187 FERC ¶ 61,012
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Allison Clements and Mark C. Christie.

PJM Interconnection, L.L.C. Docket No. ER24-843-000

ORDER ON COST ALLOCATION REPORT AND TARIFF REVISIONS

(Issued April 8, 2024)

1. On January 10, 2024, PJM Interconnection, L.L.C. (PJM), in accordance with Schedule 6, section 1.6 of the Amended and Restated Operating Agreement of PJM (Operating Agreement) and Schedule 12 of the PJM Open Access Transmission Tariff (Tariff),[1] and pursuant to section 205 of the Federal Power Act (FPA),[2] submitted amendments to Schedule 12-Appendix A and Appendix C of its Tariff to incorporate cost responsibility assignments for 215 baseline upgrades in the recent update to the Regional Transmission Expansion Plan (RTEP) approved by the PJM Board of Managers (PJM Board) on December 11, 2023.[3]

[1] PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12 (15.0.0).

[2] 16 U.S.C. § 824d.

[3] See Appendix for eTariff records addressed by this filing.

2. In this order, we accept the proposed revisions to Schedule 12-Appendix A and Appendix C, effective April 9, 2024, as requested. We note that the cost responsibility assignments addressed in this order may be affected by the outcome of the complaint filed by Neptune Regional Transmission System, LLC (Neptune) and Long Island Power Authority (LIPA) (together, Neptune/LIPA) in Docket No. EL21-39-000,[4] as well as an order on the remand of *Consolidated Edison*.[5]

I. Background

3. PJM files cost responsibility assignments for transmission projects that the PJM Board of Managers (PJM Board) approves as part of PJM's RTEP in accordance with Schedule 12 of PJM's Tariff and Schedule 6 of the Operating Agreement.[6] Schedule 12 of the Tariff establishes Transmission Enhancement Charges for "[o]ne or more of the Transmission Owners [that] may be designated to construct and own and/or finance Required Transmission Enhancements by (1) the PJM RTEP periodically developed

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[4] On December 31, 2020, in Docket No. EL21-39-000, Neptune/LIPA filed a complaint (Complaint) alleging the assignment of costs pursuant to the provisions of the regional transmission cost allocation method included in the PJM Tariff results in unjust and unreasonable rates. *See PPL Elec. Utils. Corp.*, 179 FERC ¶ 61,176 (2022) (establishing paper hearing procedures in the consolidated Neptune/LIPA Complaint proceeding).

[5] *Consol. Edison Co. of N.Y. v. FERC*, 45 F.4th 265, 290 (D.C. Cir. 2022) (*Consolidated Edison*).

[6] In accordance with the PJM Operating Agreement, PJM "shall file with FERC a report identifying the expansion or enhancement, its estimated cost, the entity or entities that will be responsible for constructing and owning or financing the project, and the market participants designated under the Operating Agreement, Section 1.5.6(1) above to bear responsibility for the costs of the project." PJM, Intra-PJM Tariffs, OA Schedule 6 Sec. 1.6, Operating Agreement Schedule 6 Sec. 1.6 (4.0.0), § 1.6(b) (Approval of the Final Regional Trans). The PJM Tariff provides that "[w]ithin 30 days of the approval of each [RTEP] or an addition to such plan by the PJM Board pursuant to Operating Agreement, Schedule 6, section 1.6, the Transmission Provider shall designate in the Tariff, Schedule 12-Appendix A and in a report filed with the FERC the customers using Point-to-Point Transmission Service and/or Network Integration Transmission Service and Merchant Transmission Facility owners that will be subject to each such Transmission Enhancement Charge ('Responsible Customers') based on the cost responsibility assignments determined pursuant to this Schedule 12." PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12 (15.0.0), § (b)(viii).

pursuant to Operating Agreement, Schedule 6; or (2) any joint planning or coordination agreement between PJM and another region or transmission planning authority set forth in Tariff, Schedule 12-Appendix B."[7]

4. In developing the RTEP, PJM identifies transmission projects to address different criteria, including PJM planning procedures, North American Electric Reliability Corporation (NERC) Reliability Standards, Regional Entity reliability principles and standards,[8] and individual transmission owner Form No. 715 local planning criteria. Types of Reliability Projects[9] identified in the RTEP include Regional Facilities,[10] Necessary Lower Voltage Facilities,[11] and Lower Voltage Facilities.[12]

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[7] Required Transmission Enhancements are defined as "enhancements and expansions of the Transmission System that (1) a [RTEP] developed pursuant to Operating Agreement, Schedule 6 or (2) any joint planning or coordination agreement between PJM and another region or transmission planning authority set forth in Tariff, Schedule 12-Appendix B ('Appendix B Agreement') designates one or more of the Transmission Owner(s) to construct and own or finance." PJM, Intra-PJM Tariffs, OATT Definitions – R - S, OATT Definitions – R - S (30.0.0.). Transmission Enhancement Charges are established to recover the revenue requirement with respect to a Required Transmission Enhancement. PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12 (15.0.0), § (a)(i).

[8] As established by Reliability First Corporation, Southeastern Electric Reliability Council, and other applicable Regional Entities. *See* PJM, Intra-PJM Tariffs, OA Schedule 6 § 1.2, OA Schedule 6 § 1.2 Conformity with NERC and Other Applicable Reliability Criteria (2.0.0), §§ 1.2(b) and 1.2(d).

[9] Reliability Projects are Required Transmission Enhancements that are included in the RTEP to address one or more reliability violations or to address operational adequacy and performance issues. *See* PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12 (15.0.0), § (b)(i)(A)(2)(a).

[10] 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, Schedule 12, OATT Schedule 12 (15.0.0), § (b)(i) (Regional Facilities and Necessary Lower Voltage Facilities).

[11] Necessary Lower Voltage Facilities are defined as Required Transmission

5. PJM utilizes a hybrid cost allocation method, which the Commission found complies with Order No. 1000,[13] for Regional Facilities and Necessary Lower Voltage

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Enhancements included in the RTEP that are lower voltage facilities that must be constructed or reinforced to support new Regional Facilities. PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12 (15.0.0), § (b)(i) (Regional Facilities and Necessary Lower Voltage Facilities).

[12] 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, Schedule 12, OATT Schedule 12 (15.0.0), § (b)(ii) (Lower Voltage Facilities).

[13] *See Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g & 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) (*S.C. Pub. Serv. Auth. v. FERC*). *See also PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013), *order on reh'g & compliance*, 147 FERC ¶ 61,128 (2014), *order on reh'g & compliance*, 150 FERC ¶ 61,038, *order on reh'g & compliance*, 151 FERC ¶ 61,250 (2015).

Facilities that address a reliability need.[14] Under this method, PJM allocates 50% of the costs of Regional Facilities or Necessary Lower Voltage Facilities on a load-ratio share basis and the other 50% based on the solution-based distribution factor (DFAX) method.[15] PJM allocates all of the costs of Lower Voltage Facilities using the solution-based DFAX method. Cost responsibility assignments pursuant to the Order No. 1000-compliant cost allocation method are included in Schedule 12-Appendix A of the Tariff.

