



Organization of PJM States, Inc. (OPSI)

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May 17, 2021
(Via E-mail only)

Dear Transmission Owners,

OPSI appreciates the opportunity to comment on the PJM Transmission Owner's proposal to revise the PJM Tariff to provide PJM Transmission Owners with the ability to elect to fund the network upgrades associated with the interconnection of new generation resources in order to earn a return of, and a return on, the costs of those network upgrades. OPSI's comments are attached.

We recognize this is an important issue and hope that the Transmission Owners will withdraw this proposal and take opportunity to improve or re-evaluate certain aspects of this proposal.

Sincerely,

Harold B. Gray, President
Organization of PJM States, Inc.

Written comments on the PJM TOs' proposal
from the Organization of PJM States, Inc.

The Organization of PJM States, Inc. (“OPSI”) appreciates this opportunity to provide comments on the April 16, 2021, Notice of PJM Transmission Owners Consultation with the Members Committee Regarding Proposed Revisions to the PJM Tariff (“Notice” or “proposal”).¹ The initial PJM stakeholder comment process provides an important opportunity for the transmission owners (“TOs”) to improve or re-evaluate certain aspects of their proposal prior to filing at FERC.² OPSI has significant concerns with the proposal and urges the TOs to withdraw this proposal at this time.

Legal Infirmary

The TOs state that a “non-compensatory ownership problem has been recognized by both the DC Circuit and the Commission in recent orders.”³ However, the *Ameren* decision⁴ and its progeny at FERC in no way render the proposal just and reasonable. The *Ameren* court never addressed the merits of the funding issues raised by the petitioners and merely vacated the underlying FERC orders and remanded the matter for further consideration.⁵ On remand, FERC did not expand the record or address any of the questions posed by the *Ameren* court, choosing instead to reverse itself.⁶

The proposal also asserts that “the current PJM interconnection pricing model fails to properly compensate the PJM TOs for the risks that they must bear in connection with owning and operating the network upgrades”⁷ The proposal would therefore create an option for the TOs to incur more costs

¹ Approved by the OPSI Board of Directors on May 17, 2021 with the following states in support: Delaware PSC, PSC of District of Columbia, Illinois CC, Indiana URC, Kentucky PSC, Maryland PSC, Michigan PSC, New Jersey BPU, PUC of Ohio, Pennsylvania PUC, Tennessee PUC, Virginia SCC, PSC of West Virginia. Abstain: North Carolina UC.

² The time allowed for preparing initial comments was insufficient for OPSI to provide a fuller response to the proposal.

³ Notice at 2.

⁴ *Ameren Servs. Co. v. FERC*, 880 F.3d 571 (D.C. Cir. 2018).

⁵ *Id.* at 582.

⁶ *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,158 (2018); *Midcontinent Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,233 (2019); *Midcontinent Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,248 (2020); *Midcontinent Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,075 (2020), *order on reh'g*, 173 FERC ¶ 61,037 (2020).

⁷ Notice at 1.

to include in rate base in order that the TOs may then earn a return for twenty years on those newly incurred costs under Section 205. This generous compensation structure proposed by the TOs is not commensurate with the uncompensated risks described in the TOs' proposal, all of which (without evidence to the contrary) are incremental, baked into other transmission owner rates or otherwise impossible to measure.

The proposal would also shift default costs from generation developers, who currently must fund their own network upgrades necessary for interconnection up front and would suffer any consequence of default, to end use customers who would suffer higher transmission charges to cover a generation developer's default under the proposal. Such an effect would not be just and reasonable.

Further, with the proposal effectively acting as a right of first refusal, it would severely limit the funding options for certain network upgrades and would result in disparate impacts upon generation developers. While there may be some benefit in a TO option to fund, namely the potential for more generation to be built by developers that cannot meet the up-front financing cost under the status quo, this unilateral decision poses substantial concerns. Some generation developers may end up in a better position if TOs unilaterally elect to fund their network upgrades. Conversely, other generation developers may be disadvantaged should the TOs unilaterally elect to fund their network upgrades, as the generation developer could have gotten a better deal elsewhere. This disparate impact will also befall generation developers in circumstances where TOs elect not to fund. Such an effect would be unduly discriminatory and would not be just and reasonable.

At a minimum, the TO proposal should be revised to eliminate the TO unilateral decision to fund and instead include a true "option to fund." This option should be a joint decision between the interconnecting customer and the TO, expanding options for interconnecting generators and providing flexibility in the interconnection process. As a subset within the "option to fund," both the TO and the generator

could jointly fund the interconnection upgrade, as determined in their joint agreement. The above approach would add a greater degree of flexibility to the process and ultimately result in three options: 1) Interconnection customer funded (status quo), 2) Funded by the TO under a joint agreement, 3) Jointly funded by the TO and interconnection customer under a joint agreement. While the remaining concerns OPSI raises would still exist, elimination of the unilateral decision to fund would be a step in the right direction. Further discussion of these options should occur before any premature filing at FERC.

Concerns of Competition and Cost Control

As noted above, the proposal would chill competition by severely limiting funding options for network upgrades. Without that competition, there is not sufficient incentive for controlling costs. A sufficient assurance of a cost control mechanism, which the proposal lacks, would be a minimum requirement. Otherwise, the OPSI states see no way to ensure their consumers are protected against unnecessarily inflated costs. Additionally, TOs owning generation would be able to favor their own generation during the network upgrade election process. As *Ameren* made clear, economic logic and theory would be an acceptable form of evidence of potential discrimination, and evidence of potential discrimination exists at least to the extent of TOs in PJM that also own generation. The elimination of competition would not be just and reasonable and the potential discrimination would be undue and prohibited by the FPA.

Prudence Uncertainty

As noted above, the risks laid out in the proposal are hard to measure, or incremental in nature (e.g. reliability and cybersecurity risks, safety risks, environmental risks and litigation risks). The proposal lacks the evidence necessary to measure these risks and therefore precludes the justification of both a TO electing to fund a network upgrade or the compensation structure proposed. This would not be just and reasonable.

Ratemaking Concern

As noted above, the mechanism TOs propose for implementing their election does not protect the general body of transmission customers from the risk of default by generators, and the levelized payment structure for generators shifts cost recovery to the general body of transmission customers in the early years of recovery. Including in rate base would not be just and reasonable.