



while at the same time requiring that transmission providers justify their existing regional planning processes on compliance. 5 U.S.C. § 706; *Nat'l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006).

## **II. REQUEST FOR REHEARING**

In addition to OPSI's justifications that we adopt for rehearing of Order 1920, the PAPUC avers that Paragraph 243 of FERC's Order is arbitrary and capricious, an abuse of discretion, and a failure to engage in reasoned decision making.

Throughout Order 1920, FERC states that outside of the context of long-term regional planning, the Final Rule will not "otherwise disturb the regional transmission planning structure required by Order No. 1000"<sup>2</sup> and will not "inadvertently cause the re-litigation of aspects of those existing processes."<sup>3</sup> However, Paragraph 243 explicitly requires that "transmission providers that wish to continue to use some or all of their existing regional transmission planning and cost allocation processes to consider transmission needs driven by Public Policy Requirements must demonstrate that continued use of any such processes does not interfere with or otherwise undermine Long-Term Regional Transmission Planning as set forth in this final rule."<sup>4</sup>

Paragraph 243 is not limited to long-term planning and requires full re-litigation of all processes that are used to satisfy Public Policy Requirements. FERC should amend Order 1920 to either remove this compliance requirement, explicitly limit it to processes used for long-term planning, or clarify that PJM's State Agreement Approach does not

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<sup>2</sup> Order 1920, ¶ 256.

<sup>3</sup> Order 1920, ¶ 253.

<sup>4</sup> Order 1920, ¶ 243.

interfere with, or otherwise undermine, long-term planning; and, thus would not be subject to re-litigation.

Under Paragraph 243, PJM would be required to re-litigate the State Agreement Approach on compliance with this rule. The State Agreement Approach, by the terms of the PJM tariff, allows that “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.”<sup>5</sup> Because the State Agreement Approach is targeted at addressing state Public Policy Requirements, it is subject to Paragraph 243’s re-litigation rule. That result must be avoided.

PJM’s footprint has grown from three member states (Pennsylvania, New Jersey and Maryland) to 13 states and the District of Columbia, all of which are highly diverse. The states have different siting authorities as well as generation and load goals and requirements to employ in determining transmission need within our borders. The State Agreement Approach allows state governmental entities to voluntarily agree to be responsible for the costs of transmission projects that help them satisfy their public policy requirements. It also ensures cost allocation rules do not inadvertently and unreasonably force neighboring states to shoulder the costs of other states’ public policy choices. FERC recognized the comments saying as much when it originally approved the State Agreement Approach.<sup>6</sup>

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<sup>5</sup> PJM Operating Agreement, Schedule 6, Section 1.5.9.

<sup>6</sup> PJM Interconnection, L.L.C., 142 FERC ¶ 61214 (Issued March 22, 2013) (Order on Order No. 1000 Compliance).

PJM's State Agreement Approach is a fair and important tool used by states in the PJM region to effectuate their policy goals. The State Agreement Approach avoids interstate fights over transmission planning, and facilitates regional cooperation across a variety of issues, even those unrelated to transmission. It must be preserved, and should not be subject to re-litigation. If FERC does not clearly preserve the State Agreement Approach on rehearing, then FERC's action in Order 1920 would be in violation of the law. Nothing in the record of this proceeding indicates the State Agreement Approach is unjust and unreasonable, and section 206 of the FPA first requires FERC to make such a finding before it may order a replacement rate, as it would be doing if Paragraph 243 remains. Retaining Paragraph 243 would consequently be arbitrary and capricious and an abuse of discretion.

### **III. CONCLUSION**

For these reasons, the PAPUC respectfully requests the Commission grant its petition for rehearing of the May 13, 2024, Order No. 1920.

Respectfully submitted,  
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Dated: June 12, 2024

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am on this date serving a copy of the foregoing comments upon each person designated on the official service list compiled by the Federal Energy Regulatory Commission in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Respectfully submitted,

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