UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

	)	
PJM Interconnection, LLC	)	Docket No. EL26-67
AEP Appalachian Transmission	)	
Company, Inc., et al.	)	
	)	

Request for Rehearing and Clarification of the Joint Consumer Advocates

The Maryland Office of People's Counsel ("MPC"), the Ohio Consumers' Counsel ("OCC"), the Delaware Division of the Public Advocate ("DPA"), and the Office of the Illinois Attorney General ("IOAG") (collectively, the Joint Consumer Advocates or "JCAs") respectfully request rehearing and clarification of certain determinations in Section III.B, "Cost Shifting Risk Among Transmission Customers," of the Commission's Order Instituting Proceeding under Section 206 of the Federal Power Act (the "Order").[1] The Order recognizes that the PJM Open Access Transmission Tariff (the "PJM Tariff") spreads the costs of Network Upgrades driven by large-load interconnections to transmission customers that "neither caused the need for nor benefit commensurately from" those upgrades in violation of the Federal Power Act ("FPA").[2] We agree with and enthusiastically support the Order's transparency directives because

[1] *PJM Interconnection, et al.*, 195 FERC ¶ 61,211 (2026) ("Order"). MPC filed its motion to intervene in this proceeding on July 1, 2026. The OCC filed its motion to intervene on July 9, 2026. The DPA filed its motion to intervene on July 8, 2026. The IOAG filed its motion to intervene in the proceeding on July 7, 2026. See (doc-less) Motions to Intervene of MPC, OCC, DPA, and IOAG, respectively, in Docket No. EL26-67.
[2] Order at PP 79, 81.

they should expose these cost shifts to state regulators and consumers. But the cost shifts identified by the Order do not originate at the retail level, and the responsibility to cure them cannot lie with state regulators. They are imposed by the PJM Tariff, which only this Commission may reform.

Just and reasonable rates, whether at wholesale or retail, must protect customers from bearing costs they did not cause and from which they do not benefit. The Order finds that the PJM Tariff fails to meet that standard. It is arbitrary and capricious and contrary to the FPA for the Commission to conclude that the PJM Tariff is inconsistent with the cost causation and beneficiary principles but then fail to remedy the elements of the tariff that violate those principles. We respectfully request rehearing on the Commission's finding that it "must act to address the *risk* of cost shifting among transmission customers" but not *actual* cost shifts among transmission customers that are guaranteed by the PJM Tariff.[3]

We agree with the Commission that, if implemented properly, "additional cost transparency measures . . . will give state public utility commissions . . . the information necessary to allow them to *understand* which transmission costs are caused by which transmission customers . . . ."[4] But identifying a transmission cost alone and mapping it to its cause is not self-implementing authority to reallocate a charge set by the PJM Tariff. The Order's further finding that transparency will allow state regulators to "sub-

[3] *Id.* at P 68 (emphasis added).
[4] *Id.* at P 70 (emphasis added).

allocate these costs to the appropriate retail customers . . . as they see fit . . ."[5] assumes flexibility under the PJM Tariff and the FPA.[6] The PJM Tariff fixes the charges each transmission customer pays, and a state cannot move costs from one transmission customer to another. The cost shifts identified by the Order occur between transmission customers, including those transmission customers whose assets straddle state lines, beyond the jurisdiction of a state commission. The Commission's finding is arbitrary and capricious because it does not consider how the PJM Tariff confines states to incomplete protection and exposes even those limited measures to legal challenges that transmission owners and customers have raised and continue to press today.

We also agree with the Commission that cost recovery agreements are necessary to ensure that Eligible Customers serving large loads timely pay "the costs incurred to provide them with the requested transmission service, including the costs of any needed Network Upgrades . . . ."[7] But the Order describes two different measures of that cost responsibility without choosing between them. The Order preliminarily finds that a cost recovery agreement should be keyed to the level of transmission service the Eligible Customer requests on behalf of the large load while also finding that the Eligible Customer, "as opposed to other transmission customers" must be ultimately responsible for the costs of any needed Network Upgrades.[8] Those two measures diverge whenever the Network Upgrade costs exceed the Network Integration Transmission Service

[5] *Id.*
[6] *See id.* at P 26 (outlining how PJM Transmission Owners bill Eligible Customers for transmission service).
[7] *Id.* at P 81.
[8] *Id.* at PP 80–83.

