

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

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**PJM Interconnection, L.L.C.**

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**Docket No. ER17-1016-000**

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**ILLINOIS COMMERCE COMMISSION  
RESPONSE TO THE DELAWARE PUBLIC SERVICE COMMISSION'S  
MOTION FOR LEAVE TO ANSWER AND ANSWER TO PROTEST,  
MOTION FOR LEAVE TO ANSWER, AND ANSWER**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213, the Illinois Commerce Commission ("ICC") does hereby submit this Answer to the Motion for Leave to Answer and Answer to Protest of the ICC<sup>1</sup> ("DPSC Answer") of the Delaware Public Service Commission ("DPSC") filed on March 29, 2017 (collectively, "DPSC Motion"), Motion for Leave to Answer, and Answer (hereinafter, "ICC Answer"). The ICC requests that the Commission deny the DPSC Motion, and, if the Commission accepts the DPSC Answer, the ICC requests that the Commission grant the ICC motion for leave to answer and consider the ICC Answer provided herein.

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<sup>1</sup> The ICC filed a Protest of the PJM cost allocation for the BGE portions of the MAPP project (b0512.33 and b0512.43) in this docket on March 15, 2017, ("Protest" or "ICC Protest").

## I. ICC RESPONSE TO DPSC MOTION

Pursuant to Rule 213(3), the ICC does hereby file this response to the DPSC Motion.<sup>2</sup> An answer may be made to any pleading if not prohibited.<sup>3</sup> The Commission does not prohibit answers to motions. This ICC response requests that the Commission deny the DPSC Motion.

Commission Rule 213 prohibits an answer to a protest unless otherwise ordered.<sup>4</sup> In this case, no decisional authority has so ordered. Moreover, the DPSC Motion does not ensure a more accurate and complete record as the DPSC suggests. Rather, the DPSC seeks to bring in irrelevant information far beyond the scope of the ICC Protest or the proceeding. The DPSC raises matters that have no relationship to the cost allocation controversy that is subject to the ICC Protest, confuse the issues, and prejudice the ICC.<sup>5</sup> In addition, the DPSC Motion improperly misrepresents the nature and contents of the ICC Protest, and it violates Rule 2101(c), by improperly impugning the ICC's participation in the Commission's settlement negotiation processes.<sup>6</sup> Further, the DPSC Motion is argumentative, lacks a clear and concise statement of any disputed factual allegations raised in the ICC Protest, and does not contain a clear and concise statement of any relevant law upon which the DPSC Motion relies.

The DPSC Motion in no way assists in the explication of issues raised and fails to demonstrate good cause to waive the Commission's prohibition against answers to a protest. As such, the DPSC Motion is deficient and should be denied.

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<sup>2</sup> 18 C.F.R. § 385.213(3).

<sup>3</sup> *Id.*

<sup>4</sup> 18 C.F.R. § 385.213.

<sup>5</sup> See *Central Hudson Gas & Electric Corp.*, 92 FERC ¶ 63,004, at 65,008 (2000) (quoting *Power Mining Inc.*, 45 FERC ¶ 61,311, at 61,972 n.1 (1988)). *Accord San Diego Gas & Electric Co.*, 114 FERC ¶ 61,070, at P 20 n.47 (2006); *Boston Edison Co.*, 61 FERC ¶ 61,026, at 61,147 n.114 (1992).

<sup>6</sup> 18 C.F.R. § 385.2101(c)

## II. MOTION FOR LEAVE TO ANSWER

To the extent that the Commission may deem this response a prohibited Answer to an Answer, the ICC hereby moves pursuant to Rule 212, and requests a waiver of Rule 213(2) for good cause shown.<sup>7</sup> The ICC response is required in order to respond to assertions in the DPSC Motion, correct misrepresentations therein, and clarify the record. The Commission may waive Rule 213 where consideration of matters will aid in the explication of issues.<sup>8</sup> Here, the DPSC appears to misunderstand the facts, raises issues unrelated to the case at hand and misrepresents the ICC's positions. The ICC seeks to respond in order to clarify the record, correct the DPSC errors and misunderstandings, and assist the Commission in its deliberations. For all these reasons, good cause exists to permit this response to the DPSC.

