UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	)	**Docket No. ER15-1344-007**

PROTEST OF THE ILLINOIS COMMERCE COMMISSION

Pursuant to Rule 211 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure,[1] and the Notice of Filing issued October 30, 2019, establishing November 19, 2019 as the deadline for comments and protests in the above-captioned docket, the Illinois Commerce Commission ("ICC") respectfully submits the following protest to PJM Interconnection, L.L.C.'s ("PJM") October 29, 2019, compliance filing in the above-captioned docket ("October 29 Filing"). PJM made its October 29 Filing pursuant to the Commission's Order on Remand dated August 30, 2019.[2] The ICC filed a Notice of Intervention in Docket No. ER15-1344-007 on November 7, 2019, and, therefore, is a party to this proceeding.

I. BACKGROUND

In its Order on Remand, the Commission directed PJM to "correct the cost assignment" for projects included in the PJM regional transmission expansion plan ("RTEP") solely to address individual transmission owner Form No. 715 local planning criteria ("715 Projects") "starting on, and continuing after, May 25, 2015."[3] PJM's October 29 Filing includes revisions to Schedule 12-Appendix A of PJM's tariff for 44 projects included in the PJM RTEP solely to

[1] 18 C.F.R. § 385.211.
[2] *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,133 (2019) (*hereinafter*, "Order on Remand"),
[3] *Id.* at P 29.

address 715 Projects and the cost responsibility assignment that changed as a result of the Order on Remand. In particular, the October 29 Filing includes cost allocations for eleven transmission enhancements and expansions that will operate at or above 500 kV.[4] Pursuant to the hybrid cost allocation methodology for Regional Facilities, 50 percent of the costs are allocated on a PJM-wide, load-ratio share basis and the remaining 50 percent are allocated to specifically-identified beneficiaries via a solution-based distribution factor ("DFAX") analysis.

II. ICC POSITION AND RECOMMENDATION

The ICC protests the PJM-wide cost allocation component—and, in particular, the resulting cost allocation to the Commonwealth Edison zone--for the eleven 715 Projects in PJM's October 29 Filing that operate at or above 500 kV. The ICC protests this cost allocation on two bases: (1) the cost shifts associated with the PJM-wide cost allocation component are inequitable as explained by PJM in its October 7, 2019 compliance filing in Docket Nos. EL19-61-000 and ER20-45-000[5]; and (2) because those projects were not subject to PJM's competitive project selection process to ensure cost efficiency and cost effectiveness, allocation of their costs outside the zone of the utility with the 715 standard (typically, the zone in which the project is physically located) would not be just and reasonable and, therefore, would be unlawful under the Federal Power Act.[6]

[4] October 29 Filing, at 3. The Regional Facilities allocated pursuant to Tariff, Schedule 12, section (b)(i) include b2582, b2665, b2758, b2759, b2928, b2960, b2960.1, b2960.2, b3019, b3020, b3021.

[5] PJM Amended and Restated Operating Agreement, Schedule 6 Compliance Filing, Docket No. ER20-45-000, filed October 7, 2019, at 9-12.

[6] 16 U.S.C. 824d (a).

III. PROTEST

A. PJM's October 29 Filing Would Result in Inequitable Cost Shifts.[7]

The eleven high voltage 715 Projects proposed to receive the Regional Facilities cost allocation in the October 29 Filing are all located in the Virginia Electric and Power Company ("Dominion") zone and have a total cost of $766.41 million.[8] In this instance, Dominion would pay just 13.17 percent of the roughly $383 million that constitutes the 50 percent load ratio share portion of the Regional Facilities cost allocation method, or $50.47 million, shifting **$332.74 million** in 715 Project costs to the other zones in PJM.[9] In particular, the Commonwealth Edison zone, which has not been shown to be a beneficiary of any of Dominion's 715 Projects[10] would, nevertheless, be allocated $50.74 million in costs for transmission projects for which there are no measurable, or commensurate, benefits to Illinois.[11]

PJM warned in its October 7, 2019 compliance filing in Docket Nos. EL19-61-000 and ER20-45-000, that "[s]ome PJM Transmission Owners in the PJM region include criteria that address asset management activities . . . in their Form No. 715, while other PJM Transmission Owners include such criteria under the Attachment M-3 process as Supplemental Projects."[12]

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[7] PJM compliance filing, Docket No. ER20-45-000, filed October 7, 2019, at 9. Specifically, PJM states, "The August 30 Orders Highlight the Disparity Among PJM Transmission Owners With Respect to Their Form No. 715 Criteria, Which If Left In Place Will Lead to Disparate Planning and Inequitable Cost Shifts in PJM."

