

168 FERC ¶ 61,133
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

PJM Interconnection, L.L.C.

Docket Nos. ER15-1387-004
ER15-1344-005

ORDER ON REMAND

(Issued August 30, 2019)

1. On August 3, 2018, the U.S. Court of Appeals for the District of Columbia Circuit (Court) reversed the Commission's acceptance of a March 26, 2015 proposal from the PJM Interconnection, L.L.C. (PJM) Transmission Owners to revise the PJM Open Access Transmission Tariff (PJM Tariff) pursuant to section 205 of the Federal Power Act (FPA).¹ The PJM Transmission Owners proposed to allocate 100 percent of costs for projects that are included in the PJM Regional Transmission Expansion Plan (RTEP) solely to address individual transmission owner Form No. 715 local planning criteria to the transmission zone of the transmission owner whose Form No. 715 local planning criteria underlie each project (2015 PJM Transmission Owner Tariff Revision). The Court remanded the case to the Commission for further proceedings.²

2. In this order, we reject the 2015 PJM Transmission Owner Tariff Revision and direct PJM to, within 30 days of the date of this order, make a filing in eTariff to make all tariff corrections necessary to reflect the rejection of the 2015 PJM Transmission Owner Tariff Revision. We also direct PJM to refile the assignment of cost responsibility in Schedule 12, Appendix A, of the PJM Tariff for transmission projects included in the

¹ 16 U.S.C. § 824d (2018); *see PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,096 (February 2016 Order), *reh'g denied*, 157 FERC ¶ 61,192 (2016) (December 2016 Order), *rev'd sub nom. Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254 (ODEC), *reh'g denied*, 905 F.3d 671 (D.C. Cir. 2018).

² The appeal challenged both the orders in Docket No. ER15-1387 accepting the 2015 PJM Transmission Owner Tariff Revision and the orders in Docket No. ER15-1344 applying the revised PJM Tariff to specific projects. The Court set aside the orders under review to the extent they applied the 2015 PJM Transmission Owner Tariff Revision to specific projects at issue. *ODEC*, 898 F.3d at 1264.

RTEP between May 25, 2015, and the date of this order that solely address individual transmission owner Form No. 715 local planning criteria, consistent with this order.

I. Background

3. PJM conducts planning for reliability transmission enhancements according to several criteria, specifically PJM planning procedures, North American Electric Reliability Corporation (NERC) Reliability Standards, Regional Entity reliability principles and standards,³ and the individual transmission owner planning criteria, as filed with the Commission in FERC Form No. 715.⁴ Form No. 715 is the Annual Transmission Planning and Evaluation Report that any transmitting utility that operates integrated transmission facilities at or above 100 kilovolts must file with the Commission on or before April 1 of each year.⁵ As relevant here, Form No. 715 requires submission of transmission planning reliability criteria that the transmission owner uses to assess and test the strength and limits of its transmission system.

4. Prior to the 2015 PJM Transmission Owner Tariff Revision at issue in this proceeding, PJM assigned the costs of projects that are selected in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria pursuant to the PJM cost allocation method accepted by the Commission as in compliance with Order No. 1000.⁶ Specifically, in the case of Regional Facilities and Necessary Lower Voltage

³ ReliabilityFirst Corporation, Southeastern Electric Reliability Council, and other applicable Regional Entities establish these regional plans. *See* PJM, Intra-PJM Tariffs, Operating Agreement, Schedule 6, §§ 1.2(b), (d) (2.0.0).

⁴ *Id.* § 1.2(e). PJM identifies reliability transmission needs and economic constraints that result from the incorporation of public policy requirements into its sensitivity analyses, and allocates the costs of the solutions to such transmission needs in accordance with the type of benefits that they provide. *See PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 441 (2013), *order on reh'g and compliance*, 147 FERC ¶ 61,128 (2014), *order on reh'g and compliance*, 150 FERC ¶ 61,038, *order on reh'g and compliance*, 151 FERC ¶ 61,250 (2015); *see also* PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(v) (12.0.0) (assigning cost responsibility for Economic Projects).

⁵ *See* 18 C.F.R. § 141.300 (2019).

⁶ *See Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014); *see also PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214.