6. With respect to transmission expansions or enhancements for which costs are assigned using the solution-based DFAX method, PJM makes a preliminary cost responsibility determination for each Required Transmission Enhancement at the time such Required Transmission Enhancement is included in the RTEP.[16] Specifically, beginning with the calendar year in which a Required Transmission Enhancement is scheduled to enter service, and thereafter annually at the beginning of each calendar year, PJM updates the preliminary cost responsibility determination for each Required Transmission Enhancement using the values and inputs used in the base case of the most recent RTEP approved by the PJM Board prior to the date of the update. All values and inputs used in the calculation of the DFAX in a determination of cost responsibility shall be the same values and inputs as used in the base case of the most recent RTEP approved by the PJM Board prior to the determination of cost responsibility.[17]

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[14] 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. *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 441; *see* PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12 (15.0.0), § (b)(v) (assigning cost responsibility for Economic Projects that are either accelerations or modifications of Reliability Projects, or new enhancements or expansions that relieve one or more economic constraints); PJM, Intra-PJM Tariffs, OA Schedule 6 Sec. 1.5, OA Schedule 6 Sec. 1.5 Procedure for Development of the Regi. (28.0.0), § 1.5.7(c)(iii).

[15] Prior to adopting the solution-based DFAX method for assigning cost responsibility, the Tariff included a violation-based DFAX method for assigning the costs of Lower Voltage Facilities. Under the violation-based DFAX method, to determine cost responsibility for Lower Voltage Facilities, PJM conducted studies to determine which loads contribute to the reliability violation that caused the upgrade by examining power flows on the constrained facilities at the time of a reliability violation. *See PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 429.

[16] PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12 (15.0.0), § (b)(iii)(H)(2).

[17] PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12 (15.0.0), § (b)(iii)(H)(2).

7. PJM's Operating Agreement provides that PJM considers state Public Policy Objectives (PPO) and Public Policy Requirements (PPR) as part of its regional transmission planning process.[18] PJM's Operating Agreement further provides that states 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.[19] The cost responsibility assignments for such state sponsored projects are reflected in Schedule 12-Appendix C.[20]

II. PJM Tariff Filing

8. The January 10, 2024 filing proposes amendments to Schedule 12-Appendix A and Appendix C of the Tariff to incorporate cost responsibility assignments for 215 baseline upgrades with an estimated overall RTEP net increase in costs of $5,085.85 million,[21] including 76 new transmission enhancements or expansions needed for

[18] *See* PJM, Intra-PJM Tariffs, OA Schedule 6 Sec 1.5, OA Schedule 6 Sec 1.5 Procedure for Development of the Regi (28.0.0), § 1.5.1(a) (PJM "may initiate the enhancement and expansion study process to address or consider, where appropriate, requirements or needs arising from sensitivity studies, modeling assumption variations, scenario analyses, and Public Policy Objectives.") The PJM Operating Agreement provides that "Public Policy Objectives shall refer to Public Policy Requirements, as well as public policy initiatives of state or federal entities that have not been codified into law or regulation but which nonetheless may have important impacts on long term planning considerations" and Public Policy Requirements shall refer to policies pursued by: (a) state or federal entities, where such policies are reflected in duly enacted statutes or regulations, including but not limited to, state renewable portfolio standards and requirements under Environmental Protection Agency regulations; and (b) local governmental entities such as a municipal or county government, where such policies are reflected in duly enacted laws or regulations passed by the local governmental entity. PJM, Intra-PJM Tariffs, O-P, OA Definitions O - P (21.0.0).

[19] PJM, Intra-PJM Tariffs, OA Schedule 6 § 1.5, OA Schedule 6 § 1.5 Procedure for Development of the Regional Transmission Expansion Plan (28.0.0), § 1.5.9(a).

[20] PJM, Intra-PJM Tariffs, SCHEDULE 12. APPX C, SCHEDULE 12.APPX C - SAA Cost Responsibility (3.0.0).

[21] The $5,085.85 million net increase in costs includes: (i) reliability criteria expansions and enhancements totaling approximately $5,142.98 million; (ii) scope and cost changes to existing baseline projects resulting in a net decrease in costs of $32.17 million; and (iii) the cancellation of existing projects resulting in a net decrease in costs of $24.96 million. Two transmission projects (b3800.9 and b3800.26) are included for tracking purposes, not assignment of cost responsibility. Transmittal at 1-2.

reliability that are Regional Facilities, 111 enhancements or expansions that are Lower Voltage Facilities, 25 circuit breakers and associated equipment independently included in the RTEP that are not part of the design specifications of a transmission element of a Required Transmission Enhancement, and one enhancement or expansion that is a Multi-Driver Project.[22] PJM explains that the cost responsibility assignments in this filing are for the 2022 RTEP Window 3 Projects, which the PJM Board approved on December 11, 2023.[23]

III. Notice and Responsive Pleadings

9. Notice of the January 10, 2024 filing was published in the *Federal Register*, 89 Fed. Reg. 2938 (Jan. 17, 2024), with interventions and protests due on or before January 31, 2024. An Errata Notice was issued on January 11, 2024, extending the comment due date to February 9, 2024.

10. A notice of intervention was filed by the New Jersey Board of Public Utilities. Timely motions to intervene were filed by American Electric Power Service Corporation;[24] Calpine Corporation; Delaware Division of the Public Advocate; Dominion Energy Services, Inc. (Dominion);[25] Duquesne Light Company; Exelon

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[22] *Id.* at 2-9. Assignment of cost responsibility for Project b3737.47 was initially accepted as a State Agreement Approach (SAA) Project in Docket No. ER23-779-000 and was included as an Incremental Multi-Driver Project in the January 10, 2024 Filing because PJM identified a more efficient or cost-effective solution that would also address reliability violations through 2022 RTEP Window 3. *PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,005 (2023); PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12 (15.0.0), § (b)(xiv)(B). The estimated cost of the SAA public policy driver portion of Project b3737.47 has not changed with the reclassification of this project as an Incremental Multi-Driver Project.

[23] *Id.* at 1-2, n.3. PJM explains that it opened 2022 RTEP Window 3 to develop solutions to "address 2027/28 baseline violations associated with local constraints; regional constraints; reactive power needs; and the cumulative impact of generation changes and deactivation." *See also* 2022 RTEP Window 3 Reliability Analysis Report (Dec. 8, 2023) 20231205-2022-rtep-window-3-reliability-analysis-report.ashx (pjm.com).

[24] On behalf of its affiliates Appalachian Power Company; Indiana Michigan Power Company; Kentucky Power Company; Kingsport Power Company; Ohio Power Company; Wheeling Power Company; AEP Appalachian Transmission Company, Inc.; AEP Indiana Michigan Transmission Company, Inc.; AEP Kentucky Transmission Company, Inc.; AEP Ohio Transmission Company, Inc.; and AEP West Virginia Transmission Company, Inc.

[25] On behalf of Virginia Electric and Power Company.

