

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection LLC

)

Docket No. ER13-198

**MOTION TO INTERVENE AND COMMENTS OF
THE ORGANIZATION OF PJM STATES, INC.**

I. INTRODUCTION

Pursuant to the November 1, 2012 Notice of Compliance Filings issued by the Federal Energy Regulatory Commission (“FERC”), the Organization of PJM States, Inc. (“OPSI”) hereby moves to intervene and submits comments on the October 25, 2012, compliance filing made by PJM Interconnection LLC (“PJM”) in the above-captioned proceeding

PJM submitted its October 25, 2012 filing to comply with the requirements of FERC’s Order No. 1000 (“*Order 1000*”).¹ Consistent with *Order 1000*, PJM’s compliance filing includes a “State Agreement Approach” to allow another means for PJM to consider state public policies in its planning process. PJM’s State Agreement Approach largely represents the collaborative efforts of OPSI, a vast majority of whose members set aside policy differences between their states to determine a reasonable framework and criteria for pursuing public policy transmission projects in the PJM region. OPSI therefore supports the State Agreement Approach, which is consistent with – and indeed exceeds – the requirements of *Order 1000*.² As the State

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Docket No. RM10-23, 136 FERC ¶ 61,051 (July 21, 2011), 76 Fed. Reg. 49,842 (Aug. 11, 2011) (“*Order No. 1000*”), *Order on reh’g and clarification*, 139 FERC ¶ 61,132 (May 17, 2012), 77 Fed. Reg. 32,184 (May 31, 2012) (*Order No. 1000-A*) (collectively, “*Order 1000*”).

² At its November 12, 2012 meeting, the OPSI Board approved a resolution providing for OPSI to file, in the instant proceeding, comments supporting PJM’s State Agreement Approach.

Agreement Approach fully complies with *Order 1000*, FERC should resist any efforts to undo this earnest, and ultimately successful, undertaking by OPSI.

II. MOTION TO INTERVENE

OPSI is an incorporated association of state regulatory authorities with jurisdiction over transmission siting and the electricity rates of transmission-owning and transmission-dependent utility members of PJM. Additionally, each OPSI member participating in this filing is a “state commission” under FERC’s regulations, 18 C.F.R. § 1.101(k), possessing a right of intervention pursuant to Rule 214(a)(2), 18 C.F.R. § 385.214(a)(2). Accordingly, OPSI has a substantial interest in the outcome of this proceeding and its intervention should be granted.³

III. COMMUNICATIONS

Pursuant to Rule 203, 18 C.F.R. § 385.203, all future pleadings and correspondence should be directed to the following:

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³ OPSI members joining in this filing are the Illinois Commerce Commission, Indiana Utility Regulatory Commission, Kentucky Public Service Commission, Michigan Public Service Commission, New Jersey Board of Public Utilities, North Carolina Utilities Commission, Public Utilities Commission of Ohio, Pennsylvania Public Utility Commission, Tennessee Regulatory Authority, Virginia State Corporation Commission, and Public Service Commission of West Virginia.

OPSI members not joining in this filing are the Delaware Public Service Commission, District of Columbia Public Service Commission, and Maryland Public Service Commission.

III. COMMENTS IN SUPPORT OF THE STATE AGREEMENT APPROACH

A. The State Agreement Approach Builds on the Foundation of PJM's Current Planning Process, Which Already Complies With *Order 1000*.

Order 1000 requires PJM to provide a process for the identification and evaluation of “transmission needs driven by Public Policy Requirements.” Through *Order 1000*, “the Commission is simply requiring the consideration of facts that are relevant to the transmission planning process.”⁴ From the outset, FERC has made clear that the requirement to consider transmission needs from “public policy requirements” is not a mandate to fulfill those requirements.⁵ Under *Order 1000*, the transmission planning processes of PJM and other regions would only “be deficient if they do not provide an *opportunity to consider* transmission needs driven by Public Policy Requirements.”⁶

The OPSI members took seriously FERC's encouragement that PJM and its stakeholders continue their dialogue regarding the order⁷ and that FERC had “strongly encourage[d] states to participate actively in the identification of transmission needs driven by Public Policy Requirements.”⁸ Members took particular notice that FERC had further explained that the planning process “could rely on committees of state regulators or, with appropriate approval from Congress, compacts between interested states to identify transmission needs driven by

⁴ *Order No. 1000* at Para. 111.

⁵ *Id.* at Para. 109; *Order No. 1000-A* at Para. 204.

⁶ *Order No. 1000* at Para. 109 (emphasis added).

⁷ *Id.* at Para. 19.

⁸ *Id.* at Para. 209, n.189.

Public Policy Requirements for the public utility transmission providers to evaluate in the planning process.”⁹

Prompted by FERC’s encouragement and guidance, OPSI’s member commissions worked to recommend an additional option for PJM to consider public policy. Those efforts ultimately proved successful. At its June 7, 2012 meeting, the OPSI Board approved language for a “State Agreement Approach,” which OPSI recommended PJM include as part of its *Order 1000* compliance filing.