## III. ANSWER

The ICC believes the following statements to be facts:

1. The PJM Board of Managers planned and approved the MAPP project, which includes the b0512.33 and b0512.43 projects at issue in this case, prior to February 1, 2013.
2. On August 24, 2012, the PJM Board of Managers cancelled the MAPP project, including the b0512.33 and b0512.43 projects at issue in this case.<sup>9</sup>
3. Certain expenditures on the MAPP project, including the b0512.33 and b0512.43 projects at issue in this case, were determined to be abandoned plant.
4. The principal purpose of Docket No. ER13-607 was to determine allowable abandoned project costs for the non-BGE portions of the MAPP project and cost allocation was not part of that case.<sup>10</sup>
5. The principal purpose of Docket No. ER15-2331 was to determine allowable abandoned project costs for the BGE portions of the MAPP project (b0512.33 and b0512.43) and cost allocation was not part of that case.<sup>11</sup>

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<sup>7</sup> 18 C.F.R. § 385.212

<sup>8</sup> See *Buckeye Pipe Line Co.*, 45 FERC ¶ 61,046 (1988). *Transwestern Pipeline Co.*, 50 FERC ¶ 61,211 (1990).

<sup>9</sup> <http://www.pjm.com/~media/committees-groups/committees/teac/20120913/20120913-srh-letter-to-teac-re-mapp-and-path.ashx>

<sup>10</sup> *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,156 (2013), at P 1.

<sup>11</sup> *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,254 (2013), at P 1.

6. The Commission authorized the recovery of \$1,159,350.14 in abandoned project costs for the b0512.33 and b0512.43 projects.<sup>12</sup>
7. The allocation of MAPP project costs, including the abandoned projects costs associated with the b0512.33 and b0512.43 projects at issue in this case, is part of the matter that was twice appealed by the ICC and twice remanded by the United States Court of Appeals for the Seventh Circuit.
8. The b0512.33 and b0512.43 projects are part of the larger MAPP project, but are not included in in Schedule 12C-Appendix B of the settlement offer filed on June 6, 2016, in Docket No. EL05-121-009.

The DPSC misunderstands, or disagrees with, some of these facts, and that accounts for many, if not all, of the incorrect statements and assertions in the DPSC Answer. In order to clarify the record and to assist the Commission, the ICC responds to the DPSC's specific assertions as follows.

**A. The ICC's Cost Allocation Challenge is Properly Lodged in the Instant Docket.**

The DPSC chides the ICC for not addressing the cost allocation of the b0512.33 and b0512.43 projects in the settlement proceedings in Docket Nos. ER13-607 and ER15-2331.<sup>13</sup> The ICC is not contesting the Commission's determination of allowable cost recovery amounts for the non-BGE or BGE portions of the MAPP project, which was the subject of those respective proceedings. Rather, the ICC protests the allocation of costs for the b0512.33 and b0512.43 projects.<sup>14</sup> Indeed, this fact was made clear when the ICC sought clarification from the Commission on whether cost allocation was properly part of the Docket No. ER13-607 proceeding and the Chief Administrative Law Judge ("Judge") issued an Order agreeing with the

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<sup>12</sup> See, Offer of Settlement of Exelon Corporation, on behalf of its affiliate, Baltimore Gas and Electric Company under ER15-2331, filed May 4, 2016, Explanatory Statement, at 3; *Letter order approving Baltimore Gas and Electric Co.'s 5/4/16 filing of an Offer of Settlement with the Maryland Public Service Commission under ER15-2331* (July 6, 2016), at 1.

<sup>13</sup> DPSC Answer, at P 4-10.