Corporation;[26] FirstEnergy Service Company;[27] Maryland Office of People's Counsel (Maryland People's Counsel); New Jersey Division of Rate Counsel; North Carolina Electric Membership Corporation; Old Dominion Electric Cooperative (ODEC); Organization of PJM States, Inc.; Pennsylvania Office of Consumer Advocate (Pennsylvania Consumer Advocate); PPL Electric Utilities Corporation; and Rockland Electric Company.

11. Late-filed motions to intervene were filed by Maryland Public Service Commission (Maryland Commission); Pennsylvania Public Utility Commission (Pennsylvania Commission); the Staff of the Virginia State Corporation Commission (Staff of the Virginia Commission); Public Service Commission of West Virginia (West Virginia Commission); American Municipal Power, Inc. (AMP); Dayton Power and Light Company (Dayton); Long Island Power Authority (LIPA); Northern Virginia Electric Cooperative, Inc. (NOVEC); Ohio Consumers' Counsel (OCC); Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC (together, PSEG); Southern Maryland Electric Cooperative (SMECO); Theresa Ann Ghiorzi; and the Virginia Office of the Attorney General, Division of Consumer Counsel (Virginia Consumer Counsel).

12. Maryland People's Counsel filed a protest. Answers were filed by PJM; ODEC and NOVEC; Pennsylvania Consumer Advocate; Virginia Consumer Counsel; and Staff of the Virginia Commission. Keryn Newman, Maryland People's Counsel, and Patricia Hankins filed answers to the answer of PJM. Comments in opposition were filed by Barron Shaw, Keryn Newman, Theresa Ann Ghiorzi, and Mary H. Gee.

IV. Pleadings

A. Protests

13. Maryland People's Counsel argues that PJM has failed to meet its burden to show that the proposed cost responsibility assignments are just and reasonable and that the Commission should therefore reject the filing or find it deficient.[28] Maryland

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[26] On behalf of Atlantic City Electric Company; Baltimore Gas and Electric Company; Commonwealth Edison Company; Delmarva Power & Light Company; PECO Energy Company; and Potomac Electric Power Company.

[27] As agent for its affiliates American Transmission Systems, Incorporated; Jersey Central Power & Light Company; Mid-Atlantic Interstate Transmission LLC; Keystone Appalachian Transmission Company; The Potomac Edison Company; Monongahela Power Company; and Trans-Allegheny Interstate Line Company.

[28] Maryland People's Counsel Protest at 5.

People's Counsel argues that the 2022 RTEP Window 3 Projects are being built to accommodate load growth as a result of Virginia state and local policies to encourage data center development, which will be particularly impactful on Maryland given its proximity to the data centers.[29] Maryland People's Counsel states that, while PJM argues that the 2022 RTEP Window 3 Projects respond to developments other than Virginia data center load growth, including the deactivation of power projects in Maryland, PJM has done no weighing of 2022 RTEP Window 3 Project needs considering the cost responsibility assignments for RTEP update projects that were previously accepted to address resource deactivations in Maryland.

14. Maryland People's Counsel argues that the load growth in Virginia that the 2022 RTEP Window 3 Projects address is due to many years of Virginia subsidies for the development of data centers, which are well-known to require large amounts of electricity to operate. Maryland People's Counsel states that these policies represent PPOs and PPRs (collectively, PPRO).[30] Maryland People's Counsel states that the PJM Operating Agreement requires PPROs be evaluated and considered by PJM in the development of the PJM RTEP.[31] Maryland People's Counsel argues that PJM should have considered Virginia's policies to encourage data center development to be PPROs and designated the 2022 RTEP Window 3 Projects as Multi-Driver Projects accordingly under the provisions in the PJM Operating Agreement and Schedule 12 of the PJM Tariff, which would have allocated to Virginia the cost of the 2022 RTEP Window 3 Projects.[32] Further, Maryland People's Counsel asserts that PJM could have accommodated Virginia's PPROs through the SAA process, which allocates the costs of transmission projects to the state that agrees to be responsible for the costs of such projects.[33]

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[29] *Id.* at 5-8. Maryland People's Counsel states that of the $5,085.85 million revenue requirement associated with the 2022 RTEP Window 3 Projects, $551 million (approximately 10% of the total costs) will be assigned to Maryland ratepayers pursuant to the PJM Tariff cost allocation method for RTEP reliability projects. *Id.* at 2.

[30] *Id.* at 8-10.

[31] *Id.* at 11.

[32] *Id.* at 10 (citing PJM, Intra-PJM Tariffs, OA Schedule 6 § 1.5, OA Schedule 6 § 1.5 Procedure for Development of the Regi (28.0.0), §§ 1.5.10(e), (h); PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12 (15.0.0), § (b)(xiv)).

[33] *Id.* at 11 (citing PJM, Intra-PJM Tariffs, OA Schedule 6 Sec 1.5, OA Schedule 6 § 1.5 Procedure for Development of the Regional Transmission Expansion Plan (28.0.0), § 1.5.9(a)).

15. Maryland People's Counsel states that Construction Work in Progress (CWIP) for the 2022 RTEP Window 3 Projects will be allocated using 2022 loads; however, loads are expected to change significantly as Virginia builds more data centers.[34] Maryland People's Counsel states that, since many of the 2022 RTEP Window 3 Projects are being built to accommodate future load growth in Virginia, CWIP should be allocated based on projected load in 2028, the year when the transmission projects are anticipated to be completed. Maryland People's Counsel argues that continuing with the current policy of allocating CWIP based on 2022 loads will result in non-Virginia ratepayers being allocated costs that are higher than their expected benefits once the projects are completed.[35]

16. Barron Shaw, Keryn Newman, Mary H. Gee, and Theresa Ann Ghiorzi contend in their comments that, while there is no indication that PJM has violated the Tariff when making this filing, PJM's current RTEP cost allocation process has become unjust and unreasonable. They urge the Commission to initiate a proceeding pursuant to section 206 of the FPA to reconsider its structure.[36] In addition, Keryn Newman argues that the Commission should consider the projects whose costs are being allocated in this filing to be public policy projects,[37] and Theresa Ann Ghiorzi argues that the 2022 RTEP Window 3 includes projects due to Virginia's economic and energy policies.[38] Barron Shaw notes that Virginia is making use of tax incentives to encourage the development of data centers that are driving load growth, and Virginia's and Maryland's state policies are not substantively different from New Jersey's efforts to support offshore wind through the SAA.[39] Keryn Newman asserts that PJM selected excessively expensive projects through its 2022 RTEP Window 3, and that PJM's stakeholder process is "unfriendly" to consumers.[40] Theresa Ann Ghiorzi argues that certain of the transmission lines approved in 2022 RTEP Window 3 provide no benefit to the communities they pass through, and that better solutions to the reliability criteria violations would be through generation sited close to new load,

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[34] *Id.* at 14-16.

[35] Keryn Newman Comments at 7.

[36] Barron Shaw Comments at 1-2; Keryn Newman Comments at 1; Mary H. Gee Comments at 1-2; Theresa Ann Ghiorzi First Comments at 1-3.

[37] Keryn Newman Protest at 5 (citing *PJM Interconnection, L.L.C.*, 185 FERC ¶ 61,107 (2023), (Christie, Comm'r, concurring at PP 7-8).

