

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

PJM Interconnection, L.L.C.

)

Docket No. ER17-1016-000

PROTEST OF THE ILLINOIS COMMERCE COMMISSION

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.211, the Illinois Commerce Commission (“ICC”) respectfully submits the following protest in the above-captioned docket in response to the filing submitted to the Commission by PJM Interconnection, L.L.C. (“PJM”) on February 23, 2017 (“February 23 Filing”) that proposes to incorporate into Schedule 12-Appendix of the PJM Tariff two baseline upgrades associated with the Mid-Atlantic Power Pathway (“MAPP Project”) that was approved, and then subsequently cancelled, by the PJM Board of Managers (“PJM Board”) under its Regional Transmission Expansion Plan (“RTEP”).¹ On March 10, 2017, the ICC filed a notice of intervention in this docket, so it is a party in the proceeding.

I. BACKGROUND

On October 17, 2007, the PJM Board approved the Regional Transmission Expansion Plan, which included the MAPP Project. The MAPP Project was approved to be a \$1.05 billion 500 kV project to run approximately 230 miles from the Possum Point Station at Dumfries, Virginia through the Delmarva Peninsula and terminate at Salem Station in Lower Alloways Creek Township, New Jersey. On January 30, 2009, PJM designated Baltimore Gas & Electric

¹ February 23 Filing, at 1.

(“BGE”) to construct a portion of the MAPP Project, which portion is, we assume, now known as b0512.33 and b0512.43.

On August 6, 2009, the United States Court of Appeals for the Seventh Circuit, among other things, granted the petitions for review challenging the Commission’s decision on cost allocation for new PJM Board-approved transmission facilities that have a capacity of 500 kilovolts or more.² In reviewing the Commission’s decision in this matter, the court noted, “the likely benefit to Commonwealth Edison from new 500 kV projects [of which the MAPP Project was one] is zero.”³ In so doing, the court provided the following guidance:

. . . if [the Commission] cannot quantify the benefits to the Midwestern utilities from new 500 kV lines in the East, even though it does so for 345 kV lines, but it has an articulable and plausible reason to believe that the benefits are at least roughly commensurate with those utilities share of total electricity sales in PJM’s region, then fine, the Commission can approve PJM’s pricing scheme on that basis. . . But it cannot use the presumption to avoid the duty of ‘comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.’⁴

The court found that, in adopting one hundred percent pro rata pricing (postage stamp cost allocation), the Commission failed to make a reasoned decision based upon substantial evidence in the record and remanded for further proceedings.⁵

On March 30, 2012, the Commission issued an Order on Remand, affirming its earlier findings.⁶

On August 28, 2012, PJM informed BGE that the MAPP Project was cancelled because the reliability drivers that PJM utilized to approve the MAPP Project no longer existed within the time period of PJM’s planning cycle.⁷

² *Illinois Commerce Commission v. FERC*, 576 F.3d 470, 478 (7th Cir. 2009).

³ *Id.*, at 477.

⁴ *Id.*

⁵ *Id.* at 478.

⁶ *PJM Interconnection, LLC*, 138 FERC ¶ 61,230 (2012) (“Order on Remand”).

⁷ <http://www.pjm.com/~media/committees-groups/committees/teac/20120913/20120913-srh-letter-to-teac-re-mapp-and-path.ashx>

In response to requests for rehearing of the Order on Remand, on March 13, 2013, the Commission issued an Order on Rehearing, again prescribing a region-wide postage-stamp allocation of the costs of new transmission facilities that operate at and above 500 kV.⁸

Thereafter, petitions for review were again filed in the United States Court of Appeals. On June 25, 2014, the Seventh Circuit granted the petitions for review concerning the pricing of new facilities that have a capacity of 500 kilovolts or more.⁹ In its opinion, the court found that the high voltage electric transmission lines at issue are “all located in PJM’s eastern region, primarily benefit that region, and should not be allowed to shift a grossly disproportionate share of their costs to western utilities on which the eastern projects will confer only future, speculative and limited benefits.”¹⁰ The court concluded that the Commission failed to comply with the court’s decision remanding the case¹¹ and directed the Commission to “try again,” on the issue of the assignment of cost responsibility for Required Transmission Enhancements planned to operate at or above 500 kV (“Second Seventh Circuit Decision”).¹² In remanding the matter back to the Commission a second time, the court instructed:

. . .if the Commission after *careful* consideration concludes that the benefits can’t be quantified even roughly, it can do something like use the western utilities’ estimate of the benefits [zero] as a starting point, adjust the estimate to account for the uncertainty in benefit allocation, and pronounce the resulting estimate of benefits adequate for regulatory purposes.¹³

In response to the Second Seventh Circuit Decision, the Commission issued an order on December 18, 2014, establishing hearing and settlement judge procedures to address the cost

⁸ *PJM Interconnection, LLC*, 142 FERC ¶61,216 (2013).

⁹ 576 F.3d at 478.

¹⁰ *Illinois Commerce Commission v. FERC*, 756 F.3d 556, 564 (7th Cir. 2014) (*hereinafter*, “Second Seventh Circuit Decision”).

¹¹ *Id.*

¹² *Id.*

¹³ Second Seventh Circuit Decision, at 564.

allocation of 500-kV and above transmission facilities planned and approved by PJM before February 1, 2013 (“Settlement Proceedings”).¹⁴

In a separate proceeding, on July 31, 2015, PJM submitted to the Commission on behalf of BGE, revisions to Attachment H-2A of the PJM Tariff to recover \$1,180,526 worth of abandoned plant costs associated with the BGE portion of the cancelled MAPP Project.¹⁵ On September 30, 2015, the Commission issued an Order on Abandonment establishing hearing and settlement judge procedures to obtain additional information to support the costs BGE sought to recover.¹⁶ On May 4, 2016, an offer of settlement was filed that would permit BGE to recover \$1,159,350.14 in abandonment costs for projects b0512.33 and b0512.43 of the cancelled MAPP Project.¹⁷

On June 15, 2016, after extensive negotiations, parties to the Settlement Proceedings in Docket No. EL05-121-009 filed an offer of settlement (“Settlement Offer”) with the Commission addressing the assignment of cost responsibility for transmission projects planned to operate at or above 500 kV that the PJM Board approved prior to February 1, 2013, which are listed in Schedule 12-Appendix of the PJM Tariff, including the non-BGE portions of the cancelled MAPP Project. BGE’s Projects b0512.33 and b0512.43, at issue in the instant case, are not on that list. Certain parties contested the settlement on an issue unrelated to the MAPP project. On September 27, 2016, the settlement judge terminated settlement proceedings. The contested settlement is still pending before the Commission.

¹⁴ *PJM Interconnection, L.L.C.* 149 FERC ¶ 61,233 (2014), at P 8-10.

¹⁵ See, *PJM Interconnection, L.L.C.* submits tariff filing per 35.13(a)(2)(iii): BGE submits revisions to OATT Attachment H-2A to be effective 10/1/2015 under ER15-2331), in Docket No. ER15-2331-000, at 1.

¹⁶ *Baltimore Gas and Electric*, Abandonment Cost Recovery Electric Rate Filing, Docket No. ER15-2331-000, 152 FERC ¶ 61,254 (2015).

¹⁷ *PJM Interconnection, L.L.C., et al.*, Settlement Agreement, § 1.1, Docket No. ER15-2331-000, *et al.*, (2016).

On July 6, 2016, the Commission issued a Letter Order accepting BGE's offer of settlement in Docket No. ER15-2331-000 on the on the amount of allowable costs for b0512.33 and b0512.43.¹⁸ The instant proceeding addresses the cost allocation of the costs determined in Docket No. ER15-2331-000.

II. PROTEST

The ICC protests PJM's February 23 Filing which would allocate, on a postage stamp basis, 13.43 percent of the cost of the b0512.33 and b0512.43 elements of the MAPP Project to the Commonwealth Edison zone. Given that MAPP is a cancelled project, the ComEd zone does not derive any benefits from the MAPP Project. As shown by PJM's DFAX analysis,¹⁹ the load in the ComEd zone did not contribute to the reliability factors that caused PJM to add the MAPP Project to the RTEP in the first place.²⁰ The beneficiaries and cost causers of the MAPP Project are located on the East Coast and that is where the Commission should allocate the costs of b0512.33 and b0512.43.²¹ Indeed, as noted twice by the Seventh Circuit, the Commission has failed to support with substantial evidence from the record an allocation of cost to the ComEd zone for this and other related projects.²² Accordingly, the Commission should deny PJM's filing which would allocate costs from these projects on a pro rata postage stamp basis to the ComEd zone.