[8] October 29 Filing, Attachment C, at 3, 5, 6, 9, and 10 (Regional Facility, Column (b)(i)).

[9] These numbers are derived from Attachments A and C of PJM's October 29 filing: $766.41 *.50 = $383.21; $383.21 * .1317 = $50.47; $383.21 - $50.47 = $332.74 (in millions). Attachment A of the October 29 filing (showing the changes to Schedule 12 – Appendix A of the PJM OATT) shows Dominion's current load ratio share to be 13.17 percent.

[10] The DFAX approach, which is designed to identify the project beneficiaries, and applied to 50% of these project costs, allocates the majority of that portion to the Dominion zone (approximately 62 percent (approximately $238 million out of the approximately $383 million allocated using DFAX)) and $0 to the ComEd zone. Attachment A Schedule 12 – Appendix A of the PJM Open Access Transmission Tariff. Accordingly, Dominion is the primary beneficiary of this group of eleven projects as well as being the cost causer. The ComEd zone is neither beneficiary, nor cost causer.

[11] These numbers are derived from Attachments A and C of PJM's October 29 filing: $766.41 *.50 = $383.21; $383.21 * .1324 = $50.74 (in millions). Attachment A of the October 29 filing (showing the changes to Schedule 12 – Appendix A of the PJM OATT) shows ComEd's current load ratio share to be 13.24 percent.

[12] PJM compliance filing, Docket No. ER20-45-000, filed October 7, 2019, at 8.

The differing cost allocation applied to these two project types results in "inherent inconsistency" as described by PJM.[13] PJM further admitted that

> similar projects will now be treated differently, *i.e.*, asset management projects planned as Supplemental Projects will be subject to the Tariff, Attachment M-3 process and will be allocated 100 percent to the Transmission Owner's Zone, and asset management projects pursuant to criteria included in a Transmission Owner's Form No. 715 will be planned as a reliability project under PJM's RTEP process set forth in the Operating Agreement, Schedule 6 and regionally allocated pursuant to Tariff, Schedule 12.[14]

Dominion includes asset management projects pursuant to criteria included in its Form No. 715, however, Commonwealth Edison does not, and all but one of the other PJM zones do not. Consequently, Dominion is the cost causer in this instance and is the utility that would be imposing on the other PJM zones the cost burdens for the eleven 715 Projects reflected in PJM's October 29 Filing. The United States Court of Appeals for the Seventh Circuit previously held:

> . . . [The Commission] can presume that new transmission lines benefit the entire network … 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.'[15]

PJM's October 29 Filing illustrates that its failure to take into account "the burdens imposed" would result in "inequitable cost shifts in PJM."[16]

B. Because the Eleven 715 Projects at Issue Here Were Not Subject To PJM's Competitive Selection Process To Ensure Cost Efficiency and Cost Effectiveness, Allocation of Their Costs Outside the Zone in Which the Project is Physically Located (Dominion) Would Not Be Just and Reasonable.