[38] Theresa Ann Ghiorzi Second Comments at 7-15.

[39] Barron Shaw Comments at 5-6.

[40] Keryn Newman Comments at 7.

through High Voltage Direct Current lines, or through transmission lines in other areas that PJM did not choose in part due to historic opposition to transmission lines in those areas.[41] Barron Shaw, Keryn Newman, Patricia Hankins, Mary H. Gee, and Theresa Ann Ghiorzi contend that the Commission should institute a proceeding pursuant to section 206 of the FPA to address concerns relating to the PJM RTEP planning process and participation in the PJM stakeholder process.

B. Answers

17. In its answer to protestors, PJM urges the Commission to reject the protests on both procedural and substantive grounds, arguing that all of the protests are outside of the scope of the proceeding, which the Commission has consistently stated is limited to whether or not PJM has followed the RTEP cost allocation provisions in Schedule 12 of the PJM Tariff.[42] PJM asserts that it followed the RTEP cost allocation provisions of the Tariff when making this filing, and no protestor has alleged that it has not. Further, PJM urges the Commission to reject requests to open a proceeding pursuant to section 206 of the FPA for this filing as protestors have not shown that PJM has not followed the Operating Agreement or that the Operating Agreement has become unjust or unreasonable.

18. PJM states that it opened the 2022 RTEP Window 3 to address numerous reliability drivers requiring the need for transmission reinforcements, including local constraints to serving data center loads, regional constraints restricting imports into load center areas, and the cumulative impact of resource deactivations and the operational characteristics of replacement generation.[43] PJM asserts that it is required to plan the transmission system to take into account expected generation retirements, load projections, major deactivation requests, and expanded load forecasts, including data center load growth that requires the need for significant regional transfer reinforcements. PJM asserts that the 2022 RTEP Window 3 Projects represent the most efficient and cost-effective solution to these reliability needs and are therefore appropriately characterized as Reliability Projects, the costs of which have been allocated in the only way that they can be according to the cost allocation method on file. PJM states that any challenges to these cost allocation methods represent a collateral attack on prior Commission orders and should be rejected.

19. PJM argues that Maryland People's Counsel's arguments that the 2022 RTEP Window 3 Projects should have been deemed SAA or Multi-Driver Projects is based on a flawed understanding of the PJM Operating Agreement. PJM states that, while it

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[41] Theresa Ann Ghiorzi Second Comments at 2-6.

[42] PJM Answer at 1-2, 6-9.

[43] *Id.* at 11-13.

considers state and federal public policies when developing the RTEP, it cannot itself select a public policy project to be included in the RTEP.[44] Rather, PJM states that projects may only be included as SAA Projects if a state or states voluntarily request to include such a project in the RTEP, and states must also agree to pay for 100% of the costs of such a project.[45] PJM explains that, with the exception of one specific project,[46] no state has done so for the 2022 RTEP Window 3 Projects, and PJM could not on its own designate these projects as such, nor could it have assigned costs to states whose public policies partially or fully impact the need for reliability solutions. PJM argues that Maryland People's Counsel's argument ignores the reliability need for these projects. Further, PJM states that Maryland People's Counsel fails to acknowledge the explicit language in Operating Agreement, Schedule 6, that bars PJM from using a state public policy to classify a project as a Multi-Driver Project unless that project meets the requirements of the SAA.[47]

20. In its answer to Maryland People's Counsel's protest, Staff of the Virginia Commission refutes Maryland People's Counsel's argument that Maryland's share of the cost responsibility assignments for the 2022 RTEP Window 3 Projects should be shifted to Virginia.[48] Staff of the Virginia Commission argues that PJM accommodates state and federal public policies in its transmission planning process for public policies that result in generation being brought online or retired, and Virginia's tax incentives to encourage data center development do not represent such a public policy. Rather, Staff of the Virginia Commission argues that Virginia's policies to encourage data center development are economic development initiatives, and several other states in the PJM

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[44] *Id.* at 14-16.

[45] *Id.* at 14 (citing PJM, Intra-PJM Tariffs, OA Schedule 6 § 1.5, OA Schedule 6 § 1.5 Procedure for Development of the Regional Transmission Expansion Plan (28.0.0), § 1.5.9(a)).

[46] *Id.* at 10, n.32, regarding baseline ID b3737.47, which is an Incremental Multi-Driver Project.

[47] *Id.* at 15-16 (citing PJM, Intra-PJM Tariffs, OA Schedule 6 § 1.5, OA Schedule 6 § 1.5 Procedure for Development of the Regional Transmission Expansion Plan (28.0.0), § 1.5.10(b)).

[48] Staff of the Virginia Commission Answer at 1-3. ODEC and NOVEC, Dominion, and the Virginia Consumer Counsel filed answers supporting the Staff of the Virginia Commission answer.

region have similar tax incentives, including Maryland. Further, Staff of the Virginia Commission states that Maryland People's Counsel did not raise similar public policy arguments in relation to Maryland's clean energy policies when PJM allocated costs for transmission projects resulting from Brandon Shore's retirement. Finally, Staff of the Virginia Commission states that the Commission should reject Maryland People's Counsel's argument to use the SAA Process to shift costs to Virginia ratepayers, as the SAA is a voluntary program to develop projects that would not otherwise be included in the RTEP. In addition, ODEC and NOVEC argue that Maryland People's Counsel's protest that 2022 loads should not be used to calculate any CWIP incentive granted to 2022 RTEP Window 3 Projects is out of scope, as PJM does not propose any CWIP or other incentives in this proceeding.[49]

21. In its answer to Maryland People's Counsel's protest, the Pennsylvania Consumer Advocate states that it supports Maryland People's Counsel's protest in part, explaining that, if it is true that the substantial load growth as a result of data center expansion in Virginia is being caused by public policy decisions in Virginia, this is a troubling development for Pennsylvania ratepayers who will bear the costs of this load growth without having a say in the policy decisions that are driving it.[50] Further, Pennsylvania Consumer Advocate asserts that PJM has failed to identify which new transmission projects are being driven by data center load growth and which are being driven by generator deactivations, and argues that the cost responsibility assignments for the 2022 RTEP Window 3 Projects would be unjust and unreasonable if PJM has failed to properly identify and allocate the costs of Multi-Driver Projects. Pennsylvania Consumer Advocate asserts that PJM's filing is deficient and requests that the Commission ask for more detailed information and more refined cost responsibility assignments from PJM, as well as allow for more stakeholder input once PJM has provided this information.

22. In an answer to protests, Patricia Hankins states that PJM provided only limited time for stakeholders' questions at the December 5, 2023 TEAC meeting, was dismissive of stakeholders' concerns, and did not fully answer stakeholders' questions. Keryn Newman also filed an answer to PJM's answer, reiterating her recommendation that new policies be put in place to address improved planning and cost allocation for transmission requirements for data center load growth and large resource retirements.