Facilities⁷ that address a reliability need, costs are allocated pursuant to a hybrid cost allocation method in which 50 percent of the costs of those facilities are allocated on a load-ratio share basis and the other 50 percent are allocated to the transmission owner zones based on the solution-based distribution factor (DFAX) method.⁸ All of the costs of Lower Voltage Facilities⁹ are allocated using the solution-based DFAX method.

II. 2015 PJM Transmission Owner Tariff Revision

5. On March 26, 2015, the PJM Transmission Owners proposed to revise the PJM Tariff to allocate 100 percent of costs for projects that are included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria to the transmission zone of the transmission owner whose Form No. 715 local planning criteria underlie each project. Specifically, the PJM Transmission Owners proposed to add the following language to the PJM Tariff:

Notwithstanding Sections (b)(i), (b)(ii), (b)(iv) and (b)(v), cost responsibility for any Required Transmission Enhancements that are included in the Regional Transmission Expansion Plan, but which would not have otherwise been so included but for the fact that they address individual Transmission Owner FERC filed planning criteria as filed in

⁷ Regional Facilities are defined as Required Transmission Enhancements included in the RTEP that are transmission facilities that: (a) are AC facilities that operate at or above 500 kV; (b) are double-circuit AC facilities that operate at or above 345 kV; (c) are AC or DC shunt reactive resources connected to a facility from (a) or (b); or (d) are DC facilities that meet the necessary criteria as described in Section (b)(i)(D). PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(i) (12.0.0). Necessary Lower Voltage Facilities are defined as Required Transmission Enhancements included in the RTEP that are AC transmission facilities or enhancements that operate below 500 kV (or 345 kV in the case of a Regional Facility described in (b) above) or new DC transmission facilities that must be constructed or reinforced to support new Regional Facilities. *Id.*

⁸ “The Solution-Based DFAX method evaluates the projected relative use on the new Reliability Project by the load in each zone and withdrawals by merchant transmission facilities, and through this power flow analysis, identifies projected benefits for individual entities in relation to power flows.” *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 416.

⁹ Lower Voltage Facilities are defined as Required Transmission Enhancements that: (a) are not Regional Facilities; and (b) are not Necessary Lower Voltage Facilities. PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(ii) (12.0.0).

FERC Form No. 715 and posted on the PJM website, shall be assigned to the Responsible Customers in the Zone of the Transmission Owner that filed such planning criteria. Merchant Transmission Facilities shall not be assigned cost responsibility for a Required Transmission Enhancement subject to this Section (b)(xv).¹⁰

6. The PJM Transmission Owners' proposal addressed transmission projects that are included in the RTEP pursuant to an individual transmission owner's Form No. 715 local planning criteria, rather than to address PJM regional criteria or NERC Reliability Standards. The PJM Transmission Owners contended that, historically, these projects are Lower Voltage Facilities, the costs of which are allocated 100 percent using the solution-based DFAX method. The PJM Transmission Owners further stated that for 98 percent of the 303 transmission projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria, all of the costs were allocated exclusively to the transmission zone of the transmission owner whose Form No. 715 local planning criteria gave rise to the need for the project.¹¹ The PJM Transmission Owners argued that the proposed revisions would better align the purpose and intent of individual transmission owner Form No. 715 local planning criteria with the need for and beneficiaries of these transmission projects.¹²

III. Orders on the 2015 PJM Transmission Owner Tariff Revision

A. May 2015 Order Rejecting Filing

7. On May 22, 2015, the Commission rejected the 2015 PJM Transmission Owner Tariff Revision.¹³ The Commission concluded the proposal was inconsistent with Order

¹⁰ *Id.* § (b)(xv). Sections (b)(i), (b)(ii), (b)(iv), and (b)(v) of Schedule 12 of the PJM Tariff provide the assignment of cost responsibility for Regional Facilities and Necessary Lower Voltage Facilities, Lower Voltage Facilities, Spare Parts, Replacement Equipment and Circuit Breakers, and Economic Projects, respectively. Section (b)(iii) provides for the solution-based DFAX method for assignment of cost responsibility for reliability projects under subsections (b)(i)(A)(2)(a) and (b)(ii)(A).

¹¹ PJM Transmission Owners, Transmittal, Docket No. ER15-1387-000, at 2 (filed Mar. 26, 2015).