("NITS") charges attributable to the large load, which they will do, routinely and significantly. We therefore respectfully request that the Commission clarify the standard it will apply to cost recovery agreements filed in response to the Order: An agreement is just and reasonable only if it requires the Eligible Customer to pay the full cost of the Network Upgrades needed to accommodate the large load.

We also respectfully request clarification that transmission owners must promptly credit revenue received under cost recovery agreements to the other transmission customers in the same PJM Transmission Zone. Collection from the Eligible Customer serving the large load and protection of other transmission customers are two separate problems, and a cost-recovery agreement addresses only the first. Crediting revenues against the revenue requirement does not return the shifted costs to the customers who bore them.[9] A credit must be immediate to ensure that it flows to transmission customers who paid the higher rate when the Network Upgrade entered the revenue requirement. Because the Order's stated objective is to ensure that Eligible Customers, "as opposed to other transmission customers,"[10] are ultimately responsible for Network Upgrade costs, we respectfully request that the Commission clarify that transmission owners must immediately credit cost-recovery agreement revenue to other transmission customers.

A request for rehearing and clarification is appropriate now. Although much of the Order is expressly preliminary, we are concerned that it also may be construed to contain

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[9] *Id.* at P 84 (stating that the Commission expects that payments will be "appropriately credited toward transmission owners' transmission revenue requirements . . .").
[10] *Id.* at P 80.

final determinations about jurisdiction and a definitive statement about the scope of the Commission's duty to address the *risk* of cost shifting among transmission customers.[11] Assuming they are final, these determinations would "fix[] some legal relationship as a consummation of the administrative process" and are proper subjects of rehearing.[12] We seek rehearing only of those determinations that could be read as final. Waiting would create risk without corresponding benefit. Challenges raised later in this proceeding, following a Commission order on filings by PJM and the transmission owners, could be dismissed as collateral attacks on the Order, jeopardizing our ability to press these arguments on appeal.

Our clarification requests, which do not depend on the finality of any determination, ask the Commission to resolve ambiguities in the manner we request as soon as possible. Delay imposes costs on the very customers that this proceeding seeks to protect. Each Network Upgrade added to a transmission owner's revenue requirement while these questions remain open embeds another cost shift, and every cost-recovery agreement negotiated against an unsettled standard invites the disputes the Commission could resolve today.

[11] The Commission's final jurisdictional findings are at PP 45, 47, 68, and 70. Findings about the Commission's duty to mitigate only risks of cost shifts are in P 68.
[12] *MISO, et al.*, 188 FERC ¶ 61,211 at P 12 (2024) (citing *Reliable Automatic Sprinkler Co. v. Consumer Prod. Safety Comm'n*, 324 F.3d 726, 731 (D.C. Cir. 2003)).

I. Statement of Issues and Specifications of Error

Pursuant to Rule 713(c) of the Commission's Rules of Practice and Procedure, we request rehearing on the following:

1. To the extent the Order's determination of the scope of the Commission's duty under the FPA constitutes a final determination, the Commission erred by recognizing a duty to address the risk of cost shifting among transmission customers while failing to remedy the actual cost shifts the PJM Tariff guarantees, and by failing to explain why its duty does not extend to those actual cost shifts. It is arbitrary and capricious and contrary to the FPA for the Commission to find that transmission customers "neither caused the need for nor benefit commensurately from" Network Upgrades for large loads but fail to order a remedy to the PJM Tariff that prevents those unjust and unreasonable cost shifts. *See* 5 U.S.C. § 706(2)(A); *Motor Vehicle Mfrs. Ass'n. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.,* 463 U.S. 29, 43 (1983) (agency must "examine the relevant data and articulate a . . . rational connection between the facts found and the choice made"); *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 476–77 (7th Cir. 2009) (summarizing cost causation and beneficiary pays principles).
2. To the extent the Order's findings regarding state authority over retail cost allocation constitute final determinations, the Commission erred by finding that transparency will enable state regulators to sub-allocate Network Upgrade costs to retail customers "as they see fit," without considering that the PJM