23. In an answer to PJM's Answer and other intervenors, Maryland People's Counsel states that PJM's filing is deficient; that PJM is silent on how to allocate the costs of projects that are driven by PPROs, but that no state has voluntarily agreed to pay for under a SAA; and that PJM should have assigned the costs of the 2022 Window 3 Projects to

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[49] ODEC and NOVEC Protest at 7-8.

[50] Pennsylvania Consumer Advocate Answer at 3-5.

Virginia.[51] Maryland People's Counsel contends that, regardless of the cost allocation methods on file, courts have directed or authorized the use of different cost allocation methods or asked the Commission to provide further justification for cost responsibility assignments under certain circumstances, and such circumstances exist here.[52] Maryland People's Counsel argues that the cost responsibility assignments do not conform with Order No. 1000, which provides that the costs of transmission facilities be allocated to the beneficiaries of such projects, and PJM may consider Public Policy Requirements when determining project beneficiaries.[53] Further, Maryland People's Counsel argues that Maryland's public policies are irrelevant to this proceeding, as this proceeding is driven by data center growth in Virginia, not resource retirements in Maryland, and Maryland's resource retirements in Maryland are being driven by economic factors, not Maryland's public policies.

V. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[54] the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

25. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,[55] we grant the late-filed motions to intervene of Maryland Commission, Pennsylvania Commission, West Virginia Commission, Staff of the Virginia Commission, AMP, Dayton, LIPA, NOVEC, OCC, PSEG, SMECO, Theresa Ann Ghiorzi, and Virginia Consumer Counsel, given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,[56] prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the

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[51] Maryland People's Counsel Answer at 2-5.

[52] *Id.* at 4 (citing *e.g.*, *Pub. Serv. Elec. & Gas Co. v. FERC*, 989 F. 3d 10 (D.C. Cir. 2021); *Consolidated Edison*, 45 F. 4th 265).

[53] *Id.* at 16 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 622).

[54] 18 C.F.R. § 385.214 (2023).

[55] 18 C.F.R. § 385.214(d).

[56] 18 C.F.R. § 385.213(a)(2) (2023).

answers of PJM, Staff of the Virginia Commission, Patricia Hankins, ODEC, NOVEC, Dominion, the Virginia Consumer Counsel, Pennsylvania Consumer Advocate, Keryn Newman, and Maryland People's Counsel because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

27. We accept PJM's proposed revisions to Schedule 12 Appendix A and Appendix C, to become effective April 9, 2024, as requested.[57]

28. We review the proposed revisions to Schedule 12 Appendix A and Appendix C to "to determine whether PJM appropriately followed its Tariff provisions in allocating costs."[58] We find that PJM has correctly applied the cost allocation provisions of Schedule 12 of the PJM Tariff. While Maryland People's Counsel contends that the costs of the 2022 RTEP Window 3 Projects should have been allocated pursuant to the Multi-Driver Project Provisions of Schedule 12 of the PJM Tariff, their arguments are based on the contention that these projects qualify as Multi-Driver Projects pursuant to Section 1.5.10(h) of Schedule 6 of PJM's Operating Agreement. We limit our review of the cost responsibility assignments for transmission projects selected in the RTEP to whether PJM has followed the provisions of Schedule 12 of the PJM Tariff, and the record does not indicate that PJM violated the Tariff by failing to allocate the costs of these projects as Multi-Driver Projects,[59] pursuant to Schedule 12 of the PJM Tariff. As such, we find that the issues that Maryland People's Counsel raises in its protest are beyond the scope of the Commission's review of the proposed cost responsibility assignments.

29. As we previously determined,[60] challenges to the PJM Tariff cost allocation provisions or the selection of transmission projects included in the PJM RTEP pursuant

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[57] We note that the cost responsibility assignments may be affected by the outcome of the Neptune/LIPA Complaint, as well as an order on the remand of *Consolidated Edison*. *See supra* P 1.

[58] *See generally PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,148, at P 28 (2024).

[59] As noted above, project b3737.47 was included as an Incremental Multi-Driver Project; thus, its costs were allocated pursuant to the Incremental Multi-Driver Provisions of Schedule 12 of the PJM Tariff. PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12 (15.0.0), § (b)(xiv)(B).

[60] *See PJM Interconnection, L.L.C.*, 185 FERC ¶ 61,107, at P 25 and n.52 (2023).

to the provisions of the PJM Operating Agreement are appropriately raised through separately filed complaints and not through protests to these cost allocation reports. The issues raised by the Maryland People's Counsel protest should have been filed as a complaint, rather than as a protest to the instant filing.

30. While the issues raised by the protest are improperly raised in, and outside the scope of, these proceedings, even if a complaint would have been filed as the appropriate procedural mechanism to advance the issues raised by the protest, we find that PJM has not violated the provisions of the PJM Operating Agreement. Specifically, Section 1.5.10(b) of Schedule 6 of PJM's Operating Agreement makes clear that to qualify as a Multi-Driver Project with a state Public Policy Requirement component, the enhancement or expansion that addresses that state Public Policy Requirement component must already meet the requirements to be an SAA Project as set forth in Section 1.5.9(a) of Schedule 6 of the PJM Operating Agreement.[61] Section 1.5.9(a) of Schedule 6 of the PJM Operating Agreement makes clear that SAA Projects may only be included in the RTEP if states voluntarily agree to include such a project,[62] and may "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 with this Section."[63] With the exception of project b3737.47, which, as noted above, was included as an Incremental Multi-Driver Project, none of the 2022 RTEP Window 3 Projects are, or include components that are, SAA Projects under Section 1.5.9(a) of Schedule 6 of the PJM Operating Agreement; thus, these projects do

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[61] *See* PJM, Intra-PJM Tariffs, OA Schedule 6 § 1.5, OA Schedule 6 § 1.5 Procedure for Development of the Regional Transmission Expansion Plan (28.0.0), § 1.5.10(b) ("A Multi-Driver Project may contain an enhancement or expansion that addresses a state Public Policy Requirement component only if it meets the requirements set forth in the Operating Agreement, Schedule 6, section 1.5.9(a).").

[62] *See* PJM, Intra-PJM Tariffs, OA Schedule 6 § 1.5, OA Schedule 6 §1.5 Procedure for Development of the Regional Transmission Expansion Plan (28.0.0), § 1.5.9(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.").

[63] *See* PJM, Intra-PJM Tariffs, OA Schedule 6 § 1.5, OA Schedule 6 § 1.5 Procedure for Development of the Regional Transmission Expansion Plan (28.0.0), § 1.5.9(a) ("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 with this Section.").

not qualify as Multi-Driver Projects with a state Public Policy Requirement component under the PJM Operating Agreement.

31. In addition, we agree with ODEC and NOVEC that Maryland People's Counsel's arguments related to the use of CWIP and other incentives are outside of the scope of this proceeding.