On August 30, 2019, in Docket No. EL19-61-000, the Commission instituted a Section 206 proceeding against PJM[17] to ensure that PJM's competitive project selection process ("the

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[13] PJM compliance filing, Docket No. ER20-45-000, filed October 7, 2019, at 8.
[14] *Id.* at 9.
[15] *Illinois Commerce Commission v. FERC*, 576 F.3d 470, 476 (7th Cir., 2009)
[16] PJM compliance filing, Docket No. ER20-45-000, filed October 7, 2019, at 9.
[17] *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,132 (2019).

competitive window proposal process") will be applied to new 715 Projects after August 30, 2019. PJM's proposed revisions in its October 29 Filing, as they relate to the eleven 715 Projects at issue here, contradict the Commission's clearly stated Order No. 1000 policy for the competitive process and inclusion in the competitive proposal window process of all regional planning projects that share in regional cost allocation – which describes the eleven 715 Projects at issue here.[18] The eleven existing 715 Projects at issue here—which were included in PJM's RTEP between May 25, 2015 and August 30, 2019—were not subject to PJM's competitive project selection process. The Commission made clear in its order instituting section 206 proceeding that, "[b]ecause the costs of projects needed solely to address individual transmission owner Form No. 715 local planning criteria will no longer be allocated 100 percent to the transmission zone of the transmission owner whose Form No. 715 local planning criteria underlie each project, we are instituting a proceeding pursuant to section 206 of the FPA to require PJM to revise the PJM Operating Agreement to no longer exempt [new 715 Projects] from the competitive proposal window process . . . ."[19]

In the October 29 Filing, PJM is proposing that the costs of the eleven existing 715 Projects no longer be allocated 100 percent to the transmission zone of the transmission owner whose Form No. 715 local planning criteria underlie each project. But, unlike the Commission's proposal for new projects going forward, PJM is not proposing to apply its competitive selection process retroactively to the eleven 715 Projects at issue here—nor could it, because applying that process to already-existing projects is impossible. It is clear that Commission's policy makes the

[18] *See Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 at P 328 (2011) (*hereinafter*, "Order No. 1000") ("the Commission requires each public utility transmission provider to amend its OATT to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan *for purposes of cost allocation.*") (emphasis added).
[19] 168 FERC ¶ 61,132 at P 2 (2019).

competitive selection process a prerequisite for regional cost allocation.[20] Consequently, because the competitive selection process cannot be applied to the eleven projects at issue in this case, allocating costs outside the transmission zone of the transmission owner whose Form No. 715 local planning criteria underlie each project (in this case, Dominion) should not be permitted.

Pursuant to Order 1000, the competitive selection process is the mechanism the Commission adopted to ensure that transmission projects are efficient and cost-effective.[21] But, prior to the Commission's initiation of the section 206 proceeding, there was no specific process in place to ensure that 715 Projects included in Schedule 12 are efficient and cost-effective.

It is the ICC's long-standing position that transmission projects that are not the product of a regional transmission organization's ("RTO") competitive project selection process must not have costs allocated outside the local zone in which the facility will be physically located.[22] The state in which a transmission project will be physically located should have the opportunity to review whether such project and its associated cost allocation will be in the public convenience and necessity. Through such processes, state authorities in states where the transmission project

[20] Order No. 1000 at P 328.

[21] Order No. 1000, 136 FERC ¶ 61,051 at PP 328, 253, 255, 284 (2011) ("the Commission requires each public utility transmission provider to amend its OATT to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation. This process must comply with the Order No. 890 transmission planning principles, ensuring transparency, and the opportunity for stakeholder coordination." P 328); ("Failure to [remove the federal right of first refusal for incumbent transmission providers] would leave in place practices that have the potential to undermine the identification and evaluation of *more efficient or cost-effective solutions* to regional transmission needs, which in turn can result in rates for Commission-jurisdictional services that are *unjust and unreasonable* or otherwise result in undue discrimination by public utility transmission providers." P 253 (emphasis added)); ("By requiring the comparable evaluation of all potential transmission solutions, the Commission has sought to ensure that the more efficient or cost-effective solutions are in the regional transmission plan; P 255); (Restricting the universe of transmission developers offering potential solutions for consideration in the regional transmission planning process "is unjust and unreasonable because it may result in the failure to consider more efficient or cost-effective solutions to regional needs and, in turn, the inclusion of higher-cost solutions in the regional transmission plan." P 284).

