



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
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May 13, 2026

Via Electronic Filing

The Honorable Debbie-Anne A. Reese, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: Motion for Leave to File Comments and Comments in Support of
Requests for Rehearing and Clarification of the Pennsylvania
Public Utility Commission; Docket Nos. EL21-39 *et al.***

Dear Secretary Reese:

Please find for e-filing the Motion for Leave to File Comments and Comments in Support of Requests for Rehearing and Clarification of the Pennsylvania Public Utility Commission (PA PUC) at Docket Nos. EL21-39, EL15-18-005, EL17-68-003, ER17-950-006, ER22-1606-000, and ER22-1606-001 *et al.*

Copies of this document have been served upon all parties designated on the Commission's official service list, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

/s/ Elizabeth H. Barnes
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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Consolidated Edison Company of New York, Inc. v. PJM Interconnection, L.L.C.	)	Docket Nos.	EL15-18-005
)		
Linden VFT, LLC v. PJM Interconnection, L.L.C.	)		EL15-67-005
)		
Linden VFT, LLC v. PJM Interconnection, L.L.C.	)		EL17-68-003
)		
PJM Interconnection, L.L.C.	)		ER17-950-006
)		
	)		(Not consolidated)
)		
Neptune Regional Transmission System, LLC and Long Island Power Authority v. PJM Interconnection, L.L.C.	)		EL21-39-000
)		
PPL Electric Utilities Corporation	)		ER22-1606-000
)		
PPL Electric Utilities Corporation, Neptune Regional Transmission System, LLC, Long Island Lighting Co.	)		ER22-1606-001
	)		(Consolidated)

**MOTION OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
FOR LEAVE TO FILE COMMENTS, AND COMMENTS
IN SUPPORT OF REQUESTS FOR REHEARING AND CLARIFICATION**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,¹ the Pennsylvania Public Utility Commission (“PA PUC”) hereby requests leave to respond and submit this Motion for Leave to File Comments (“Motion”) and Comments in Support of the Requests for Rehearing and Clarification of the Illinois Commerce Commission (“ICC Rehearing Request”) and PJM Interconnection,

¹ 18 C.F.R. §§ 385.212 and 385.213.

L.L.C. (“PJM Rehearing Request”), in the above-captioned proceedings.² PA PUC respectfully requests that the Commission grant rehearing of its March 6, 2026, Order on Remand in the above-captioned proceeding (“March 6 Order”).³ In particular, PA PUC urges the Commission to reconsider its determination in Paragraph 92 of the March 6 Order that PJM Interconnection, L.L.C. (“PJM”) must recalculate cost responsibility for transmission projects undertaken over the past eleven (11) years (“Reallocation Directive”). Such a broad, lengthy, and uncertain resettlement presents substantial costs to PA PUC’s constituency. Pennsylvania is a restructured state. PJM load-serving entities (“LSEs”), which comprise both regulated and competitive entrants, depend upon predictability in the transmission costs that are priced into their regulated or market services. We respectfully request the Commission tailor any relief on remand to a narrow prospective remedy that does not disproportionately harm customers or disrupt PJM markets.

I. INTRODUCTION & SUMMARY

The PA PUC is an independent agency of the Commonwealth of Pennsylvania authorized to intervene in cases before Federal forums in which energy-related issues affect Pennsylvanians. On December 31, 2020, Neptune Regional Transmission System, LLC and Long Island Power Authority filed a complaint pursuant to Sections 206 and 306 of the Federal Power Act alleging

² Illinois Commerce Commission (“ICC”) Request for Rehearing and Clarification, Docket Nos. EL15-18-005, EL15-67-005, EL17-68-003, ER17-950-006, EL21-39-000, ER22-1606-000, ER22-1606-001 (Apr. 2, 2026); Motion for Extension of Time and Request for Expedited Action by 05/01/2026, Motion for Clarification, and Limited Request for Rehearing of the 03/06/2026 Order under EL15-18 et al., Docket Nos. EL15-18-005, EL15-67-005, EL17-68-003, ER17-950-006, EL21-39-000, ER22-1606-000, ER22-1606-001 (Apr. 3, 2026). PA PUC also supports the Indicated Transmission Owners’ (“Transmission Owners”) request for rehearing on the issue of reallocations of past costs. Request for Rehearing of the Indicated Transmission Owners (“Transmission Owners Rehearing Request”), Docket Nos. EL15-18-005, EL15-67-005, EL17-68-003, ER17-950-006, EL21-39-000, ER22-1606-000, ER22-1606-001 (Apr. 6, 2026).

