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Public Service Commission

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General Counsel

Kathleen H. Burgess

Secretary

Three Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

February 23, 2018

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. EL18-54-000 - New Jersey Board of
Public Utilities v. PJM Interconnection, L.L.C.
et al.

Dear Secretary Bose:

For filing, please find the Notice of Intervention and Protest 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) 432-1537.

Very truly yours,

S. Jay Goodman

S. Jay Goodman
Assistant Counsel

Attachment
cc: Service List

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

New Jersey Board of Public Utilities,)	
)	
Complainant,)	
)	
v.)	
)	
PJM Interconnection, LLC; New York Independent System Operator, Inc.; Consolidated Edison Company New York, Inc.; Linden VFT, LLC; Hudson Transmission Partners, LLC; and, New York Power Authority,)	Docket No. EL18-54-000
)	
Respondents.)	

**NOTICE OF INTERVENTION AND PROTEST
OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION**

INTRODUCTION

On December 22, 2017, the New Jersey Board of Public Utilities (NJBPU) filed a "Complaint" against PJM Interconnection, L.L.C. (PJM), the New York Independent System Operator, Inc. (NYISO), Consolidated Edison Company of New York, Inc. (Con Edison), Linden VFT, LLC (Linden), Hudson Transmission Partners (HTP), and the New York Power Authority (NYPA) (collectively, the Respondents).¹ The Complaint alleges that orders issued by the Federal Energy Regulatory Commission (FERC

¹ Docket No. EL18-54-000, New Jersey Board of Public Utilities v. PJM Interconnection, L.L.C. et al., Complaint of the New Jersey Board of Public Utilities (dated December 22, 2017).

or the Commission), and agreements approved by the Commission, violate PJM's Open Access Transmission Tariff (OATT), are inconsistent with FERC's Order No. 1000,² and result in an unjust, unreasonable, and unduly discriminatory rates for New Jersey ratepayers.

In particular, the NJBPU claims that FERC's approvals of (i) amendments to the PJM-NYISO Joint Operating Agreement (JOA), and (ii) requests by HTP and Linden to convert their Firm Transmission Withdrawal Rights (FTWRs) to Non-Firm Transmission Withdrawal Rights (TWRs), violate the Order No. 1000 cost allocation principles because they enable the Respondents to avoid cost responsibility for the Bergen-Linden Corridor (BLC) project, which is a Regional Transmission Expansion Project (RTEP) located entirely within the PJM control area.³ The NJBPU also asserts that (i) PJM and the NYISO have failed to comply with the JOA's "Mutual Benefits" provisions because the NYISO purportedly fails to pay for certain benefits received from its

² Complaint, p. 3 (citing *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 136 FERC ¶61,051 (issued July 21, 2001) (Order No. 1000)).

³ The BLC project addresses short-circuit reliability issues on the Public Service Electric and Gas (PSE&G) transmission system and has an estimated cost of approximately \$1.2 billion. (Complaint, pp. 2-3; *New York Independent System Operator, Inc. and PJM Interconnection, LLC*, 161 FERC ¶61,033 (issued October 6, 2017) at P50 (OBF Order)).

interconnection with PJM, and (ii) the NYISO is operating its system out-of-balance, thus "leaning" on PJM.⁴

As discussed below, the Complaint should be denied in its entirety because it presents an impermissible collateral attack on prior FERC orders. Moreover, the allegations that PJM and the NYISO are violating the JOA "Mutual Benefits" provisions, and that the NYISO is "leaning" on PJM, are erroneous and should be rejected. Further, the relief requested in the Complaint, if granted, would be contrary to Commission policy and set a bad precedent by encouraging the NYISO and PJM, as well as other interconnected regions, to cut inter-regional ties that support the reliable, cost-effective operation of neighboring regional transmission systems.⁵

NOTICE OF INTERVENTION

The NYPSC hereby submits its Notice of Intervention and Protest in the above-captioned proceeding pursuant to the Commission's Notice Granting Request for Extension of Time to

⁴ *Disturbance Control Standard*, 158 FERC ¶61,030 (issued January 9, 2017) (Order No. 835).

