

174 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly and
Allison Clements.

PJM Interconnection, L.L.C.

Docket No. ER21-689-000

ORDER ACCEPTING STUDY AGREEMENT

(Issued February 16, 2021)

1. On December 18, 2020, PJM Interconnection, L.L.C. (PJM) submitted, pursuant to section 205 of the Federal Power Act¹ and Part 35 of the Commission's regulations,² an executed State Agreement Approach Study Agreement (Agreement) between PJM and the New Jersey Board of Public Utilities (New Jersey Board) implementing the State Agreement Approach process under Schedule 6, section 1.5.9 of PJM's Amended and Restated Operating Agreement (Operating Agreement). As discussed below, we accept the Agreement, effective November 18, 2020, as requested.

I. Background

2. As part of its Order No. 1000³ compliance filing, PJM proposed a State Agreement Approach transmission planning mechanism, which PJM explained is an additional option to further meet potential states' public policy needs and not directly tied to meeting Order No. 1000's requirements regarding the consideration

¹ 16 U.S.C. § 824d.

² 18 C.F.R. pt. 35 (2020).

³ *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).

of transmission needs driven by public policy requirements.⁴ The Commission found that the State Agreement Approach was not part of PJM's compliance with the provisions of Order No. 1000 that address transmission needs driven by public policy requirements.⁵ However, because the State Agreement Approach was related to other revisions PJM made in compliance with Order No. 1000, the Commission found it appropriate to include its determination on the State Agreement Approach in that proceeding and accepted it as just and reasonable, subject to modifications.⁶

3. The State Agreement Approach is a supplementary transmission planning and cost allocation mechanism through which one or more 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. The transmission expansion or enhancement is reflected in the PJM Regional Transmission Expansion Plan (RTEP) as either a Supplemental Project or a state public policy project.⁷

II. Summary of Filing

4. PJM explains that, on November 18, 2020, New Jersey became the first state in the PJM region to use the State Agreement Approach process when the New Jersey Board issued an order formally requesting that PJM open a competitive proposal window to solicit project proposals to expand the PJM transmission system and to identify system improvements to interconnect and provide for the deliverability of 7,500 MW of offshore wind into the state by 2035. PJM states that, because the State Agreement Approach is a flexible mechanism, as opposed to a prescriptive process, there is no *pro forma* service agreement that a state must use to identify and develop a project that will effectuate its public policy requirements. Thus, PJM explains, the Agreement is being used (and filed with the Commission as a service agreement under PJM's tariff to provide notice to all

⁴ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 124 (2013).

⁵ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 142, *order on reh'g*, 147 FERC ¶ 61,128, at P 92 (2014).

⁶ *Id.*

⁷ *See* Operating Agreement, Schedule 6, section 1.5.9(a). A state public policy project is "a transmission enhancement or expansion, the costs of which will be recovered pursuant to a FERC-accepted cost allocation proposed by agreement of one or more states and voluntarily agreed to by those state(s)." *Id.*

stakeholders) as a first step toward identifying a transmission project tailored to New Jersey's public policy goals.⁸

5. PJM states that the Agreement: (1) specifies that PJM will use its existing tariff process to convene a competitive proposal window to solicit transmission solutions in relation to the New Jersey Board's State Agreement Approach request; (2) provides notice that PJM will study and plan for New Jersey's public policy goals and the State Agreement Approach request in the 2020-2021 RTEP cycle; (3) provides for milestones and other key dates to set a roadmap for the State Agreement Approach process; (4) identifies obligations and liabilities of the parties; and (5) contains other standard contractual terms and conditions modeled after language in Commission-accepted *pro forma* agreements.⁹

6. The Agreement also establishes the following key dates and milestones: (1) PJM will analyze and develop preliminary recommendations from project proposals for the New Jersey Board to consider and endeavor to post those recommendations for review by October 15, 2021; (2) PJM will endeavor to provide final transmission project recommendations to the New Jersey Board on or about February 15, 2022 but in no event later than September 1, 2022; and (3) no later than 70 days after receiving PJM's final recommendations, the New Jersey Board will enter into a term sheet to be filed with the Commission identifying: (i) the New Jersey Board's selected State Agreement Approach public policy project(s), if any; (ii) the entity(ies) the New Jersey Board has designated as responsible for developing such project(s); and (iii) the cost allocation method for the project(s). PJM also explains that the terms of the Agreement expire with completion of the final milestone or December 31, 2022, whichever comes earlier.¹⁰

7. PJM emphasizes that the Agreement makes clear that "[t]he conducting of a Competitive Proposal Window shall not obligate [PJM] or the [New Jersey Board] to proceed with any state public policy project or construct any facilities or upgrades under this Agreement."¹¹ PJM further states that, "aside from the request to convene the Competitive Proposal Window and the request for studies under PJM's tariff, this Agreement is not consenting to the selection of any projects, designated entities, cost allocations, nor is it granting any rights."¹² PJM states that it and New Jersey anticipate

⁸ Transmittal at 1-4.