Tariff fixes the charges each transmission customer must pay. Order at P 70. The Commission likewise erred in concluding that its approach "respect[s] the cooperative federalism approach established under the FPA," because it could assign to states a redistribution of FERC-set charges or could invite states to approve transmission rates that conflict with the PJM Tariff. *Id.* While a state utility commission may allocate charges paid by a particular Eligible Customer among retail ratepayers, states may be limited in whether and how they may re-allocate transmission charges among transmission customers. In this context, it is arbitrary and capricious and contrary to the FPA for the Commission to conclude that "state regulators can use [] information" about Network Upgrade costs "to protect residential and small commercial customers by incorporating those costs into the retail rates as they see fit given their authority to set rates for different classes of retail customers." Order at P 70. *See* 5 U.S.C. § 706(2)(A); *Motor Vehicle Mfrs. Ass'n. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.,* 463 U.S. 29, 43 (1983) (agency must "examine the relevant data and articulate a . . . rational connection between the facts found and the choice made"); *Mississippi Power & Light Co. v. Mississippi ex rel. Moore, et al.*, 487 U.S. 354, 371 (1988) ("States may not alter FERC-ordered allocations . . . by substituting their own determinations of what would be just and fair.").

To the extent the Commission concludes that either determination is preliminary rather than final, we reserve the right to raise these issues in response to compliance filings and at subsequent stages of this and related proceedings.

We further request clarification of the following:

3. We respectfully request that the Commission clarify the standard it will apply to assess cost-recovery agreements. We urge the Commission to adopt a straightforward test: agreements that do not protect transmission customers from cost shifts due to Network Upgrades for large loads are unjust and unreasonable. Just and reasonable cost-recovery agreements will "ensure that Eligible Customers . . . are ultimately responsible for . . . the costs of any needed Network Upgrades." Order at PP 70, 80.
4. We respectfully request that the Commission clarify that transmission owners must immediately credit revenue received under cost-recovery agreements to the transmission customers in the PJM Transmission Zone. Credits against the transmission owner's revenue requirement in a later year flow to whichever customers are in the Zone at that time and in that year's peak-load shares, not to the customers who bore the cost shift when the Network Upgrade entered the revenue requirement. To achieve the Commission's stated objective of ensuring that Eligible Customers, "as opposed to other transmission customers," are ultimately responsible for Network Upgrade costs, the Commission should confirm that transmission owners must immediately credit

all revenue collected under cost-recovery agreements to transmission customers. Order at PP 80, 84.

II. Illustration: The PJM transmission tariff spreads Network Upgrade costs to all transmission customers in the relevant PJM transmission zone.

Because our requests for rehearing are about the PJM Tariff, we illustrate how the tariff operates with a hypothetical about Network Upgrade costs. Our hypothetical application of the PJM Tariff illustrates its mechanics in raising transmission charges for existing transmission customers due to Network Upgrades needed to accommodate a new large load locating in their PJM Transmission Zone. The outcome, contrary to the Order's intent, is a cost shift to customers other than the large load causing the Network Upgrade.

Our hypothetical emphasizes that the total amount paid by each Eligible Customer for transmission service is fixed by the PJM Tariff.[13] The costs of Network Upgrades a transmission owner identifies as needed to accommodate load additions are added to the transmission owner's revenue requirement. The PJM Tariff spreads these costs across all transmission customers in the relevant transmission zone, including across state lines for multijurisdictional zones and to municipal and cooperative utilities located within the zone.[14]

[13] *See* Order at PP 25–26.

