

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

Building for the Future Through Electric)	
Regional Transmission Planning and)	Docket No. RM21-17-000
Cost Allocation)	

**MOTION FOR CLARIFICATION AND AMENDMENT OF
THE ORGANIZATION OF PJM STATES, INC.**

Pursuant to Rule 212 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.212, the Organization of PJM States, Inc. (“OPSI”),¹ respectfully submits this Motion for Clarification and Amendment related to the Commission’s May 13, 2024, Order in this matter (“Order No. 1920” or “the Rule”). OPSI remains² supportive of long-term transmission planning for the cost savings it may hold for consumers over the status quo, and specifically supports the Rule’s intent to identify potential opportunities to right-size replacement transmission facilities.

In furtherance of its support for long-term transmission planning, OPSI believes that specific provisions of the Rule related to the development and review of cost allocation methods and scenarios demand clarification or amendment. Reasoned decision making would require a

¹ OPSI’s following members support these comments: the Delaware Public Service Commission, Public Service Commission of the District of Columbia, Indiana Utility Regulatory Commission, Kentucky Public Service Commission, Maryland 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 Public Utility Commission, and Public Service Commission of West Virginia*. The Illinois Commerce Commission and the Virginia State Corporation Commission abstained in the vote on this document. The Commissions noted with an * intend to file separate pleadings under their own name.

² *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Comments of the Organization of PJM States, Docket No. RM21-17-000 at p. 1 (“OPSI supports the promotion of long-term, regional transmission (“LTRT”) planning for the potential efficiencies it promises, while maintaining reliability and recognizing the central role of states in this process.”) (“OPSI Initial Comments”).

clarification or amendment in finalizing a just and reasonable rule.³

Although the Rule provides elevated roles for states in the development of scenarios⁴ and cost allocation methods,⁵ OPSI respectfully requests the Commission clarify the necessary deference to and importance of the states' agreed-to decisions in order to provide more certainty that relevant state entities' input will result in the appropriate development of scenarios and cost allocation methods. OPSI also seeks clarification on the mechanics related to the development and approval of cost allocation methods. Ensuring the states have a clear understanding of how FERC will evaluate state agreements is critical to the Commission receiving proposals it can accept.

I. MOTION FOR AMENDMENT

A. State Agreements Must be Filed

As discussed further below, the Commission has designed a process for states to engage in the development of either an *ex ante* cost allocation method and/or a State Agreement Process that could lead to an agreement among states. However, the Rule does not provide a defined path for those proposals – where the states have agreed to a cost allocation methodology – to be brought before the Commission.⁶ If states, through the process envisioned and required by the

³ *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (“The agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.”). *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985).

⁴ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, Final Rule, 187 FERC ¶ 61,068 at P 561 (“Rule”).

⁵ *Id.* at P 1293.

⁶ *Id.* at P 1429 (“Specifically, we clarify that, after the required Engagement Period, transmission providers in each transmission planning region will decide what Long-Term Regional Transmission Cost Allocation Method(s) and any State Agreement Process to file as part of their compliance filings. Therefore, transmission providers in a transmission planning region could elect to propose on compliance a Long-Term Regional Transmission Cost

(continued)

Commission, exert the effort and resources to successfully reach agreement on a cost allocation method or methods and Transmission Providers are not required to file or even acknowledge the Relevant State Entities' efforts,⁷ state engagement in the development of cost allocation methods for Long-Term Regional Transmission Facilities and any expected development of more efficient or cost-effective facilities may never materialize. In fact, further incenting state agreement (and filing of that agreement) makes it more likely the Rule's goals are met, as a filing with state agreement has a lower burden of proof than a Transmission Provider-filed cost allocation without state agreement.⁸ In keeping with its reasoned decision-making obligations, the Commission should amend this aspect of the Rule. As it stands, the Rule works contrary to the Commission's stated objective, and instead, the Commission should require Transmission Providers to file on compliance a cost allocation methodology agreed upon by the states.⁹

In addition, regardless of and independent of *ex ante* filing requirements, because of the large number of relevant state entities in PJM, the diversity of regulatory models of the relevant state entities in PJM, and the diversity of state laws and procedures applicable to those relevant state entities, to provide a meaningful opportunity for discussion and development of a state agreement, the Commission should clarify that the six-month Engagement Period will be

Allocation Method and not file a State Agreement Process or other *ex ante* cost allocation method to which Relevant State Entities agreed.”).