<sup>14</sup> The ICC was an active participant in Docket No. EL05-121-009, which addressed the cost allocation for the non-BGE portions of the MAPP project.

Commission Trial Staff that such issues were “beyond the scope” of that proceeding.<sup>15</sup> The Order specifically stated that Docket No. ER13-607 “does not limit or affect the rights of the ICC or any other party to participate in an unrelated docket or appeal” regarding cost allocation. The Judge in Docket No. ER13-607 made clear that the connection to cost allocation in that docket “does not exist. . .”<sup>16</sup> In accordance with that clear direction, the ICC did not raise the cost allocation issue in the subsequent Docket No. ER15-2331 regarding the b0512.33 and b0512.43 projects. The instant ER17-1016 docket is the “unrelated docket” addressing the issue of cost allocation for the BGE portions of the b0512.33 and b0512.43 projects. The ICC now challenges PJM’s proposed cost allocation for those projects. The DPSC’s assertion that the ICC acted incorrectly or inappropriately by filing the ICC Protest is misdirected and misleading, and the Commission should reject these misguided arguments.

**B. The DPSC Suggestion that the ICC Seeks to Re-functionalize Costs is Incorrect and Unsubstantiated.**

Contrary to the assertions of the DPSC, the ICC does not seek the “re-functionalization of costs.”<sup>17</sup> Rather, as stated in the ICC’s Protest, “PJM has provided no evidence in the instant case to support load ratio share cost allocation for the BGE portions of the MAPP project (b0512.33 and b0512.43).”<sup>18</sup> As noted twice by the Seventh Circuit Court, the Commission has failed to support with substantial evidence from the record an allocation of cost to the ComEd zone for the MAPP or other related projects. For that reason, the ICC recommended that the

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<sup>15</sup> See, Order of Chief Judge Denying Motion to File Comments out of Time, Docket No. ER13-607 *et al*, February 7, 2014, at 2. (“. . .the MAPP Abandonment Cost, which has been agreed to in the Settlement, will not be subject to modification in any other proceeding. The language in the Settlement does not limit or affect the rights of the ICC or any other party to participate in an unrelated docket or appeal, nor will the outcome of the appeal in the rate design case affect the MAPP Abandonment Cost. The connection which the ICC suggests between the proceedings does not exist and the clarifications sought by the ICC are unnecessary.”)

<sup>16</sup> Order of Chief Judge Denying Motion to File Comments out of Time, ER13-607 *et al*, at 2, (February 7, 2014).

<sup>17</sup> DPSC Answer, at P 11.

<sup>18</sup> ICC Protest, at 6-7.

Commission deny PJM's February 23 filing which would allocate costs from the b0512.33 and b0512.43 projects on a pro rata postage stamp basis to the ComEd zone.<sup>19</sup>

Moreover, in contrast to DPSC allegations, the ICC does not “presume facts from a negotiation process that cannot be supported . . . due to the nature of the settlement discussions”.<sup>20</sup> The ICC notes PJM's publicly filed April 13, 2010, DFAX analysis which shows that the ComEd zone is neither a cost causer, nor a beneficiary of the MAPP project.<sup>21</sup> This hardly constitutes an “unfounded characterization[] of determinations somehow reflected in the ultimate settlement agreement filed in FERC Docket No. EL05-121 regarding the cost allocation of the BGE MAPP Abandonment Cost”, as asserted by the DPSC.<sup>22</sup>

The ICC's recognition of PJM's DFAX analysis with regard to the MAPP project is not an “attempt to relitigate” anything or to assert any position with respect to “hybrid cost allocation otherwise applicable to RTEP projects”, as alleged by the DPSC.<sup>23</sup> These assertions by the DPSC are entirely misplaced. The ICC attributes the DPSC's misplaced accusations to a misunderstanding of the fact that, while the BGE portions of the MAPP project (b0512.33 and b0512.43) were part of the ICC's cost allocation appeal and the two remands issued by the Seventh Circuit Court, they were not part of the settlement filing under Docket No. EL05-121-009.