32. Comments of Barron Shaw, Keryn Newman, Patricia Hankins, Mary H. Gee, and Theresa Ann Ghiorzi contend that the Commission should institute a proceeding pursuant to section 206 of the FPA to address concerns relating to the PJM RTEP planning process and participation in the PJM stakeholder process. As is the case for the issues raised in Maryland People's Counsel's protest, challenges to the PJM RTEP planning process are appropriately raised through separately filed complaints and not through comments to these cost allocation reports. Commenters may not attempt to circumvent the statutory requirements of FPA section 206 and the Commission's Rules of Practice and Procedure by raising in comments matters outside the scope of this limited proceeding,[64] and the Commission has broad discretion "in deciding whether to initiate investigations pursuant to section 206 of the FPA and whether to set the issue for a formal hearing."[65]

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[64] 18 C.F.R. § 385.206 (2023).

[65] *Int'l Transmission Co.*, 116 FERC ¶ 61,036, at P 35 (2006); *see also Blumenthal v. FERC*, 613 F.3d 1142, 1144 (D.C. Cir. 2010) ("FERC's choice whether to hold an evidentiary hearing 'is generally discretionary.'") (quoting *Cerro Wire & Cable v. FERC*, 677 F.2d 124, 128 (D.C. Cir. 1982)).

The Commission orders:

PJM's proposed Tariff records are hereby accepted, to become effective April 9, 2024, as discussed in the body of this order.

By the Commission. Commissioner Clements is concurring with a separate statement attached.
Commissioner Christie is concurring with a separate statement attached.

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.

Appendix – Tariff Records Accepted

PJM Interconnection, L.L.C.
Intra-PJM Tariffs

- SCHEDULE 12.APPX A - 2, OATT SCHEDULE 12.APPENDIX A - 2 Baltimore Gas and Electric (24.0.0).
- SCHEDULE 12.APPX A - 3, OATT SCHEDULE 12.APPENDIX A - 3 Delmarva Power & Light Comp (25.0.0).
- SCHEDULE 12.APPX A - 5, OATT SCHEDULE 12.APPENDIX A - 5 Metropolitan Edison Company (28.0.0).
- SCHEDULE 12.APPX A - 8, OATT SCHEDULE 12.APPENDIX A - 8 PECO Energy Company (26.0.0).
- SCHEDULE 12.APPX A - 9, OATT SCHEDULE 12.APPENDIX A - 9 PPL Electric Utilities Corpo (28.0.0).
- SCHEDULE 12.APPX A - 10, OATT SCHEDULE 12.APPENDIX A - 10 Potomac Electric Power Comp (3.0.0).
- SCHEDULE 12.APPX A - 12, OATT SCHEDULE 12.APPENDIX A - 12 Public Service Electric and (32.0.0).
- SCHEDULE 12.APPX A - 14, OATT SCHEDULE 12.APPENDIX A - 14 Monongahela Power Company (32.0.0).
- SCHEDULE 12.APPX A - 17, OATT SCHEDULE 12.APPENDIX A - 17 AEP Service Corporation (44.0.0).
- SCHEDULE 12.APPX A - 20, OATT SCHEDULE 12.APPENDIX A - 20 Virginia Electric and Power (40.0.0).
- SCHEDULE 12 APPX A - 28, OATT SCHEDULE 12.APPENDIX A - 28 Transource (1.0.0).
- SCHEDULE 12.APPX A - 32, OATT SCHEDULE 12.APPENDIX A - 32 NextEra Energy Transmission (1.0.0).
- SCHEDULE 12.APPX C, SCHEDULE 12.APPX C - SAA Cost Responsibility (4.0.0).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C. Docket No. ER24-843-000

(Issued April 8, 2024)

CLEMENTS, Commissioner, *concurring*:

1. I support today's order and agree with the basis on which the Commission finds that PJM has acted in accordance with the cost allocation provisions of Schedule 12 of its tariff. I write separately to observe that this case demonstrates well the peril of seeking to allocate transmission infrastructure costs in a multi-state RTO in a myopic manner.

2. The facts before us are this: PJM has identified nearly $5.1 billion of transmission upgrades needed to address reliability problems that would otherwise materialize based on projected changes to supply and demand in the future. PJM identifies several contributing factors, one of which is demand growth in northern Virginia driven by new data centers. Pursuant to the cost allocation method in PJM's tariff, which assigns costs roughly based on contribution to the reliability violations identified, approximately half of this total cost will be borne by customers in northern Virginia, the site of the data centers, and approximately 10% by customers in Maryland. Maryland Office of People's Counsel (Maryland People's Counsel) objects, arguing that Virginia customers should bear all, or nearly all, of the costs because the data centers are the result of Virginia state policy to incentivize their locating in Virginia.

3. Maryland People's Counsel therefore asks us to reduce Maryland customers' cost responsibility for a set of new transmission projects because another state's public policy contributed to the need for that transmission. But seeking to isolate any infrastructure affected by state public policy and require the state enacting such policy to shoulder the infrastructure's costs absent voluntary agreement to do so, as Maryland People's Counsel appears to suggest,[66] ignores the regional nature of PJM's transmission system and the

[66] It is not clear exactly what cost allocation Maryland People's Counsel seeks, as it appears to request allocation pursuant to a methodology that does not exist in PJM's tariff. Maryland People's Counsel asserts PJM should have treated the transmission projects at issue as Multi-Driver Projects under the provisions of section 1.5 of Operating Agreement Schedule 6. Maryland People's Counsel Protest at 10. However, as today's order explains, section 1.5.10(b) "makes clear that to qualify as a Multi-Driver Project with a state Public Policy Requirement component, the enhancement or expansion that addresses that state Public Policy Requirement component must already meet the requirements to be a[] [State Agreement Approach] Project," which includes that the state

full distribution of benefits of regional infrastructure. Adopting Maryland People's Counsel's suggested outcome would be impractical and unworkable. "It is a fact of economic life that the wholesale and retail markets in electricity, as in every other known product, are not hermetically sealed from each other."[67] Given this overlap between state and federal regulation, Maryland People's Counsel's approach would require disentangling the effects of countless public policies on the need for new transmission, raising difficult line drawing exercises whenever, inevitably, multiple policies have affected the need for the relevant infrastructure.

4. Further, making necessary transmission upgrades contingent on a state's voluntary assumption of costs could imperil reliability, given that PJM has determined that the transmission projects at issue are needed for grid reliability. It would also allow a state, such as Maryland in this instance, to free ride, receiving reliability benefits of new infrastructure without paying for them. That is simply not how planning and allocating costs for an integrated regional transmission system can or should work. While states should of course have the *opportunity* to fund infrastructure that meets their specific needs, infrastructure that is integral to reliable, affordable system operation does not and cannot depend on an opt-in structure requiring the affirmative consent of all affected parties to the precise costs that they are allocated.

5. As the order explains, Maryland People's Counsel's argument fails because PJM has followed its tariff in arriving at its proposed cost allocation. However, Maryland People's Counsel's argument also overlooks the reality that myriad state and local (and, for that matter, federal) public policies affect either the demand for or supply of electric power. Virginia is certainly not the only state with economic development policies that are increasing the demand for power. Likewise, every state makes policy and/or regulatory decisions that affect which generating facilities provide supply to meet demand. Assigning transmission costs by attempting to parse countless public policies to determine whether and how each contributes to the need for transmission by affecting demand or supply in the power system is an impractical task that is not required by the Federal Power Act.[68]

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with the public policy voluntarily assume the costs associated with meeting that policy. It is therefore not clear how Maryland People's Counsel envisions allocating these costs where Virginia has not advanced a public policy need through the State Agreement Approach process.