[22] *See, e.g.*, Request for Rehearing of the Illinois Commerce Commission under FERC Docket No. ER13-198 (2013), at 5-6. *See also*, Comments of the Illinois Commerce Commission in FERC Docket No. ER13-198 (2012), at 9.

will be physically located can decide for themselves whether the project is needed, whether the project is cost-effective, and whether the project will bring benefits to the electricity consumers in the state. States in which the project will not be physically located, but whose electricity consumers must bear costs of the project under RTO-directed regional cost allocation methods, do not have an analogous process to protect the interests of their electricity consumers from incorrect, unnecessary, or imprudent costs of transmission projects. Because there is no way to retroactively ensure that the eleven 715 Projects at issue here are efficient and cost effective, the Commission must reject PJM's October 29 Filing as it applies to these projects.

On September 26, 2019, PJM made a presentation to its Markets & Reliability Committee in which PJM explained that the Commission's Order on Remand was "silent as to refunds."[23] Consequently, if the Commission does not issue a subsequent Order directing refunds (which the Commission should not do for the reasons discussed above), the only practical impact of PJM's October 29 Filing is to "correct the cost assignments" going forward. In the October 29 Filing, PJM requested that the Commission "accept its revisions as set forth in the August 30 Order on Remand."[24] Therefore, if adopted, the recovery of costs associated with the eleven 715 Projects at issue here during the period prior to August 30, 2019 will remain unchanged and the actual impact of PJM's October 29 Filing will only be forward from the applicable effective date.

Consequently, as to the eleven projects at issue, the ICC's Protest herein, as a practical matter, applies only to the recovery of costs going forward from August 30, 2019, although this

[23] "Summary Update on Two FERC Orders, Form 715 RTEP Projects" presented by Pauline Foley, Associate General Counsel to the Markets & Reliability Committee, September 26, 2019. https://www.pjm.com/-/media/committees-groups/committees/mrc/20190926/20190926-item-06-form-715-orders-presentation.ashx

[24] October 29 Filing, at 6.

protest could apply to the cost reallocation for the eleven 715 Projects starting from March 26, 2015.

IV. CONCLUSION

While the Commission's section 206 proceeding would subject all future 715 Projects to PJM's competitive window process, such cost discipline did not exist for the 715 Projects approved for inclusion in Schedule 12 between March 26, 2015 and August 30, 2019. Regional allocation of 715 Project costs without application of PJM's competitive window proposal process to discipline project costs, cannot be considered just and reasonable. Also, differentials in the criteria associated with PJM Transmission Owners' Form No. 715, in conjunction with the change in cost allocation associated with PJM's October 29 Filing would produce inequitable cost shifts. Accordingly, the ICC protests the October 29 Filing for the eleven 715 Projects identified herein on the basis that changing the cost allocation from local zone to regional, absent the application of PJM's competitive project selection process to ensure project efficiency and cost effectiveness, would be unjust and unreasonable and that doing so given the disparity in the Form No. 715 criteria among PJM zones would result in inequitable cost shifts.

WHEREAS, for the reasons discussed above, the Illinois Commerce Commission protests PJM's October 29 Filing as it applies to the eleven projects identified herein and requests the Commission reject PJM's compliance filing with respect to those projects and provide any and all appropriate relief.

Respectfully submitted,

/s/Christine F. Ericson

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ILLINOIS COMMERCE COMMISSION

Dated: November 19, 2019

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.) Docket No. ER15-1344-007

VERIFICATION

STATE OF Illinois)
COUNTY OF Cook)

I, Torsten Clausen, being duly sworn upon oath, attest that I am the Director of the Policy Division, in the Public Utilities Bureau of the Illinois Commerce Commission, and that I have authority to verify the foregoing document. I have read the foregoing document and I affirm that the facts, representations, and statements set forth therein are true and correct to the best of my knowledge, information, and belief.

Torsten Clausen
Director, Policy Division
Public Utilities Bureau
Illinois Commerce Commission

Subscribed and sworn before me
This 18 day of November, 2019

Esperanza De Los Santos
Notary Public

OFFICIAL SEAL
ESPERANZA DELOSSANTOS
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:08/25/23

My commission expires on Aug. 25, 2023

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 in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Chicago, Illinois, this 19th day of November, 2019.

/s/ Christine F. Ericson

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