⁵ Although this Protest addresses only select arguments presented in the Complaint, the New York State Public Service Commission (NYPSC) disagrees with all claims alleged therein and respectfully urges FERC to deny the Complaint in its entirety.

File Comments, issued on January 3, 2018, and Rules 211 and 214(a)(2) of the Commission's Rules of Practice and Procedure.⁶

Copies of all correspondence and pleadings should be addressed to:

S. Jay Goodman
Assistant Counsel
New York State Department
of Public Service
Three Empire State Plaza
Albany, New York 12223-1350
Jay.Goodman@dps.ny.gov

William Heinrich
Chief, Policy Coordination
New York State Department
of Public Service
Three Empire State Plaza
Albany, New York 12223-1350
William.Heinrich@dps.ny.gov

DISCUSSION

I. The Commission Should Deny the Complaint Because it is an Impermissible Collateral Attack on Prior FERC Orders

NJBPU alleges that "various recent interregional actions taken by PJM, NYISO, and other respondent parties" enabled them to avoid cost responsibility for the BLC project, thus potentially giving rise to unjust, unreasonable, and unduly discriminatory rates to New Jersey ratepayers. These actions resulted in FERC approving a 400 MW Operational Base Flow (OBF)

⁶ 18 C.F.R. §§385.211 and 385.214(a)(2). The NYPSC is a regulatory body established under the laws of the State of New York with jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State, and is therefore a State Commission as defined in section 3(15) of the Federal Power Act (FPA) (16 U.S.C. §796(15)). 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 State Public Service Law, the Chair of the NYPSC is authorized to direct this filing on behalf of the NYPSC.

between PJM and NYISO,⁷ and allowing HTP and Linden to convert their FTWRs to Non-Firm TWRs.⁸

The Complaint repeatedly challenges the foregoing decisions (and Order No. 1000), which reveals that the NJBPU's true concerns lie with FERC's prior orders. The Complaint thus amounts to a collateral attack on prior Commission orders, which is prohibited by Commission policy and precedent.⁹ For this reason alone, the Complaint is procedurally defective and should be dismissed in its entirety.

Regardless, the challenged orders are fully consistent with Order No. 1000. In Order No. 1000, FERC established cost allocation rules for new transmission facilities whereby the costs associated with a regional project (i.e., located within one transmission planning region) must be allocated solely within that region unless an entity outside that region voluntarily consents to a cost allocation.¹⁰ For costs associated with an inter-regional project (i.e., located within

⁷ *New York Independent System Operator, Inc. and PJM Interconnection, LLC*, 161 FERC ¶61,033 (issued October 6, 2017) (OBF Order).

⁸ *PJM Interconnection, LLC*, 161 FERC ¶61,262 (issued December 15, 2017) (HTP Order); *Linden VFT, LLC v. Public Service Electric and Gas Company and PJM Interconnection, LLC*, 161 FERC ¶61,264 (issued December 15, 2017) (Linden Order).

⁹ *NECPUC v. Bangor Hydro-Electric Company et al.*, 135 FERC ¶61,140 (issued May 19, 2011), P27.

¹⁰ Order No. 1000 at P628, 657.

two or more transmission planning regions), each host planning region must complete specific procedural milestones and voluntarily consent to a cost allocation.¹¹

FERC explicitly rejected involuntary cost allocations in Order No. 1000. In so ruling, FERC explained that allowing involuntary inter-regional cost allocations would place “too heavy a burden” on stakeholders to monitor all planning processes in neighboring transmission planning regions.¹² Such monitoring, FERC continued, “would amount to interconnectionwide transmission planning with corresponding cost allocation, albeit in a highly inefficient manner.”¹³ FERC rejected this outcome and approach notwithstanding that it might “lead to some beneficiaries of transmission facilities escaping cost responsibility because they are not located in the same transmission planning region as the transmission facility.”¹⁴ The concerns that originally led FERC to reject involuntary cost allocations to entities in neighboring transmission planning regions remain relevant.