PJM’s compliance filing would add to its planning process a “State Agreement Approach” that largely tracks the approach recommended by OPSI. PJM’s State Agreement Approach provides as follows:

1.5.9 State Agreement Approach

(a) State governmental entities authorized by their respective states, individually or jointly, may agree voluntarily to be responsible for the allocation of all costs of a proposed transmission expansion or enhancement that addresses state Public Policy Requirements identified or accepted by the state(s) in the PJM Region. Such transmission enhancements or expansions may be included in the recommended plan as a (i) Supplemental Project or (ii) state public policy project, which is a transmission enhancement or expansion, the costs of which will be recovered pursuant to a FERC-accepted cost allocation proposed by agreement of one or more states and voluntarily agreed to by those state(s). All costs related to a state public policy project or Supplemental Project included in the Regional Transmission Expansion Plan to address state Public Policy Requirements pursuant to this Section shall be recovered from customers in a state(s) in the PJM Region that agrees to be responsible for the projects. No such costs shall be recovered from customers in a state that did not agree to be responsible for such cost allocation. A state public policy project will be included in the Regional Transmission Expansion Plan for cost allocation purposes only if there is an associated FERC-accepted allocation permitting recovery of the costs of the state public policy project consistent

⁹ *Id.*

with this Section.

(b) Subject to any designation reserved for Transmission Owners in Section 1.5.8.(1) of this Schedule 6, the state(s) responsible for cost allocation for a Supplemental Project or a state public policy project in accordance with Section 1.5.9(a) in this Schedule 6 may submit to the Office of the Interconnection the entity(ies) to construct, own, operate and maintain the state public policy project from a list of entities supplied by the Office of the Interconnection that pre-qualified to be Designated Entities pursuant to Section 1.5.8(a) of this Schedule 6.

The State Agreement Approach would supplement PJM's existing planning process, which already satisfies the requirements of *Order 1000*. Currently, public policies can be evaluated by PJM through planning efforts that include – but are not limited to¹⁰ – those of the Independent State Agencies Committee (“ISAC”). ISAC allows for participation by state regulatory bodies as well as official state governmental agencies with statutory authority for energy planning, and/or environmental issues that relate to electric transmission facilities, including statutory consumer advocates. Additionally, as a requirement of its charter, ISAC meetings are open to all interested stakeholders.¹¹ In full compliance with *Order 1000*, ISAC provides an open and transparent forum for the identification and evaluation of public policies with the possibility of affecting transmission needs in PJM.

B. The State Agreement Approach, Which Is Lawful and Reasonable, Should Be Approved.

The voluntary project sponsorship scheme of the State Agreement Approach ensures that

¹⁰ PJM's compliance filing summarizes several other ways that PJM considers and evaluates public policies in its planning process. See, e.g., Compliance Filing at 36-48.

¹¹ See *PJM Interconnection LLC*, Docket No. EL12-1178-000, 139 FERC ¶61,080 at Para. 18, Order Conditionally Accepting Tariff Revisions Subject to Compliance (Apr. 30, 2012).

transmission costs will correspond closely with state-identified public policy benefits, thereby eliminating concerns about both free ridership and cross-state cost shifting for public policy projects. Under the State Agreement Approach, sponsoring states can pursue a public policy project they determine is cost-beneficial. On the other hand, states evaluating a public policy project who conclude that project costs outweigh the benefits need not pursue such a project any further. This matching of costs and benefits for projects that are not economic or needed for system reliability is reasonable, logical, and responsible.

The State Agreement Approach was formulated with the understanding that each PJM state has a variety of public policies, some of which may be unique to a particular state or may even conflict with other states' policies. The State Agreement Approach is carefully drafted to avoid any state's unintentional "endorsement" of a potentially conflicting public policy goal. By ensuring that the transmission costs of a public policy project remain wholly with its benefiting proponent(s), the State Agreement Approach will not force any state to fund another state's policies or to participate in resource-intensive project development processes simply to ensure that costs of such projects are not foisted upon it. This approach will therefore reasonably allow more cost-effective transmission planning by focusing public policy planning efforts on project development, feasibility, and system impacts, rather than on the divisive, self-interested policy debates that would inevitably ensue from an involuntary approach to public policy project planning and funding.

The State Agreement Approach defines a process by which PJM can, when appropriate, expand the public policy evaluation required by *Order 1000* to actual projects. Absent an explicit legislative directive for a project's construction, turning a "public policy" into a "transmission need" for a project that is not economic or needed for reliability will likely require

the interpretation and/or extrapolation of laws or regulations.¹² Such policy decisions and pronouncements are appropriately made by governmental entities and not by private interests or regional transmission planners.¹³ OPSI agrees with FERC that the regional transmission planning simply is not the forum for making policy decisions as “[i]t is not the function of the transmission planning process to reconcile state policies.”¹⁴ No employee in the PJM chain of command is appointed or elected by the citizenry to interpret, implement, or reconcile state laws and regulations. The State Agreement Approach appropriately identifies that only authorized policymakers should make the policy decisions and pronouncements that will be required to convert “public policies” into “transmission needs.”