¹² *Id.*

¹³ *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,172, at P 22 (2015) (May 2015 Order), *granting reh'g*, 154 FERC ¶ 61,096 (2016), *reh'g denied*, 157 FERC ¶ 61,192

No. 1000 because “the local transmission owner planning criteria are incorporated into the regional transmission planning process, and as a result, projects intended to address such criteria may be selected in PJM’s RTEP for purposes of cost allocation.”¹⁴ The Commission found the proposal inconsistent with the PJM cost allocation regime as it did not reflect the benefits of regional transmission facilities: “[t]he PJM Transmission Owners have not demonstrated that Regional Facilities and Necessary Lower Voltage Facilities, which the Commission previously found provide significant regional benefits that accrue to all members of the PJM transmission system, do not provide such benefits simply because the needs that prompted their selection are local in nature.”¹⁵ The Commission concluded that “it appears that under the PJM Transmission Owners’ proposal, a transmission facility that qualifies to be and is selected in PJM’s RTEP for purposes of cost allocation would not be eligible to use the PJM regional cost allocation method if it is intended to address individual transmission owner local planning criteria.”¹⁶

8. The PJM Transmission Owners and Dayton Power and Light Company (Dayton) requested rehearing of the May 2015 Order, and on September 15, 2015, the Commission directed staff to convene a technical conference to explore issues raised by these rehearing requests.¹⁷

B. February 2016 Order Granting Rehearing of May 2015 Order

9. Following the technical conference and post-technical conference comments, on February 12, 2016, the Commission granted rehearing of the May 2015 Order and

(2016), *rev’d sub nom. Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254, *reh’g denied*, 905 F.3d 671 (D.C. Cir. 2018).

¹⁴ May 2015 Order, 151 FERC ¶ 61,172 at P 22 (citing Order No. 1000, 136 FERC ¶ 61,051 at PP 339, 558, 690).

¹⁵ *Id.*

¹⁶ *Id.* P 24. As explained above, the 2015 PJM Transmission Owners Tariff Revision would allocate 100 percent of costs for projects that are included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria to the transmission zone of the transmission owner whose Form No. 715 local planning criteria underlie each project.

¹⁷ *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,197 (2015). The technical conference was held on November 12, 2015, with initial post-conference comments due on December 18, 2015, and reply comments due on January 15, 2016.

accepted the 2015 PJM Transmission Owner Tariff Revision, to be effective May 25, 2015.¹⁸ The Commission found that the 2015 PJM Transmission Owner Tariff Revision would include among the projects that are included in the RTEP, but are not selected for purposes of cost allocation, a new category of projects that solely address transmission owner Form No. 715 local planning criteria.¹⁹ The Commission stated that in PJM, such projects were not needed to meet PJM regional criteria or NERC Reliability Standards, but instead were included in the RTEP and approved by the PJM Board only to ensure that such projects were developed in a manner that is consistent with PJM's overall regional transmission expansion plan.²⁰ Consistent with that clarification, the Commission found that it is just and reasonable to allocate 100 percent of cost for projects that are included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria to the transmission zone of the transmission owner whose Form No. 715 local planning criteria underlie each project. The Commission also found that granting rehearing would be consistent with another proceeding in which the Commission accepted Midwest Independent System Operator's (MISO) local cost allocation of 100 percent of the cost of projects. The Commission found the fact that 98 percent of projects in PJM had been allocated to local zones to be "even more compelling than the data on which the Commission relied" in the MISO proceeding.²¹

10. On December 9, 2016, the Commission denied rehearing of the February 2016 Order. The Commission again concluded that the PJM Transmission Owners had created a new category of transmission projects that are included in the RTEP solely to address

¹⁸ February 2016 Order, 154 FERC ¶ 61,096 at P 1.

¹⁹ *Id.* P 13 & n.16 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 63). The Commission explained that "transmission facilities selected in a regional transmission plan for purposes of cost allocation are transmission facilities that have been selected pursuant to a transmission planning region's Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation because they are more efficient or cost-effective solutions to regional transmission needs. . . . Such transmission facilities often will not comprise all of the transmission facilities in the regional transmission plan; rather, such transmission facilities may be a subset of the transmission facilities in the regional transmission plan. . . . A local transmission facility is a transmission facility located solely within a public utility transmission provider's retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation." *Id.* P 13 n.16.