[67] *EPSA v. FERC*, 577 U.S. 260, 281 (2016).

[68] I wrote recently about this same general point in the context of PJM's markets, rather than its transmission planning process. In that case I explained that state and local policies of all stripes naturally affect the supply of resources participating in PJM's

6. It is far more sensible, and legally defensible, to plan transmission based on known and foreseeable conditions and then assign costs based on the allocation of reliability and economic (and perhaps other demonstrable) benefits. Doing so reflects the regional nature of PJM's system and comports with the Commission's obligation to ensure that the costs of transmission are allocated in a manner at least roughly commensurate with the benefits derived from that transmission.[69]

For these reasons, I respectfully concur.

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Allison Clements
Commissioner

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capacity market, thereby influencing the costs and benefits that others receive by participating in that market. On an integrated transmission system, regional investments—whether generating resources or transmission upgrades—provide broad benefits to customers across the region. The just and reasonable standard is met where costs are assigned consistently with those benefits. *PJM Interconnection, L.L.C.*, 186 FERC ¶ 61,080 (2024) (Clements, Comm'r, concurring in part and dissenting in part).

[69] *See Coalition of MISO Transmission Customers v. FERC*, 45 F.4th 1004, 1009 (D.C. Cir. 2022).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C. Docket No. ER24-843-000

(Issued April 8, 2024)

CHRISTIE, Commissioner, *concurring*:

1. Since the SAT is coming back,[70] here is a multiple-choice question:

Which of the following is a "public policy" transmission project under PJM's tariff:

a. A reliability line caused by load growth that may be attributed to economic development resulting from state tax policies applicable to all taxpayers, such as relatively lower individual and corporate tax rates.

b. A reliability line caused by load growth attributable to the rapid development of a very specific industry that uses huge amounts of power and is receiving very specific and very generous state tax subsidies not available to other businesses.

c. A reliability line caused by a state's policy of mandating the closure of fossil-fueled power generation stations.

d. A supplemental line built at the request of a state to meet its offshore wind generation policy goals.

e. All of the above.

If you answered "d" you would be correct (the SAT "best" answer), as this is the classic PJM State Agreement Approach (SAA) model currently being used for New Jersey's offshore wind projects. And New Jersey is appropriately bearing the full costs of these projects, which are not planned as reliability projects.

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[70] Hannah Natanson & Susan Svrluga, *The SAT is Coming Back at Some Colleges. It's Stressing Everyone Out*, WASH. POST, Mar. 18, 2024, https://www.washingtonpost.com/education/2024/03/18/sat-test-policies-confuse-students/.

2. In this case, however, the Maryland Office of People's Counsel (Maryland People's Counsel)[71] and other intervenors[72] argue that options other than "d" should also

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[71] *See, e.g.*, Maryland People's Counsel Feb. 2, 2024 Protest and Comments (Maryland People's Counsel Protest) at 9 ("While Virginia's state policy incentivizes locating data centers within the Commonwealth, the tight correlation between data center development and electric consumption means that it is essentially also a state policy to promote massive electric infrastructure development to supply data center needs."), *id*. at 8-14; Maryland People's Counsel Mar. 20, 2024 Answer at 4-5 ("The Commission's approval here would, in effect, allow a state with [Public Policy Requirements and Public Policy Objectives (PPROs)] that are driving massive demand and transmission investments to do an end-run around the allocation of transmission costs for facilities to meet the 'need' fueled by that State's PPROs, avoiding costs by simply not identifying the PPROs in the RTEP process and not participating in the SAA."), *id*. at 3-9, 15.

[72] *See, e.g.*, Keryn Newman Feb. 9, 2024 Comments at 3-6 ("This newest cost allocation for $6B worth of new transmission projects that were caused solely by the policy choices of Maryland and Virginia should therefore be allocated to only those states as public policy projects. . . . Virginia's choice to approve new data centers, even though they have no idea where the electricity to power them is coming from, is also outside the control of consumers in surrounding states. Under PJM's current tariff, consumers in other states would pay for the new transmission to support the planning decisions of just one or two counties in Virginia. While the data centers would benefit their home counties with increased tax revenue, economic development, and jobs, they will not provide the same benefits to the millions of struggling consumers in the rest of the PJM Region who would subsidize their electric service with new transmission lines. New data center load is just as much a policy choice made by local/state governments as clean energy policy and should also be allocated to the states responsible the same as public policy projects."); *id*. at 8 (footnote omitted) ("PJM's biggest transmission building endeavor ever results from the energy policy and economic choices of governments in only a very small portion of PJM. The costs of their choices should not be visited on everyone else in the region so that these states/localities can continue to escape the consequences of their irresponsible energy choices. The time for the Commission to step in to protect consumers is now, before the next set of data center transmission lines is planned and approved. Northern Virginia's status as the data center capital of the world demands a different, just and reasonable, cost allocation method be developed."); *see also* Pennsylvania Office of Consumer Advocate Feb. 26, 2024 Answer at 4-5 (footnotes omitted) ("First, if [Maryland People's Counsel] is correct that the substantial load growth created by data centers in Virginia and the corresponding substantial transmission investments needed to address this situation is in fact being caused by public policy decisions in Virginia, that is a troubling outcome for Pennsylvania ratepayers. Pennsylvania ratepayers obviously have no voice in the local political decisions being made in Virginia as to the hosting of data centers in that state or as to whether Virginia

be considered a public policy project or otherwise be cost allocated as a public policy project. In my view, they make an argument that deserves serious consideration in the future, as stated below, even if it does not change the outcome of this case given the legal standard here.[73] As a factual matter, there is no question that the Commonwealth of Virginia has – as a matter of public policy – for years given generous tax subsidies directly to one very specific type of industry: data centers.[74] Virginia's entire I-95 corridor between Northern Virginia and Richmond may accurately be called "Data Center Alley." Did these tax subsidies cause Data Center Alley? Under the economic principle of "if you want more of something, subsidize it,"[75] it is logical to assume that Virginia's tax subsidies did incent the construction of more data centers than would otherwise have located in this corridor, although the exact marginal impact remains unknowable.[76] But the Maryland People's Counsel and Intervenor Newman make a logical argument to consider the necessary construction of reliability lines in PJM due to

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should seek to build suitable generation to accommodate this substantial load growth. And yet, Pennsylvania electric utilities and ultimately Pennsylvania ratepayers will bear the costs of these transmission projects under the current PJM allocations.").

[73] Order at P 28.

[74] To the extent that Dominion, the load-serving utility in this part of Virginia, socializes the relatively large cost of network upgrades needed to serve individual data centers across all Dominion customers, that could be considered by some to be another subsidy, given the extraordinarily large amount of power consumed by a data center relative to those other customers (which also drives costs for new power resources). But these issues are policy questions for Virginia policy-makers, as these costs are not allocated regionally but are confined to Virginia.