The DPSC expresses “...concern with discussion of specific details concerning the settlement negotiations subject to the Commission Rules of Practice and Procedure”<sup>24</sup> and twice cites Section 5.1 – Declaration of Privilege contained in the EL05-121 settlement.<sup>25</sup> The DPSC's

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<sup>19</sup> ICC Protest, at 7.

<sup>20</sup> DPSC Answer, at 9.

<sup>21</sup> ICC Protest, at 5.

<sup>22</sup> DPSC Answer, at P 9.

<sup>23</sup> DPSC Answer, at P 10 and 12.

<sup>24</sup> DPSC Answer, at P 13.

<sup>25</sup> DPSC Answer, at P 13 and 15.

intent is unclear. If the DPSC is suggesting that the ICC's reference to the settlement offer or the noting of PJM's DFAX analysis somehow hamstrings the DPSC's opportunity to respond to the ICC's Protest, the ICC disagrees. The existence of the settlement offer and PJM's DFAX analysis is public information. The ICC referenced Docket No. EL05-121 in its Protest merely to point out that the b0512.33 and b0512.43 projects were not included in that offer of settlement, so the cost allocation achieved for purposes of settlement in that docket would not automatically apply here.<sup>26</sup>

As the ICC indicates in its Protest, PJM provides no evidence in the instant case, or anywhere else, to support a load ratio share cost allocation for the b0512.33 and b0512.43 projects. The only applicable guidance for cost allocation of those projects is the Seventh Circuit Court's prior ruling that "the likely benefit to Commonwealth Edison from new 500 kV projects [which includes the MAPP Project, and specifically the b0512.33 and b0512.43 portions] is zero."<sup>27</sup> Accordingly, the ComEd zone should not be allocated any related costs. Doing so would violate cost causation – beneficiary pays cost allocation methodology, as well as the Seventh Circuit Court's decisions in this matter unless and until such benefits are quantified and demonstrated.

#### **IV. CONCLUSION**

WHEREAS, for all the reasons set forth herein, the Illinois Commerce Commission does hereby respectfully request that the Commission deny the Motion for Leave to Answer and Answer to Protest of the ICC of the Delaware Public Service Commission filed on March 29, 2017. If, nevertheless, the Commission accepts the DPSC's Answer, the ICC requests that the

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<sup>26</sup> ICC Protest, filed March 15, 2017, at 6-7; *Illinois Commerce Commission v. FERC*, 576 F.3d 470, at 477 (7th Cir. 2009).

<sup>27</sup> *Illinois Commerce Commission v. FERC*, 576 F.3d 470, at 477 (7th Cir. 2009).

Commission grant the ICC motion for leave to answer and consider the answer submitted herein.

The ICC further requests any and all other appropriate relief.

Respectfully submitted,

*/s/Christine F. Ericson*

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Christine F. Ericson  
Special Assistant Attorney General  
Illinois Commerce Commission  
Office of the General Counsel  
160 N. LaSalle St., Suite C-800  
Chicago, IL 60601  
(312) 814-3706  
(312) 793-1556 (fax)  
cericson@icc.illinois.gov

ILLINOIS COMMERCE COMMISSION

Dated: April 7, 2017

CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the foregoing document of the Illinois Commerce Commission to be served this day upon each person designated on the official service list compiled by the Secretary in this proceeding, a copy of which is attached, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Chicago, Illinois, this 7<sup>th</sup> day of April, 2017.

*/s/ Christine F. Ericson*

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Christine F. Ericson  
Special Assistant Attorney General  
Illinois Commerce Commission  
Office of the General Counsel  
160 N. LaSalle Street, Suite C-800  
Chicago, IL 60601  
(312) 814-3706  
[cericson@icc.illinois.gov](mailto:cericson@icc.illinois.gov)