²⁰ *Id.* P 13.

²¹ *Id.* PP 13-14 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215, at PP 520, 524 (2013) (*MISO*)).

individual transmission owner Form No. 715 local planning criteria; that are responsive to the local needs identified by the individual transmission owners pursuant to their individual planning criteria; and that are not selected in the RTEP for purposes of cost allocation as the more efficient or cost-effective transmission solutions to regional transmission needs.²²

IV. Remand

11. Dominion Energy Services, Inc. (Dominion) and Old Dominion Electric Cooperative (ODEC) sought judicial review of the Commission orders: (1) accepting the 2015 PJM Transmission Owner Tariff Revision; and (2) applying it to specific projects.

12. On August 3, 2018, the Court found that the Commission acted arbitrarily and capriciously in approving the 2015 PJM Transmission Owner Tariff Revision and applying it to the high-voltage projects, granted the petition for review, set aside the Commission orders, and remanded the case to the Commission for further proceedings consistent with the Court's opinion.²³ The Court found that:

Application of the cost-causation principle is simple here, because this critical point is undisputed: high-voltage power lines produce significant regional benefits within the PJM network, yet the amendment categorically prohibits any cost sharing for high-voltage projects like those at issue here.²⁴

The Court rejected the Commission's reliance on local planning for the projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria, as opposed to being included only to ensure that such transmission projects were developed in a manner that is consistent with PJM's overall RTEP, as providing a sufficient justification for exempting these projects from the application of the PJM regional cost allocation method.

13. The Court found that, given the significant regional benefits of high-voltage transmission facilities, the Commission's decision to approve the 2015 PJM Transmission Owner Tariff Revision was arbitrary. The Court found that "the

²² December 2016 Order, 157 FERC ¶ 61,192 at P 19.

²³ As previously noted, the Court set aside the orders under review to the extent they applied the 2015 PJM Transmission Owner Tariff Revision to the projects at issue. *ODEC*, 898 F.3d at 1264.

²⁴ *Id.* at 1260.

amendment denies cost sharing for *all* projects included in the Regional Plan only to satisfy the planning criteria of individual utilities—including for high-voltage transmission facilities.”²⁵ Accordingly, the Court found that the 2015 PJM Transmission Owner Tariff Revision “produced a severe misallocation of the costs of such projects,” stating that the Tariff revisions “involve a wholesale departure from the cost-causation principle, which would shift a disproportionate share of [the] costs” of these high-voltage projects to a single zone.²⁶ The Court further stated that the Commission “did not attempt to justify its order as a lawful departure from the cost-causation principle,” instead asserting three possible grounds for reconciling its order with that principle. The Court found “[n]one of them is persuasive.”²⁷

14. First, the Court found the Commission’s reliance on data (i.e., that 98 percent of projects needed solely to address individual transmission owner Form No. 715 planning criteria had been allocated to the local zone) unpersuasive, stating that the Commission’s “statistics misleadingly aggregate two very different categories of projects” since all of the projects in the sample were low-voltage facilities.²⁸ The Court found that the Commission’s reasoning “would replace a cost-allocation formula *about which FERC had expressed no concerns* with another one that is less accurate overall, as well as grossly inaccurate with respect to high-voltage projects, *in return for no countervailing regulatory benefit.*”²⁹ In this respect, the Court distinguished the *MISO* case on which the Commission had relied. The Court found that “the *MISO* order was supported by a finding that the benefits of the projects at issue there were ‘realized primarily in the pricing zone in which the project is located. [citation omitted] Here, by contrast, FERC’s

²⁵ *Id.* at 1261 (emphasis in original).