³ *Consolidated Edison Co. of New York, Inc. v. PJM Interconnection, L.L.C.*, 194 FERC ¶ 61,179 (Mar. 6, 2026).

unjust and unreasonable distortion of cost allocation assignments for PJM Transmission, L.L.C. Regional Transmission Expansion Plan projects. The complaint is docketed at EL21-39. On January 22, 2021, the PA PUC filed a motion to intervene out of time due to an administrative oversight. No objections were filed to PA PUC's motion to intervene. PA PUC is a party to this proceeding.⁴

The *de minimis* threshold has been part of the distribution-factor analysis (DFAX) calculation methodology since 2007.⁵ In the March 6 Order, the Commission addressed a complex, contentious, and interrelated set of disputes regarding how cost responsibility for Regional Transmission Enhancement Projects ("RTEP") in PJM was and is calculated.⁶ On remand from the D.C. Circuit, the Commission maintained use of the solution-based DFAX (SBDFAFAX) cost allocation methodology but eliminated the *de minimis* threshold exemption, not only prospectively but also retrospectively back to 2015, when the first complaint was filed.⁷ While the underlying determinations are being contested by parties seeking rehearing, PA PUC limits its comments to the Reallocation Directive over an 11-year period across the entire PJM footprint.

⁴ To the extent that the Commission may deem it necessary, pursuant to Commission Rule 214, 18 C.F.R. 385.214, the PA PUC does hereby move to intervene out of time in Docket Nos. EL15-18-005, EL17-68-003, ER17-950-006, ER22-1606-000, and ER22-1606-001, the other five dockets subject to the Commission's March 6 Order. Given the significant impacts of these proceedings on Pennsylvania ratepayers, good cause exists to grant this motion.

⁵ See Offer of Settlement and Partial Settlement Agreement, Docket Nos. ER06-456, et al., (Sept. 14, 2007). The Commission approved the 2007 DFAX Settlement by orders dated July 29, 2008 and October 15, 2008. *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,112 (2008); *PJM Interconnection, L.L.C.*, Letter Order, Docket Nos. ER06-456, et al. (Oct. 15, 2008).

⁶ The underlying complaints began with disagreements specific to several northern New Jersey projects and were eventually appealed to the D.C. Circuit Court of Appeals. While the D.C. Circuit generally upheld PJM's use of the distribution factor analysis ("DFAX") approach to cost allocation, it rejected PJM's system-wide application of a *de minimis* threshold exemption when applying the DFAX analysis. March 6 Order, 194 FERC ¶ 61,179, at PP 1-2 (citing *Consol. Edison Co. of N.Y., Inc. v. FERC*, 45 F.4th 265 (D.C. Cir. 2022) ("Remand Opinion")).

⁷ March 6 Order, 194 FERC ¶ 61,179, at P 2. See also, Request for Rehearing of Indicated PJM Transmission Owners.

PA PUC has a unique perspective as a state situated within large and small transmission zones in the PJM footprint including but not limited to: PECO Energy Company (“PECO”); Mid-Atlantic Interstate Transmission LLC (“MAIT”); FirstEnergy Service Company, on behalf of its affiliates American Transmission Systems, Keystone Appalachian Transmission Company, Trans-Allegheny Interstate Line Company and Metropolitan Edison Company (Met-Ed) (collectively, the “FirstEnergy Companies”); PPL Electric Utilities Corporation (“PPL”); Duquesne Light Company (“Duquesne Light”); and UGI Utilities, Inc. - Electric Division (UGI) as discussed in the March 6 Order and subsequent pleadings.⁸ It has been alleged that elimination of the *de minimus* rule will result in substantial cost increases to small zones including but not limited to Duquesne Light and UGI for some or all of these years.⁹ To ensure our perspective is considered, PA PUC respectfully requests that the Commission grant it leave to offer comments in this proceeding.

Regardless of the merits of the Commission's resolution of the underlying issues, the mandate to order a recalculation of transmission cost responsibility dating back eleven years, then to bill and collect for the new responsibility, with interest, and without proper notice, appears to be unprecedented. PA PUC agrees with the ICC, PJM, and the Transmission Owners in their respective Rehearing Requests that the Reallocation Directive is fatally flawed in several respects.

First, the remand from the D.C. Circuit was limited to issues concerning the application of the SBDFAX transmission cost allocation methodology to a narrow set of projects and parties, some not located within the PJM region. From this, a market-wide restructuring of PJM’s

⁸ *Id.*, at P 37, 88 - 89.