As reflected in the State Agreement Approach, if customers are to pay the costs of a project pursued *in the name of state policy*, there must first be a *state determination* that such a project is, in fact, consistent with that state’s policy. This approach complies with FERC’s guidance that public policy planning can “rely on committees of state regulators or, with appropriate approval from Congress, compacts between interested states.”¹⁵ Note, however, that because some state regulators responsible for siting transmission projects may be reluctant or unable to prejudge – in the planning process – the ability of a project to satisfy state siting requirements, the State Agreement Approach purposely leaves it to each individual state to determine, under its own applicable laws, the appropriate state entity to pursue any such projects.

¹² For example, much of the discussion in this space is about mandatory renewable portfolio standards, which are, of course, state policies. But those laws were designed with a great deal of flexibility. In fact, many of these laws allow alternative compliance payments in lieu of the actual purchase or generation of renewable power. And these laws say little, if anything, about the construction of transmission, much less the construction of transmission that is uneconomic or not otherwise needed for reliability.

¹³ Of course, public policy, by definition, is the product of some type of governmental process. Regional transmission planning simply is not such a process.

¹⁴ *Order No. 1000-A* at Para. 327.

¹⁵ *Order No. 1000* at Para. 209, n.189.

The State Agreement Approach is also consistent with the reality that the states, which possess transmission siting jurisdiction, are in the best position to determine the viability of siting such non-traditional projects. The “need” for transmission projects is a determination that, with limited exceptions, is ultimately defined under state siting laws and the implementation of such state laws by state bodies. In theory, perhaps, transmission planning could incorporate any number of public policies, in any number of ways. Those efforts, however, if disconnected from the requirements for actually getting a line approved for construction, are likely to be empty and costly exercises.

For reasons that include those discussed above and in PJM’s compliance filing, the State Agreement Approach is lawful and reasonable and should be approved.

C. FERC Should Not Adopt Any Cost Allocation That Undermines State Legislative Prerogatives.

Some interests have argued that PJM should require, in its regional plan, public policy projects in a way that would downplay the policy driver for any such projects and effectively force states to fund other states’ public policies. Such a mandate, which is not included in *Order 1000*, is based on mistaken and inequitable arguments advanced by its proponents and should be rejected.¹⁶ States pursuing their own policy goals should expect to pay the costs of such goals. It is hard to fathom a state enacting laws or promulgating regulations with a realistic expectation that other states will foot some, or all, of the bill. Certainly, *Order 1000* does not direct such an inequitable result and no support can be found in the Federal Power Act for such a result. In

¹⁶ For example, those advocating for a mandatory, involuntary approach to public policy transmission planning and funding typically speculate that there may be some kind of incidental reliability “benefit” associated with these projects that PJM should attempt to quantify and allocate more broadly across its footprint. But it should be understood that any public policy project will not be optimal from a reliability standpoint. This is because PJM must proactively identify optimal reliability projects as part of its core responsibility of satisfying mandatory reliability standards required by federal statute. Put simply, all valuable reliability benefits are already optimally planned for.

fact, nothing in *Order 1000* requires the development of a separate class of transmission projects if PJM and its stakeholders do not believe it is appropriate to do so.¹⁷

IV. CONCLUSION

For the foregoing reasons, OPSI recommends FERC approval of PJM's State Agreement Approach, which is the prudent course for the PJM region at this time.

Respectfully submitted,

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¹⁷ *Order No. 1000* at Para. 220 (“Further, we are not requiring that a separate class of transmission projects be created in the transmission planning process related to compliance with Public Policy Requirements, although nothing in this Final Rule prohibits the development of a separate class of transmission projects if the public utility transmission provider and its stakeholders believe that it is appropriate to do so.”). See also *Order No. 1000-A* at Para. 327 (“It is [transmission providers’] function to help both sets of utilities comply with the laws they each face by considering in the transmission planning process, *but not necessarily including in the regional transmission plan*, the new transmission facilities needed by both sets of utilities to meet their obligations....”) (emphasis added).

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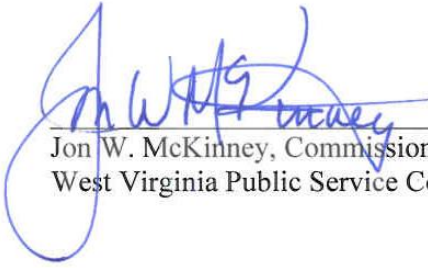
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WEST VIRGINIA PUBLIC SERVICE COMMISSION



Jon W. McKinney, Commissioner
West Virginia Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding in accordance with the provisions of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Richmond, Virginia, this 10th day of December, 2012.

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Document Content(s)

ER13-198 Motion to Intervene.PDF.....1