¹⁸ *PJM Interconnection, L.L.C.* 152 FERC ¶ 61,254 (2015).

¹⁹ Response of PJM Interconnection, L.L.C., filed April 13, 2010, in Docket No. EL05-121-006. *See also*, Initial Comments of Exelon Corporation on Remand, filed May 28, 2010, in Docket No. EL05-121-006, at 3 (“the pro rata socialization of costs of RTEP projects at issue in this proceeding results in so egregious a mismatch of costs and beneficiaries as to be unjust and unreasonable and unduly discriminatory. Mr. Naumann recommends that the Commission require PJM to allocate these costs under the DFAX methodology to achieve a just and reasonable allocation.”)

²⁰ *See supra*, note 19.

²¹ Initial Comments of Exelon Corporation on Remand, filed May 28, 2010, in Docket No. EL05-121-006, *passim*.

²² *See supra*, 2-3.

The Settlement Proceedings and the resulting Settlement Offer in Docket No. EL05-121-009 addressed the allocation of project costs associated with the non-BGE portions of the cancelled MAPP Project for purposes of settlement.²³ PJM prepared Schedule 12C-Appendix A of the Settlement Offer, which lists the transmission projects covered under the Settlement Proceedings (“Appendix A”). Appendix A also identifies cancelled or abandoned transmission projects that, while approved by the PJM Board prior to February 1, 2013, were never put in service. Appendix A does not include projects b0512.33 and b0512.43, the cost allocation for which is at issue in the instant case.

Schedule 12C-Appendix B of the Settlement Offer (“Appendix B”) details the cost allocation to various PJM zones or merchant transmission facility owners (“MTFs”). As noted in Appendix B, costs of the non-BGE portions of the cancelled MAPP Project would, if approved by the Commission, be allocated to PJM zones and MTFs using the violation-based distribution factor (“DFAX”) analysis.²⁴ PJM’s DFAX analysis determined that several zones (including the ComEd zone) and MTFs did not contribute to the reliability need for the MAPP Project and, accordingly, Appendix B allocates zero DFAX-based costs to those zones.²⁵

Projects b0512.33 and b0512.43 are part of the MAPP Project that was both approved and cancelled, prior to February 1, 2013. PJM has provided DFAX analysis showing that the ComEd zone did not contribute to the reliability need which drove PJM to include the MAPP Project in its regional transmission expansion plan.²⁶ PJM has provided no evidence in the instant case to support load ratio share cost allocation for the BGE portions of the MAPP project

²³ See, Settlement Offer in Docket No. EL05-121-009.

²⁴ See, Second Seventh Circuit Decision, at 564 (DFAX is appropriate methodology to apply to these costs). For purposes of settlement, this method applied to 50 percent of the costs. See, Appendix B, note.

²⁵ See, Settlement Offer in Docket No. EL05-121-009.

²⁶ Settlement Offer Appendix B; See also, supra, note 19.

(b0512.33 and b0512.43). The only applicable guidance for b0512.33 and b0512.43 cost allocation is that provided by the Seventh Circuit Court, specifically, “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.”²⁷

III. CONCLUSION

WHEREFORE, since the United States Court of Appeals has twice determined that the Commission has failed to support with substantial evidence from the record an allocation of cost to the ComEd zone for the projects at issue here, as well as for other related projects, the Commission should reject PJM’s proposal to allocate, on a pro rata basis, 13.43 percent of these b0512.33 and b0512.43 costs to the ComEd zone.

The ICC further requests any and all other appropriate relief.

Respectfully submitted,

/s/ Christine F. Ericson

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ILLINOIS COMMERCE COMMISSION

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

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 15th day of March, 2017.

/s/ Christine F. Ericson

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