⁹ Answer of the Indicated PJM Transmission Owners, dated June 24, 2025.

transmission cost allocation regime is being imposed without due process. This restructuring is coupled with a decade-long retroactive market surcharge mandate reallocating the costs of over 1,200 transmission projects affecting every transmission customer in PJM, potentially adversely affecting many of the very transmission customers the court was trying to protect. That result is neither compelled by the D.C. Circuit’s Opinion and Order nor permissible under the Federal Power Act (FPA) or Administrative Procedure Act (APA), which requires decisions be based upon law and the evidence before it.

Second, the Reallocation Directive fails to comply with the filed rate doctrine, the rule against retroactive ratemaking, and the notice and refund periods defined in the FPA.¹⁰ Even if the Reallocation Directive were permissible under statute, Pennsylvania’s ratepayers did not have sufficient notice, as required by principles of due process. The Commission has not explained its basis for issuing refunds (and presumably surcharges) from before the limited notice was provided, and for a period longer than provided for in the FPA. Our ratepayers have expectations of certainty in their rates and they budget their household and business expenses accordingly. Transmission rates must be foreseeable and reasonable for the economic stability of our Commonwealth. Because market participants serving retail customers price in premiums for uncertainty, the Reallocation Directive has a disruptive effect upon the reliability and predictability of interstate transmission costs.

Finally, the Reallocation Directive may result in rate shock to customers in Pennsylvania and other PJM member States—in many cases, to customers who were not customers in 2015. Conversely, customers receiving the benefit of this ruling as a consequence of refunds may be

¹⁰ East Kentucky Power Cooperative (“EKPC”) also filed a Motion for Leave of East Kentucky Power Cooperative, Inc. to File Comments and in Support of the Indicated Transmission Owners’ Request for Rehearing under EL15-18 et. al, in the above-captioned dockets (“EKPC Comments”).

unjustly rewarded if they were not the existing customers during the period for which they were residing in the net-benefit zones. If PJM collects and transfers refunds to transmission operators, who in turn do not or are unable to distribute to customers because they no longer are account holders for service properties within these zones, that is an unjust result. Such foreseeable results regarding reallocation over an 11-year period are unjust and unreasonable and should be reconsidered by the Commission.

II. MOTION

PA PUC respectfully requests leave to file Comments in response to the ICC Rehearing Request, the PJM Rehearing Request, and the Transmission Owners Rehearing Request. Rule 213(a)(2) generally prohibits answers to a request for rehearing unless such answers have been authorized by the decisional authority. The Commission exercises its discretion to grant motions for leave to submit answers when doing so will clarify the issues, assist in the Commission's decision-making processes, or otherwise ensure an accurate and complete record.¹¹ PA PUC respectfully submits that these Comments will clarify the issues in this proceeding, assist the Commission in its decision-making process, and ensure a complete decision-making record. PA PUC has a unique perspective on the issues raised by the ICC, PJM, and the Transmission Owners in their rehearing requests. Accordingly, the Commission should accept these Comments in the above-captioned proceedings.

¹¹ 18 C.F.R. § 385.213(a)(2); *See, e.g., PJM Interconnection, L.L.C.*, 145 FERC ¶ 61,035, at P 32 (2013); *Wisconsin Pub. Serv. Corp.*, 144 FERC ¶ 61,093, at P 27 (2013); *Iberdrola Renewables, Inc.*, 137 FERC ¶ 61,185, at P 17 (2011); *Virginia Elec. and Power Co.*, 125 FERC ¶ 61,391, at P 26 (2008).

III. COMMENTS SUPPORTING REHEARING

These Comments address the directive in Paragraph 92 (and Ordering Paragraphs E-F) of the March 6 Order to “recalculate the cost responsibility assignments for the Transmission Enhancement Charges for the period beginning June 18, 2015 to reflect the elimination of the *de minimis* threshold exemption in the calculation of cost responsibility assignments, and to assess refunds and surcharges, including interest, as discussed in the body of this order.”¹²

First, the March 6 Order fails to provide a reasoned explanation for the sweeping, retroactive remedy comprising the Reallocation Directive. Any deviation from the FPA ought to come with a clear, reasoned explanation—not only of the legal basis for taking such action, but to explain and demonstrate how equities were balanced and considered in ordering a remedy that is sweeping in its scope—authorizing reallocations of transmission costs over the course of approximately 11 years, across the entirety of the PJM region, without sufficient notice, with unknown (but likely significant) price impact, and with potential additional remedies yet to be determined.¹³ An overly broad remedy may have unintended adverse consequences leading to further debate over PJM’s cost allocation methodology in the future. Additionally, the Reallocation Directive upends the SBDFAX method that stakeholders, investors, and customers have relied upon in a long-established, organized marketplace. This approach introduces substantial new risk to settled expectations of market participants. An 11-year reallocation undermines confidence in PJM’s marketplace and in the certainty of filed rates.