⁷ *Id.* at P 1429, 1431 (“[W]e decline to require, as PJM States, NESCOE, and New Jersey Commission suggest, that transmission providers file two cost allocation methods – the transmission providers’ preferred cost allocation method and the cost allocation method agreed to by the Relevant State Entities – if the transmission providers disagree with a proposed cost allocation method to which the Relevant State Entities agree.... We reiterate that transmission providers retain their right to decide what Long-Term Regional Transmission Cost Allocation Method(s) and any State Agreement Process to file in compliance with this final rule after the Engagement Period.”)

⁸ *Id.* at P 1469, 1472 & 1476.

⁹ *Id.* at P 1359.

extended for up to a maximum of twelve months if the states file a unanimous declaration that they are engaged in, but require additional time to complete, cost allocations discussions.

B. The Commission Should Clarify the Level of Flexibility Afforded in the Development of Scenarios

Order No. 1920 requires that Transmission Providers consider categories of factors related to state laws and integrated resource plans but does not give states a distinct role to influence those factors beyond any other stakeholder. The Commission should clarify the degree to which Transmission Providers should defer to, weigh, or consider the input or agreed-to position of the states as it relates specifically to state laws and regulations and integrated resource plans. Given the states' unique role as to those subjects, this only makes sense. If state commissions seek to have their integrated resource plans, especially those performed under PUC regulations, afforded little weight in scenario planning, it would be unreasonable to treat that perspective the same as any other stakeholder's viewpoint.

Further, the Commission should clarify or alternatively amend the Rule to allow states to request additional scenario and sensitivity analyses to more fully understand the extent to which certain categories of factors or specific factors drive transmission needs. More specifically, the Rule requires Transmission Providers to assume that all legally binding obligations (i.e., federal, federally-recognized Tribal, state, and local laws and regulations) are followed, state-approved integrated resource plans are followed, and expected supply obligations for load-serving entities are fully met *and not discounted*.¹⁰ Similarly, sensitivity cases appear to be designed to account

¹⁰ *Id.* at P 507 (emphasis added).

for uncertain operational outcomes and electric power system model inputs.¹¹ OPSI is concerned that the Rule may place undue restrictions required for the development of scenarios or sensitivities indispensable in informing states on critical transmission needs, and determination of the associated costs and benefits necessary to assist in cost allocation determinations and general siting and safety decisions.

OPSI seeks clarification¹² that the Rule does not prohibit a fourth scenario, or additional sensitivities designed to inform states on critical drivers of necessary transmission facilities, as well as their associated costs and benefits. As an example, PJM and states could work together to design scenarios or sensitivities based on changes in certain specific factors or factor categories such as state preferred generation technologies or locations, which may depart, in some cases, from then current state directed requirements.

Accordingly, the Commission should clarify or amend the Rule to require, or even permit, Transmission Providers to provide additional scenario and sensitivity analyses, and the results of those analyses, to the states that best inform them on required transmission facility needs, costs, and benefits based on variations *or exclusions* of specific factors or categories of factors, including those in the first three categories of factors. More specifically, the Rule should provide flexibility to allow states to work with the Transmission Provider to craft such *additional* scenarios and sensitivities *without limitation* in order to achieve the objectives of the Rule.¹³ These scenarios and sensitivities should be provided by the Transmission Provider to states in a

¹¹ *Id.* at PP 593-4.

¹² To the extent the Commission intended to prohibit such scenarios or sensitivities, OPSI seeks amendment of the Rule to enable such necessary scenarios or sensitivities.

¹³ *Id.* at PP 507, 593-4.

manner that informs states in sufficient time to assist in cost allocation and/or project selection decision making.

States are the primary siting authority for transmission facilities, and our citizens ultimately pay for them in retail rates. It is critical that states be unimpeded in crafting scenarios and sensitivities that provide critical information to ensure costs are fairly allocated based on the costs and benefits of future transmission projects, and that states fully understand cost drivers related to their individual state energy requirements and objectives. This critical information to fully inform states is especially important in helping states come to agreement on important issues amongst themselves.

II. MOTION FOR CLARIFICATION

A. The Commission Should Clarify That PJM's State Agreement Approach Will Continue to Exist in Its Current Form and How It Can Be Used in the Context of Order No. 1920

OPSI recognizes that the Commission's Rule states "that any State Agreement Process that the Commission accepts in compliance with this final rule will apply to only Long-Term Regional Transmission Facilities, while any existing voluntary state cost allocation processes that the Commission has previously accepted apply to other transmission facilities and, thus, are unaltered by this final rule."¹⁴ OPSI further recognizes that the Commission specifically wrote in the Rule that "agreements outside of the context of Order No. 1000 regional cost allocation methods, such as PJM's State Agreement Approach, can result in cost allocations that are just

¹⁴ *Id.* at P 1479.

and reasonable”¹⁵ and that “nothing in the final rule would prohibit such voluntary cost sharing arrangements.”¹⁶ OPSI requests that the Commission clarify that PJM’s existing State Agreement Approach is not in conflict with the Rule and that states within PJM can continue to pursue their public policies via voluntary election of the State Agreement Approach, in its current form.