²⁶ *Id.* (citing *Ill. Commerce Comm’n v. FERC*, 756 F.3d 556, 565 (7th Cir. 2014)). The Court further noted that the cost-causation principle requires “comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.” *Id.* (citing *Midwest ISO Transmission Owners*, 373 F.3d 1361, at 1368 (D.C. Cir. 2004)).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 1262 (emphasis in original). The Court further noted that the Commission had not expressed any concern that the pre-revision Tariff “had proven inaccurate, administratively unwieldy, or otherwise problematic.” *Id.*

only relevant finding was that the projects impacted by the amendment produced ‘significant regional benefits.’”³⁰

15. Second, the Court found unpersuasive the Commission’s argument that projects needed solely to address individual transmission owner Form No. 715 local planning criteria were not selected in the RTEP for purposes of cost allocation because they were not needed to meet PJM regional criteria or NERC Reliability Standards. The Court found that while this statement is true, “the cost-causation principle focuses on project benefits, not on how particular planning criteria were developed” and that “Form [No.] 715 is not limited to projects with purely local benefits.”³¹

16. Third, the Court rejected the Commission’s contention that the 2015 PJM Transmission Owner Tariff Revision was consistent with Order No. 1000. While recognizing that Order No. 1000 “requires cost-sharing only for projects selected in a regional plan for purposes of cost allocation,” it found that “compliance with Order No. 1000 does not necessarily ensure compliance with the cost-causation principle—a pre-existing, more general rule that, in order to ensure just and reasonable rates, FERC must make some reasonable effort to match costs to benefits.”³²

17. In addition, the Court addressed the argument pressed by *amici* that transmission owners “should not have free rein to impose unjustified costs on an entire region by unilaterally adopting overly ambitious planning criteria.”³³ The Court concluded that nothing it had said regarding cost assignment would “prevent PJM or its member utilities from amending the Tariff, the Operating Agreement, or PJM’s own planning criteria to address any problem of prodigal spending, to establish appropriate end-of-life planning criteria, or otherwise to limit regional cost sharing.”³⁴

18. Parties filed requests for panel rehearing and/or clarification. On October 16, 2018, the Court denied the requests. The Court stated that “[n]othing in the opinion prevents [the Commission] on remand from attempting to ‘provide a better justification

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.* at 1263.

³⁴ *Id.*

for its approval of the [Tariff revision],” and “there is no need for clarification.”³⁵ In addressing requests for clarification by Consolidated Edison Company of New York, Inc. (Con Edison) and Linden VFT, LLC (Linden), the Court stated that “[b]ecause the panel opinion set aside FERC’s approval of the proposed tariff amendment, the unamended tariff remains in effect.”³⁶ The Court further stated that “the parties remain free to address the appropriate treatment of low-voltage or other facilities, either under the unamended [Tariff] or under any proposed [Tariff] amendment that [the Commission] may now wish to consider.”³⁷

V. Pleadings

19. On November 27, 2018, the PJM Transmission Owners filed a motion requesting that the Commission establish paper hearing procedures for the parties to submit evidence and arguments to support approval of the 2015 PJM Transmission Owner Tariff Revision. The PJM Transmission Owners continue to believe that allocation of the costs of high-voltage projects solely to address a transmission owner’s Form No. 715 local planning criteria to the transmission zone of the individual transmission owner whose Form No. 715 local planning criteria underlie each project is reasonably commensurate with the benefits they provide and that there are valid reasons to distinguish such projects from those needed to satisfy PJM’s regional reliability criteria. Accordingly, the PJM Transmission Owners request that the Commission explore on remand whether it is just and reasonable, for reasons not addressed in *ODEC*, to allocate the costs of high-voltage transmission projects included in the RTEP solely to address a transmission owner’s Form No. 715 planning criteria exclusively to the customers in the transmission zone of the transmission owner whose Form No. 715 local planning criteria underlie each project.

20. Dominion and ODEC (jointly) and Con Edison filed answers to the PJM Transmission Owners’ motion. Dominion and ODEC contend that the Court has found that the 2015 PJM Transmission Owner Tariff Revision violates the cost-causation principle, and further proceedings are unnecessary. Dominion and ODEC request that the Commission confirm that “the unamended [Tariff] remains in effect.” Con Edison contends that the Court’s discussion and analysis was focused entirely on high-voltage projects while its decision vacated the entire Tariff revision, and requests that the Commission direct PJM to file a Tariff amendment as a compliance filing that is applicable to transmission facilities that are not addressed by the Court.

³⁵ *ODEC*, 905 F.3d at 671.