¹² March 6 Order, 194 FERC ¶ 61,179, at Ord. Para. (F).

¹³ *Id.* at P 92.

A. The Reallocation Directive lacks a legal basis and violates the Federal Power Act.

FERC’s remedy in this proceeding will require PJM to collect funds (whether through surcharges or another mechanism) from a subset of PJM customers over an undetermined period—enough to cover a decade of recalculated allocations—effectively changing the rates of these consumers for the foreseeable future. FERC’s action in this proceeding contravenes the filed rate doctrine and also is violative of the due process as FERC granted no notice to Transmission Owners or customers residing in PJM’s service territory about of the length of the refund period.

The filed rate doctrine stands as a central governing principle of FERC-jurisdictional rates. The doctrine is derived from the FPA’s express statutory language.¹⁴ FPA Section 205(c) explains that a public utility’s rates must first be filed with the FERC and be made publicly available.¹⁵ Section 205(d) states that “no change shall be made by any public utility in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after sixty days’ notice to the Commission and to the public.” Consequently, the filed rate doctrine “bind[s] regulated entities to charge only the rates filed with FERC and to change their rates only prospectively.”¹⁶ The filed rate doctrine has been called “‘a nearly impenetrable shield’ and does not yield, ‘no matter how compelling the equities.’”¹⁷ However, the

¹⁴ *PJM Power Providers Grp. v. FERC*, 96 F.4th 390, 394 (3rd Cir. 2024) (citing *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1226-27 (D.C. Cir. 2018); *Borough of Ellwood City v. FERC*, 583 F.2d 642, 648 (3d Cir. 1978). “The filed rate doctrine ‘binds regulated entities to charge only the rates filed with FERC and to change their rates only prospectively.’” *Id.* (quoting *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 829 (D.C. Cir. 2021); *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577-78 (1981); see also *Md. Off. of People’s Couns. v. FERC*, 164 F.4th 920, 922-23 (D.C. Cir. 2026).

¹⁵ 16 U.S. Code § 824d(c).

¹⁶ 16 U.S. Code § 824d(d). The time period may be shortened by order of the Commission.

¹⁷ *Id.* at 829-830 (quoting *Old Dominion Elec. Corp. v. FERC*, 892 F.3d 1223, 1230 (D.C. Cir. 2018)).

Commission has not provided legal reasoning to justify its decision to ignore the filed rate doctrine.

In the instant case, the March 6 Order did not explain why requiring surcharges (with interest) for over a decade of past allocations is an equitable remedy. The Reallocation Directive does not explain whether or how the FERC has weighed various equitable factors. Rather, the Commission provided a single paragraph at the end of a lengthy order to justify reallocation, which may cost a subset of PJM's consumers well over a billion dollars, dating back over a decade. Whatever authority the FERC may have to fashion remedies here, it owes its customers and stakeholders (present and future) an explanation. Thus, FERC has not provided sufficient justification for its decision to direct a retroactive increase and decade-old tariff changes.

As a corollary to the filed rate doctrine, the Commission may not alter rates retroactively outside the refund period set forth in the FPA, which is limited to 15 months and constitutes a "narrow exception" to the rule against retroactive ratemaking.¹⁸ While refunds are permissible in limited circumstances, as stated by the D.C. Circuit, "no concomitant authority exists to retroactively correct rates that were too low."¹⁹ Yet, a company should receive sufficient and adequate notice of the length and scope of the refund period when it is ordered to provide refunds, as this is a fundamental aspect of due process and administrative law.

Here, FERC has not provided sufficient notice of the length of the applicable refund period. From a due process standpoint, notice is essential. For notice to be valid, it should be clear that rates could change from the time of notice. Here, most PJM customers were not likely

¹⁸ 16 U.S. Code § 824e(b); *Md. Off. of People's Couns. v. FERC*, 164 F.4th 920, 927 (quoting *Exxon Mobil Corp. v. FERC*, 571 F.3d 1208, 1211 (D.C. Cir. 2009)).