¹¹ Order No. 1000 at P657.

¹² Id. at P660.

¹³ Id.

¹⁴ Id.

The BLC project is located entirely within PJM, in northern New Jersey.¹⁵ Thus, pursuant to Order No. 1000, the costs associated with the project can only be allocated to an entity within the NYISO control area if that entity consents to such allocation.

Section 12 of the PJM OATT provides that FTWRs include cost responsibility for RTEP projects. PJM OATT §232 provides Merchant Transmission Facilities (MTFs) with the right to elect either Firm or Non-Firm TWRs in place of other transmission rights, and the OATT grants MTFs the unilateral right to convert Firm TWRs to Non-Firm TWRs. MTFs must pay for RTEPs that support their FTWRs, or avoid RTEP cost responsibility and accept the risk of curtailment under the less dependable Non-Firm TWR service.¹⁶

None of the Respondent New York entities have currently consented to assume an allocation of BLC project costs. Con Edison previously consented to an allocation of PJM RTEP costs pursuant to a modified transmission wheeling agreement.¹⁷ That consent, however, ended on April 30, 2017 when

¹⁵ See, e.g., *Consolidated Edison Company of New York, Inc. v, PJM Interconnection, LLC*, 151 FERC ¶61,227 (issued Jun 18, 2015) at P1 (CE Complaint Order).

¹⁶ HTP Order, P50 (citation omitted); Linden Order, P50 (citation omitted).

¹⁷ *PJM Interconnection, LLC*, 132 FERC ¶61,221 (2010).

Con Edison exercised its contractual right not to renew the wheeling agreement.¹⁸ PJM and NYISO agreed to replace the wheeling agreement with the OBF, which is not a firm transmission service in either control area and, by its express terms, will not subject either the NYISO or its Market Participants to an allocation of PJM RTEP costs.¹⁹ FERC approved the OBF and explicitly ruled that BLC project costs cannot be allocated to Con Edison because it will not receive firm transmission service under the OBF and has not consented to cost responsibility.²⁰

HTP and Linden have each exercised their right to downgrade their transmission service to Non-Firm TWRs.²¹ FERC approved these conversions, explaining that RTEP project cost allocations are updated annually and, therefore, cost responsibility for the projects "will shift over time as usage by transmission customers of a RTEP project changes over its lifespan."²² FERC explained further that the PJM OATT does not obligate an MTF to pay RTEP costs over the life of an RTEP project based solely on the amount of FTWRs initially held by

¹⁸ OBF Order, P7.

¹⁹ Id., P14.

²⁰ Id., P50-51.

²¹ HTP Order, P1; Linden Order, P1.

²² HTP Order, P50 (citing PJM OATT, Schedule 12 §(b)(iii)).

the MTF, and MTFs may decide what level of transmission service (i.e., firm or non-firm) is appropriate to meet their needs.²³ Therefore, because the Commission's prior orders dictate that project costs cannot be allocated to entities that hold Non-Firm TWRs in PJM, or to any New York entity without its affirmative consent, the Respondents cannot be compelled to assume cost responsibility for the BLC project.

II. The Commission Should Reject the NJBPU's Interpretation of the "Mutual Benefits" Provision Under the JOA, Which Ignores and Contradicts the JOA's Plain Language

The JOA recognizes in Section 35.2 that PJM and the NYISO both share "Mutual Benefits" from the interconnection of their respective transmission systems. Section 35.2.1 defines "Mutual Benefits" as "the transient and steady-state support that the integrated generation and Transmission Systems in PJM and New York provide to each other inherently by virtue of being interconnected as described in Section 35.4 of this Agreement." Section 35.4.1 provides that PJM and the NYISO "shall not" charge each other for these Mutual Benefits.