[75] *See*, *e.g.,* the Inflation Reduction Act of 2022, Pub. L. No. 117-169. The corollary is "if you want less of something, tax it," which is an argument for a carbon tax if you are serious about reducing carbon emissions.

[76] For example, Maryland People's Counsel's expert states in his Affidavit: "According to an audit of state spending in 2021, Virginia incurred $837 million in Data Center Exemptions from 2011 to 2020. Going forward, Virginia projects approximately $3.6 billion in additional tax subsidies have and will be extended via the exemption for fiscal years 2022-2025. This has had a substantial impact on the local economy, as detailed in another 2021 report by the Northern Virginia Technology Council. Northern Virginia has the largest data center market in the United States, exceeding the next five largest markets combined." Maryland People's Counsel Protest Feb. 9, 2024 Affidavit of Ron Nelson at 20:14-21:3 (footnotes omitted).

load growth from the explosion of data center development in Virginia, as driven – at least at the margin – by Virginia's own public policy of subsidizing data centers.

3. A similarly logical and serious argument, however, could also be made for option "c" in the mock SAT question above. Indeed, Staff of the Virginia State Corporation Commission (Staff of the Virginia Commission) argue that Maryland refrained from mentioning public policy considerations when PJM allocated costs associated with the reliability upgrades required by the closure of the Brandon Shores power generation unit,[77] and the Office of the Virginia Attorney General, Division of Consumer Counsel (Virginia Consumer Counsel) argues that a paradigmatic example of a public policy project include federal and state incentives for new renewable generation units and generating plant deactivations, due to their connection to electric infrastructure.[78] These comments logically raise the question whether a law such as Maryland's mandate to close fossil-fueled generation units located in Maryland has a more direct, intentional and causal impact on the need for new reliability transmission lines than state tax subsidies to high-load customers such as data centers. At a minimum, both Maryland and Virginia state commenters make arguments that are worthy of serious consideration.

4. Under PJM's current tariff, however, only supplemental projects requested by a state, such as New Jersey's offshore wind-driven projects, are considered to be public policy projects. Since PJM's RTEP filing under consideration herein is consistent with

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[77] Virginia Commission Staff Feb. 21, 2024 Answer at 2-3 (footnotes omitted) ("Notably, Maryland [People's Counsel] refrained from raising a 'public policy' argument to allocation of costs of projects within Maryland resulting from the Brandon Shores retirement, but argued instead that such costs should be paid in part by ratepayers outside Maryland because PJM should have foreseen the Brandon Shores retirement. Maryland [People's Counsel] does not explain how that would have occurred if not for PJM taking notice of Maryland public policies incenting the retirement of fossil generation.").

[78] Virginia Consumer Counsel Mar. 7, 2024 Answer at 3-4 (footnotes omitted) ("The distinction between PPROs and Virginia's data center tax incentives is the degree of their connection to electric infrastructure. Maryland [People's Counsel] itself defines PPROs to 'include state level policies that are closely associated with promoting or regulating electric production or usage.' Paradigmatic examples of PPROs are federal and state incentives for new renewable generation units, generating plant deactivations, and demand response and energy efficiency programs. These are policies which *directly* affect load *by design*. . . . Under Maryland [People's Counsel's] reasoning, manufacturing incentives would constitute PPROs, requiring ratepayers to entirely fund transmission projects designed to serve the increased load that new manufacturers in their state would require.") (emphases in original).

its current tariff, under section 205 of the Federal Power Act (FPA), we must approve it, and for that reason I concur.

5. I will reiterate what I said, however, in a recent PJM RTEP filing that included the need to update RTEP projects due to the noticed closure of the Brandon Shores coal generating station near Baltimore:

> Let me emphasize that the State of Maryland, within its sovereign police powers, clearly has the authority to mandate any particular mix of generating resources it prefers. Maryland's new climate law is well within its inherent authority to enact. Such policies are for Marylanders to choose, not RTOs or FERC. But if the resulting transmission projects under protest in this RTEP filing are caused more by Maryland's policy choices than by organic load growth and economic resource retirements, then a salient question that may be asked is whether these transmission projects are more accurately categorized as *public policy* projects, essentially the same as the transmission upgrades caused by New Jersey's offshore wind projects?
>
> And if they are more accurately categorized as public policy projects, should such projects be regionally cost-allocated, potentially to consumers in Pennsylvania, West Virginia, Ohio, *et al*.? For example, the State of Illinois has a law similar to Maryland's that PJM has already estimated will cause *$2 billion* in transmission upgrades, costs that will be allocated to consumers in other states under PJM's existing cost-allocation formula. These are questions that the states within OPSI may wish to start considering, as some already have. As the National Association of Regulatory Utility Commissioners (NARUC) noted in comments filed at FERC: ". . . the PJM states are not voting members of PJM, but the majority have reached an equally valid agreement that the burden for costs driven by public policy requirements of one state should not be placed on customers of load serving entities in non-participating states."[79]

6. While this matter (and the November 2023 RTEP Order) both arise in PJM, the issue of the proper regional cost allocation for public policy-driven transmission projects is not confined to PJM, but is applicable across all of the nation's multi-state RTOs.[80]

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[79] *PJM Interconnection, L.L.C.*, 185 FERC ¶ 61,107 (2023) (November 2023 RTEP Order) (Christie, Comm'r, concurring at PP 7-8 (emphasis in original)) (available at https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-pjm-transmission-projects-cost-allocation-er23).

[80] The issue does not arise in single-state RTOs such as CAISO and NYISO, as long as the costs of transmission projects caused by, or implementing, any of their state

Since RTOs are regulated by this Commission, I believe that the time has come for this Commission to take the lead in its convening role to initiate a proceeding, such as a Notice of Inquiry, a series of technical conferences, or by initiating an FPA section 206 proceeding outside this docket, posing such important questions, among others, as: What is the proper definition of a public policy transmission project? Does the definition of public policy transmission project need to be changed for purposes of regional cost allocation? How should public policy transmission projects be cost-allocated in a multi-state RTO? In my view the states themselves need to be at the forefront of deciding these questions, as it is their own state policies that are largely making these questions unavoidable, as these two recent PJM RTEP cases graphically illustrate.[81]

For these reasons, I respectfully concur.

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Mark C. Christie
Commissioner

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public policies are confined to those states.

[81] I note too that in PJM's RTEP review it offers a good example of how components of two different types of projects, a specific reliability solution and SAA Project, can be combined into one project that meets both needs. PJM describes in its filing how it solved a Window 3 specific reliability problem by combining that solution with an SAA project into an Incremental Multi-Driver Project. *See* Order at P 8 & n.22. This is a good example of how a multi-driver project should work: The reliability need is specific and would require a specific reliability solution that would, on its own, merit inclusion in the RTEP as a reliability project, and the SAA project, which is a supplemental – not a reliability – project, if feasible as it is in this specific case, can be planned in a way to meet the specific reliability need. Costs are allocated by PJM proportionately to each component of the project, one percentage allocated as a reliability project under PJM's formula, the other percentage wholly allocated to New Jersey for the SAA project. I note a concern that if there are future cost overruns, they should be ascribed wholly to the portion of the project where the cost overruns occur.