⁹ *Id.* at 5-11.

¹⁰ *Id.* at 7-8.

¹¹ *Id.* at 9 (citing Agreement, section 3).

¹² *Id.* at 6.

that such matters will be the subject of subsequent filings before the Commission, depending on the results of the competitive proposal window process and New Jersey's future decisions after examining submitted proposals with PJM.¹³

8. PJM requests waiver of the Commission's 60-day prior notice requirement to allow an effective date of November 18, 2020 for the Agreement. PJM asserts that waiver is appropriate because the Agreement is being filed within 30 days of New Jersey's and PJM's notice to stakeholders of the State Agreement Approach request and its use as inputs for the development of the RTEP.¹⁴ In the alternative, PJM seeks an effective date for the Agreement that is one day following the filing of the Agreement with the Commission.¹⁵

III. Notice of Filing and Responsive Pleadings

9. Notice of the Agreement was published in the Federal Register, 85 Fed. Reg. 84,329 (Dec. 28, 2020), with interventions and protests due on or before January 8, 2021. Timely motions to intervene were filed by American Electric Power Service Corporation; American Municipal Power, Inc.; Calpine Corporation; Central Transmission, LLC; Electric Power Supply Association; Equinor Wind US LLC; Exelon Corporation; LSP Transmission Holdings II, LLC; Monitoring Analytics, LLC, in its capacity as the independent market monitor for PJM; NextEra Energy Transmission MidAtlantic Indiana, Inc.; New Jersey Division of Rate Counsel; North Carolina Electric Membership Corporation; NRG Power Marketing LLC and Midwest Generation, LLC; PPL Electric Utilities Corporation; the PSEG Companies;¹⁶ Rockland Electric Company; and Shell Energy North America (US), L.P. Notices of intervention were filed by Maryland Public Service Commission and the New Jersey Board. The New Jersey Board filed comments in support of the Agreement. No protests were filed.

10. In its comments, the New Jersey Board states that the State Agreement Approach process that the Agreement formalizes will help to proactively identify potential transmission limitations associated with New Jersey's public policy of deploying 7,500 MW of offshore wind generation by 2035 and that potential solutions to those limitations will be developed through PJM's competitive RTEP process. The New Jersey Board asserts that this type of collaborative approach to transmission planning is a critical step

¹³ *Id.*

¹⁴ *Id.* at 11 (citing 18 C.F.R. § 35.3(a)(2) (2019)).

¹⁵ *Id.* at 12.

¹⁶ The PSEG Companies include Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

in ensuring that the high voltage transmission system will be able to accommodate state clean energy policies and represents the type of state-federal collaboration that Order No. 1000 intended to foster. The New Jersey Board states that it strongly supports the Agreement as consistent with its public policy goals and asserts that the Agreement is adequately transparent and flexible. Further, the New Jersey Board acknowledges that the Agreement does not bind either it or PJM to the selection of any projects, designated entities, costs, or cost allocations, and does not grant rights to any party. The New Jersey Board states that it and PJM anticipate that such matters will be the subject of subsequent filings before the Commission.¹⁷

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

12. We find the Agreement just and reasonable. Schedule 6, section 1.5.9 of the Operating Agreement provides that a state governmental entity may agree to voluntarily be responsible for the allocation of all costs of a proposed transmission expansion or enhancement that addresses state public policy requirements and that PJM will include such transmission expansion or enhancements in the RTEP. PJM states that the Agreement effectuates the State Agreement Approach by providing the services to be performed under that provision: (1) the performance of planning studies to identify system improvements to interconnect and provide for the deliverability of offshore wind generation capacity at specific points of interconnection to the Transmission System, and (2) the commencement of a competitive proposal window process to solicit project proposals that address New Jersey's public policy goals.

13. We find that the Agreement memorializes the New Jersey Board's formal request that PJM incorporate New Jersey's public policy of deploying 7,500 MW of offshore wind generation by 2035 via the State Agreement Approach and provides transparency to stakeholders regarding the process milestones and inclusion of the New Jersey Board's requested transmission in the 2020-2021 RTEP cycle. We agree with PJM that the Agreement does not consent to the selection of any projects or designated entities, establish any cost allocations, or grant any transmission rights. We understand that these issues may be the topic of subsequent filings.

¹⁷ New Jersey Board Comments at 1-3.

14. We also grant PJM's request for waiver of the Commission's prior notice requirements.¹⁸ Accordingly, we accept the Agreement, effective November 18, 2020.

The Commission orders:

The Agreement is hereby accepted for filing, effective November 18, 2020, as discussed in the body of this order.

By the Commission. Commissioner Christie is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁸ See 18 C.F.R. § 35.3(a)(2) (2020); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-84, *order on reh'g and clarification*, 65 FERC ¶ 61,081 (1993) (the Commission will grant waiver of the 60-day prior notice requirement "if service agreements are filed within 30 days after service commences.").