³⁶ *Id.*

³⁷ *Id.*

21. Dominion and ODEC filed a motion requesting that the Commission issue an order on remand directing PJM to revise its Tariff to remove the provision that requires that the costs of all projects included in the RTEP solely to address a transmission owner's Form No. 715 local planning criteria be allocated 100 percent to the transmission zone of the transmission owner whose Form No. 715 local planning criteria underlie each project. Dominion and ODEC also request that the Commission order refunds to put the parties in the position they would have occupied if the Commission had never accepted the 2015 PJM Transmission Owner Tariff Revision.

22. The PJM Transmission Owners and Linden filed answers to the Dominion and ODEC motion. The PJM Transmission Owners argue that the Court found only that the Commission did not adequately justify its decision and that many issues remain for consideration on remand. The PJM Transmission Owners contend that the Court did not preclude the Commission from engaging in further inquiry on remand. Linden contends that the Court decision hinged on the fundamental point that high-voltage transmission facilities produce significant regional benefits, and that the parties remain free to address the appropriate cost allocation method for transmission facilities included in the RTEP solely to address Form No. 715 local planning criteria that are not addressed by the Court. Accordingly, Linden requests that the Commission hold further proceedings on remand regarding the cost allocation method to be applied to transmission facilities included in the RTEP solely to address Form No. 715 local planning criteria.

23. Dominion and ODEC (jointly) and LSP Transmission Holdings, LLC (LSP) filed answers. Dominion and ODEC argue that the PJM Transmission Owners ignore that the Court determined that the 2015 PJM Transmission Owner Tariff Revision violates the cost-causation principle, and that the request for further proceedings does not take into account that the Court set aside the Commission's orders, and that the "unamended [Tariff] remains in effect." LSP argues that the Court left little doubt that the Court vacated the Commission's orders and the Commission should reject the arguments that it is just and reasonable to apply the 2015 PJM Transmission Owner Tariff Revision to the transmission facilities that are not addressed by the Court.

VI. Discussion

24. As discussed below, on remand, we reject the 2015 PJM Transmission Owner Tariff Revision as unjust and unreasonable. The Court stated in *ODEC* that the cost-causation principle requires "comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party."³⁸ Upon further review of the record, as discussed below, we find that the 2015 PJM Transmission Owner Tariff Revision is unjust and unreasonable because it is inconsistent with the cost-causation principle.

³⁸ *ODEC*, 898 F.3d at 1261 (internal citations omitted).

25. The Court found that the 2015 PJM Transmission Owner Tariff Revision, by allocating 100 percent of costs for projects that are included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria to the transmission zone of the transmission owner whose Form No. 715 local planning criteria underlie each project, “produced a severe misallocation” of the costs of such projects and “involve[d] a wholesale departure from the cost-causation principle.”³⁹ The PJM Transmission Owners fail to provide a further basis beyond those rejected by the Court to distinguish the beneficiaries of projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria from those of other transmission projects selected in the RTEP for purposes of cost allocation. The PJM Transmission Owners have therefore failed to meet their burden under section 205 of the FPA to demonstrate that their proposal—the 2015 PJM Transmission Owners Tariff Revision—is just and reasonable and not unduly discriminatory or preferential.

26. The PJM Transmission Owners contend that the December 2016 Order did not address the implication of the undisputed fact that projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria are, by definition, unnecessary to address NERC Reliability Standards, PJM regional reliability criteria, or to enhance market efficiency, or that the specific projects at issue replace existing transmission facilities. However, the Commission’s orders, particularly the February 2016 Order and December 2016 Order, did in fact highlight such differences.⁴⁰ But the Court found that such differences did not alleviate the severe mismatch it identified between a project’s beneficiaries and those to whom corresponding costs would be allocated.⁴¹

27. Con Edison contends that the Court’s discussion and analysis was focused entirely on high-voltage projects while its decision vacated the entire Tariff revision, and requests that the Commission direct PJM to file a Tariff amendment as a compliance filing that is applicable to transmission facilities that are not addressed by the Court. However, the

³⁹ *Id.*

⁴⁰ The Commission found in the December 2016 Order: “The projects included in the RTEP to address an individual transmission owner Form No. 715 local planning criteria are not selected to meet ‘PJM criteria: system reliability, operational performance or economic criteria pursuant to a determination by the Office of the Interconnection.’ [citation omitted] Rather, these projects are responsive to the *local* needs identified by the individual transmission owners pursuant to their individual planning criteria.” December 2016 Order, 157 FERC ¶ 61,192 at P 19 (emphasis in original).