¹⁹ *Verso Corp. v. FERC*, 898 F.3d 1, 10 (D.C. Cir. 2018).

aware that a major 11-year reallocation was on the table. Despite setting a 2020 refund effective date in one of the proceedings, the Commission has not explained in its March 6 Order why it is justified in ordering refunds in Docket No. EL21-39 for over 5 years prior to the date that implied there would be no reallocations before December 30, 2021. Yet, the Reallocation Directive is retroactive to 2015. It also fails to set refund effective dates in some proceedings and limit relief to 15 months as set by statute.²⁰

There is no substantial evidence to support a finding of a basis to operate outside the limits of the filed rate doctrine and the express language of the FPA. The Reallocation Directive will require rate increases for customers in many PJM zones to fund over a decade of reallocations. Additionally, FERC has neither justified its basis for such action nor explained how it has balanced the equities in correcting its legal error. Thus, PA PUC respectfully requests this Commission reconsider its selected remedy.

B. The Reallocation Directive invites unpredictably into the marketplace and will discourage capital investment in PJM and other FERC-jurisdictional markets.

FERC possesses unique powers among agencies of the Federal government. While many agencies regulate, and some agencies adjudicate, FERC also has the power to set wholesale and interstate rates and charges in a specific industry. State commissions like the PA PUC have similar powers over state-regulated rates and charges. Electric industry regulation is “one of the most important of the functions traditionally associated with the police power of the States.” *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm’n*, 461 U.S. 375, 377 (1983). These powers have a substantial economic impact on consumers, including over services that directly affect the lives and livelihoods of virtually everyone. With such extensive powers, predictability and clarity of

²⁰ “FERC cannot order utilities to give back money already collected (except for money collected during the limited refund period).” *Exxon Mobil Corp. v. FERC*, 571 F.3d 1208, 1215 (D.C. Cir. 2009).

the rates charged to customers—ends served by the filed rate doctrine—are of utmost importance.

According to the Third Circuit Court of Appeals (“Third Circuit”), a central purpose of the filed rate doctrine is predictability. The doctrine “reflects a congressional determination that parties in the industry need to be able to rely on the finality of approved rates, and that this interest outweighs the value of being able to correct for decisions that in hindsight may appear unsound.”²¹ [insert language about how FERC’s action will result in market unpredictably]

Consequently, PA PUC agrees with the Comments of the Delaware Public Service Commission (DE PSC) and EKPC in which they request rehearing. As EKPC noted:

PJM is one of the most mature and successful organized wholesale power markets.... Market participants rely on the stability of Commission-approved cost allocations that the PJM market has historically provided. Mandating reallocations for the past ten years may have unintended consequences for how that market is perceived. In particular, imposing such sweeping retroactive reallocations risks signaling that even long-settled cost allocations remain perpetually subject to re-litigation, thereby increasing regulatory uncertainty.²²

PA PUC shares this concern about the damage the Reallocation Directive might do to the credibility of PJM markets and to the reliability of settled rates.

C. The Commission should exercise any remedial authority to develop a narrowly tailored remedy focused on prospective changes.

Alternatively, if the Commission concludes the reallocation is legally permissible, the PA PUC requests no refunds be directed in this instance but rather focus on prospective relief instead. The Commission has discretion to limit or deny refunds in a complaint proceeding under Section 206 of the FPA. A decision on the equities “requires the development of factual matters . . . as well as a broad and penetrating analysis of ‘the factors pro and con a refund, and

²¹ PJM Power Providers Grp. v. FERC, 96 F.4th 390, 401–02 (3d Cir. 2024).

²² EKPC Comments at 5-6.

its amount or extent, in arriving at an equitable conclusion.” *Consumer Fed’n of Am. v. Federal Power Com.*, 515 F.2d 347 at 359 (D.C. Cir. 1975) (emphasis added). In other words, the Commission must balance the equities in arriving at a lawful remedy. *See also La. Pub. Serv. Comm’n v. Entergy Corp.*, 155 FERC ¶ 61,120, at P 27 (2016) (“in cases where a cost allocation or rate design has been found unjust and unreasonable, but where no over-collection of revenue has occurred, other factors come into play.”)

The Reallocation Directive will disrupt the settled expectations of tens of millions of end-use customers for more than a decade. To the extent the Commission reaffirms its determination on the *de minimis* threshold across the PJM footprint, it should fashion relief prospectively, narrowly tailored to address the specific concerns raised by Complainants.

III. Conclusion

For all of these reasons stated above, PA PUC respectfully requests that the Commission consider these Comments in reaching its decision on the rehearing requests in the above-referenced dockets, and fashion a remedy that is narrowly tailored and prospective in nature.

Respectfully submitted,

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Dated: May 13, 2026

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am on this date serving a copy of the foregoing document 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,

/s/Elizabeth H. Barnes

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Dated: May 13, 2026