The NJBPU claims that the NYISO is violating these "Mutual Benefits" provisions by realizing certain interconnection benefits without paying for its share of those benefits. Specifically, the NJBPU alleges that the NYISO

²³ HTP Order, P50; Linden Order, P50.

benefits from energy and capacity exports from PJM, and by reflecting the potential availability of emergency assistance from PJM in NYISO planning studies. The NJBPU asserts that these are "Mutual Benefits" within meaning of the JOA, and argues that the NYISO is benefitting at PJM's expense because the BLC project supports these benefits. Thus, NJBPU suggests that PJM and the NYISO have failed to comply with the JOA's "Mutual Benefits" obligations, and that BLC project costs should be allocated to New York.

The NJBPU's arguments ignore the JOA's plain language and seek to re-write the provisions through regulatory intervention. As noted above, "Mutual Benefits" are reliability benefits derived from the real-time operation of synchronously interconnected transmission systems. This does not include exports of capacity and energy, which the NYISO and its market participants pay for through established, market-based mechanisms. To the extent that the NJBPU argues that the BLC project supports such exports, cost responsibility for the BLC project is subject to the cost allocation principles enumerated in Order No. 1000, as discussed above.

"Mutual Benefits," as defined in the JOA, also excludes emergency assistance. Emergency energy is explicitly addressed in the Inter Control Area Transactions Agreement

executed by PJM and the NYISO.²⁴ Under Schedule A of the Inter Control Area Transactions Agreement, the price that the NYISO and PJM pay for any emergency energy transferred between the neighboring control areas is explicitly specified.

Finally, the NJBPU warps the JOA's plain language by suggesting that PJM and NYISO should quantify all such "Mutual Benefits" and compensate each other if their apparent share of benefits exceeds an unspecified proportion. In stark contrast to this claim, Section 35.4.1 of JOA is entitled: "No Charge for Mutual Benefits of Interconnection," and states that "PJM and NYISO shall not charge one another for such Mutual Benefits." As a result, there is no credible basis to claim that the NYISO might owe PJM for "Mutual Benefits" received. Accordingly, FERC should reject the NJBPU's strained attempt ignore the plain language of the JOA and expand the meaning of "Mutual Benefits."

III. The Commission Should Reject the Complaint Because it Would Establish A Bad Precedent Encouraging Neighboring Control Areas to Cut Inter-Regional Ties

In addition to the foregoing legal and factual reasons to deny the Complaint in its entirety, granting the relief sought would establish a bad precedent with adverse consequences. By reversing the cost allocation principles

²⁴ Available at http://www.nyiso.com/public/webdocs/markets_operations/documents/Legal_and_Regulatory/Agreements/Interconnection/pjm_intercontrolarea_agree.pdf.

adopted in Order No. 1000 and multiple prior determinations, the Commission would create uncertainty in the marketplace and encourage transmission control regions to shift costs associated with transmission projects located entirely within one transmission planning region to non-consenting entities located in a neighboring transmission planning region. This would send perverse signals for the NYISO and PJM, as well as other interconnected regions, to cut inter-regional ties that currently support the reliable, cost-effective operation of neighboring transmission systems. Therefore, the Commission should not grant the relief sought in the Complaint, which would undermine years of FERC policy and precedent that was designed to facilitate regional interconnections.

CONCLUSION

For the foregoing reasons, the NYPSC respectfully requests that FERC deny the Complaint in its entirety.

Respectfully submitted,

Paul Agresta

Paul Agresta
General Counsel
Public Service Commission
of the State of New York
By: S. Jay Goodman
Assistant Counsel
3 Empire State Plaza
Albany, NY 12223-1305
(518) 432-1507

Dated: February 23, 2018
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
February 23, 2018

S. Jay Goodman

S. Jay Goodman
Assistant Counsel
3 Empire State Plaza
Albany, NY 12223-1305
(518) 432-1507