⁴¹ *ODEC*, 898 F.3d at 1262-63; see also *Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,258, at PP 60-64 (2019) (applying *ODEC* to a cost allocation proposal in MISO).

2015 PJM Transmission Owner Tariff Revision pending before us is a section 205 filing that proposes to allocate 100 percent of costs of *all* projects that are included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria to the transmission zone of the transmission owner whose Form No. 715 local planning criteria underlie each project. Because the 2015 PJM Transmission Owner Tariff Revision proposes a blanket rule applicable to projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria that is inconsistent with the cost-causation principle, we reject the 2015 PJM Transmission Owner Tariff Revision in its entirety.

28. We also deny the PJM Transmission Owners' motion to establish paper hearing procedures. We are unpersuaded that additional record evidence is necessary to respond to the Court's remand.

29. Because we reject the 2015 PJM Transmission Owner Tariff Revision, we require PJM to make a filing in eTariff to make all tariff corrections necessary to reflect the rejection of the 2015 PJM Transmission Owner Tariff Revision.⁴² We also must address the cost assignment of those projects that were included in the RTEP starting on May 25, 2015 solely to address individual transmission owner Form No. 715 local planning criteria. Consistent with our action in the December 2016 Order, we require PJM to correct the cost assignment⁴³ for projects included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria that were allocated incorrectly for the period starting on, and continuing after, May 25, 2015.⁴⁴ The courts have recognized that section 309 of the FPA⁴⁵ provides the Commission with broad remedial authority, including in situations where the Commission has made a legal error.⁴⁶ In exercising this remedial authority, the Commission "will consider whether to

⁴² We note that the 2015 PJM Transmission Owner Tariff Revision has been in effect since May 25, 2015, and since that time the PJM Transmission Owners and PJM have made several revisions to Schedule 12 and Schedule 12 Appendix A.

⁴³ PJM's cost assignment corrections must be in accordance 18 C.F.R. § 35.19(a) (2018).

⁴⁴ December 2016 Order, 157 FERC ¶ 61,192, at P 49.

⁴⁵ Section 309 states, in relevant part: "The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter." 16 U.S.C. § 825h (2012).

⁴⁶ See, e.g., *Xcel Energy Servs. Inc. v. FERC*, 815 F.3d 947, 954-55 (D.C. Cir. 2016) (discussing the Commission's authority under FPA section 309 to remedy its legal

require refunds in cost allocation and rate design cases based on the specific facts and equities of each case.”⁴⁷

30. We find, based on the specific facts and equities of this case, that it is appropriate to require PJM to correct the cost assignments.

31. Accordingly, we require PJM to, within 30 days of the date of this order, make a filing in eTariff to make all tariff corrections necessary to reflect the rejection of the 2015 PJM Transmission Owner Tariff Revision,⁴⁸ and to refile the assignment of cost responsibility in Schedule 12 Appendix A for transmission projects that solely address an individual transmission owner Form No. 715 local planning criteria, consistent with this order.

The Commission orders:

(A) The 2015 PJM Transmission Owner Tariff Revision included in the PJM Tariff at Schedule 12, Section (b)(xv), is hereby rejected, as discussed in the body of this order.

(B) PJM is directed, within 30 days of the date of this order, to make a filing in eTariff to make all tariff corrections necessary to reflect the rejection of the 2015 PJM Transmission Owner Tariff Revision, as discussed in the body of this order, and to refile the assignment of cost responsibility in Schedule 12 Appendix A for transmission projects that address an individual transmission owner’s Form No. 715 local planning criteria consistent this order, as discussed in the body of this order.

By the Commission. Commissioner McNamee is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

error); *TNA Merchant Projects, Inc. v. FERC*, 857 F.3d 354, 359, 361 (D.C. Cir. 2017) (same).

⁴⁷ *Black Oak Energy, LLC*, 167 FERC ¶ 61,250, at P 27 (2019).

Document Content(s)

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