B. The Commission Should Clarify the Minimum Filing Requirements of the Transmission Providers’ Long-Term Cost Allocation Method Compliance Filing Process to Ensure it Has Sufficient Evidence Upon Receipt

As OPSI explained in Section I of this pleading, the Commission should amend its Rule and require Transmission Providers to file on compliance the cost allocation methodology agreed upon by the states, if the states provide a state agreed upon approach. Regardless, even if the Commission does not agree to that amendment, it should at least clarify that Transmission Providers must explain in their cost allocation filings what steps they took to meet the Rule’s requirements to meaningfully solicit and consider cost allocation methodologies, concepts, or principles to which states mutually agree. To expeditiously determine the status of state inputs into cost allocations, OPSI believes the Commission should require Transmission Providers to include, at minimum, the following information in their filings: the setting and communicating of deadlines, the general forum for transmission provider discussions with and outreach to state entities, the degree to which states agreed or disagreed with the filed cost allocation, whether states timely put forward an alternate cost allocation method, if applicable, the states’ alternate proposal, and again, if applicable, justifications for why the Transmission Provider did not file

¹⁵ *Id.* at P 1407.

¹⁶ *Id.* at P 1407.

the states' agreed-to alternate cost allocation proposal. Such minimum filing requirements would demonstrate the extent to which Transmission Providers actually engaged with states and provide the Commission evidence necessary to make its determination as to whether the compliance filing is just and reasonable. If the Commission does not require a state agreed-to cost allocation to be filed, as sought above, then, this clarification will make it more likely, in accordance with the spirit of the Rule, that Transmission Providers will file a cost allocation agreed to by the states, ultimately making it more likely the Rule meets the Commission's (and OPSI's) stated goal of more efficiently and effectively planning long-term transmission.

C. The Commission Should Clarify the Terms of the Engagement Period

Relatedly, to increase the likelihood of state and Transmission Provider agreement on cost allocation within the Engagement Period, the Commission should clarify that the "Engagement Period" related to cost allocation¹⁷ in the Rule is actually a "State Engagement Period." The Commission should clarify that, at least for the Transmission Provider's engagement on cost allocation, the states are the stakeholder(s) to engage.¹⁸ This clarification will help ensure "robust participation" by the states.¹⁹ However, any clarification should not prohibit states from inviting others that are helpful or important in assisting the states in coming to agreement on cost allocation. Instead, the Commission's clarification should be narrowly tailored to make clear that the cost allocation Engagement Period is not for the engagement of all

¹⁷ See generally, *Id.* at P 1354, *et al.*

¹⁸ See *Id.* at Christie Dissent, P 71.

¹⁹ *Id.* at P 5.

stakeholders, but is instead intended to provide a forum for Transmission Providers and states to try and come to agreement on cost allocation.

III. The Commission Should Open a Rulemaking That Includes Construction Work in Progress And Proceed Expeditiously to Issue A Final Rule That Reduces Ratepayer Risk

OPSI's initial comments supported the NOPR proposal to disallow the Construction Work In Progress (CWIP) incentive for long-term regional transmission facilities as a means for allocating the risk of transmission facilities not being used and useful to the for-profit entities, rather than to ratepayers.²⁰ OPSI is concerned that the Commission decided not to implement that proposal in the Rule²¹ and urges the Commission to move promptly to open a rulemaking docket that addresses this issue. The CWIP incentive for long term planning could result in a dangerous cost shift of project costs. Long Term Planning, under this Final Order, would analyze 20 years into the future and seek solutions to long term needs that, based on several factors, would serve load structures that look drastically different than what exists at the time they are planned. A CWIP incentive will more likely than not inappropriately assign costs of a project based on the current characteristics of the transmission and load landscape for an extended period of time before and during construction of planned facilities even though the project would serve a load and grid that may appear much different in the future. Therefore, a CWIP incentive, especially for long term transmission facilities, may be paid for by the wrong customers.

²⁰ OPSI Initial Comments at p. 13.

²¹ Rule at P 1547.

IV. CONCLUSION

OPSI appreciates the Commission's efforts to promote cost-effective transmission development and submits this pleading to promote that objective. As noted above, OPSI is specifically supportive of Commission reforms to provide a better opportunity to identify right-sized transmission. The FPA mandates that the Commission protect consumers, and OPSI believes the most effective way to do that is to provide the states a more meaningful role in long-term planning processes than the Rule currently provides.

Respectfully Submitted,

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Dated: June 12, 2024

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. Section 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Gregory V. Carmean

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