreasonable."¹⁷ This requirement is bolstered by PJM's Operating Agreement, which mandates that PJM's RTEP must "avoid the imposition of unreasonable costs on any Transmission Owner or any user of Transmission Facilities."¹⁸ PJM, however, again ignored its tariff in defaulting on its obligation to assess the reasonableness of the cost responsibility it allocated to Con Edison through rote application of the DFAX formula. As a result, PJM's lax reliance on the outcome of the DFAX formula is an unreasonable and unsustainable violation of its tariff and Operating Agreement.

For its part, FERC failed in its June 2015 Order to perform an independent assessment of the reasonableness of Con Edison's cost allocation under the DFAX formula. Instead, FERC merely found the PJM tariff "limits the discretion in reviewing

¹⁷ PJM OATT, Schedule 12(b)(iii)(1).

¹⁸ PJM Operating Agreement, Schedule 6, §1.4(d).

the results of the solution-based DFAX method analysis to its engineering judgment of the flows over the subject facility.”¹⁹ The Commission therefore inadequately relied on PJM’s self-serving, perfunctory, and unsupported contention that it had applied the DFAX formula in accordance with its tariff. Yet the tariff itself demonstrates that PJM had a broader responsibility beyond the mechanistic application of a formula. Because PJM defaulted on its obligation to look at the reasonableness of its results, the Commission must act to rectify that default by enforcing PJM’s tariff and preventing PJM from assessing an unjust and unreasonable allocation of RTEP costs against Con Edison.²⁰

CONCLUSION

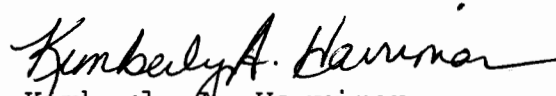
In accordance with the foregoing discussion, the NYPSC respectfully requests that the Commission grant rehearing of its

¹⁹ June 2015 Order, ¶52.

²⁰ Con Edison v. FERC, 347 F.3d 964 (D.C. Cir. 2003) (remanding to FERC where the Commission erroneously determined that a tariff violation did not occur).

June 2015 Order, and provide for a just and reasonable allocation of costs to Con Edison.

Respectfully submitted,



Kimberly A. Harriman
General Counsel
Public Service Commission
of the State of New York

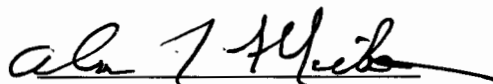
By: David G. Drexler
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Dated: July 20, 2015
Albany, New York

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated: Albany, New York
July 20, 2015



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Document Content(s)

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