[14] *Id.*; *see also* Supplemental Comment of FirstEnergy Service Company, Docket No. RM26-4 (Jun. 5, 2026) ("Under the Federal Energy Regulatory Commission's current rules, when a utility constructs new high-voltage transmission lines and substations to connect a single new data center, the cost of that infrastructure is spread across all customers in the surrounding region. Ordinary families and small businesses see their electric bills rise to support facilities that were built to serve the new data center facilities.").

Importantly, our hypothetical below assumes for simplicity purposes that large-load Network Upgrades are designated by the transmission owners as *Supplemental Projects* under the PJM Tariff. Although outside the scope of our hypothetical, we highlight the Commission's understanding that Network Upgrades for large loads that are planned through PJM's Regional Transmission Expansion Plan as *baseline projects* are regionally cost-allocated pursuant to Schedule 12 of the PJM Tariff, which spreads their costs throughout PJM to transmission customers who neither benefit from nor caused those upgrades.[15] In such situations, the cost-shifting that occurs under our hypothetical increases significantly, as the hybrid cost allocation methodology for regional high-voltage baseline projects allocates 50 percent of these costs across the full PJM footprint on a load-ratio basis and the other 50 percent using its power-flow based DFAX methodology.[16]

Our hypothetical PJM Transmission Zone has an annual zonal transmission revenue requirement of $300 million per year. It has three Eligible Customers:[17]

1. DistributionCo is the transmission-owning utility serving provider-of-last-resort load in a retail-choice state with a coincident peak of 1,500 MW.

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[15] *See* Order at P 72 (noting that Network Upgrades for large loads may contribute to regional transmission needs that are addressed through the regional plan and regionally cost allocated); *id.* at PP 79, 81 (stating that transmission customers "neither caused the need for nor benefit commensurately from" Network Upgrades for large loads).

[16] MPC has pending before the Commission a complaint challenging PJM's hybrid cost allocation methodology, as impacted by large loads, for regional baseline projects, including the $22 billion in costs for the last three RTEP windows. *Md. Off. of People's Couns. v. PJM Interconnection, LLC*, Docket No. EL26-63-000.

[17] Note that the PJM Tariff uses the term Network Customer. To stay consistent with the Order, we use the term Eligible Customer. The Commission appears to treat them as equivalent. *See* Order at P 26 ("The demand charges for NITS, which are charged to the relevant Network Customer (i.e., the Eligible Customer) . . .").

2. RetailCo is a competitive retailer with a coincident peak of 1,000 MW.

3. Muni is a municipal utility with a coincident peak of 500 MW.

The NITS rate is computed by dividing the revenue requirement by the peak load of 3,000 MW (1,500 + 1,000 + 500), yielding $100,000 per MW-year.[18] While these figures are illustrative and fictitious, they are roughly in line with actual PJM annual zonal transmission revenue requirements and NITS rates.[19]

The Hypothetical PJM Transmission Zone:

	NITS Rate		Peak Demand		NITS Charges
DisCo	$100,000 / MW-yr	×	1,500 MW	=	$150 M
RetailCo	$100,000 / MW-yr	×	1,000 MW	=	$100 M
Muni	$100,000 / MW-yr	×	500 MW	=	$50 M

Next, we compute that the NITS rate increases by 5 percent for all three transmission customers when a 200 MW large load takes service.

A new 200 MW large load will purchase energy from RetailCo. This new large load will increase RetailCo's peak demand by 200 MW. The transmission owner identifies Network Upgrades of Supplemental Projects needed to accommodate the new 200 MW large load. Using utility industry estimates about costs of Network Upgrade

[18] *See* Order at P 26 (summarizing the methodology for computing the NITS rate and NITS charges for an Eligible Customer).
[19] In 2025, eight out of the 20 PJM Transmission Zones had annual zonal revenue requirements between $200 and $500 million. NITS rates in these Zones were lower than our $100,000 per MW-year hypothetical rate, although two Zones in this range had NITS rates above $80,000 per MW-year. Three other Zones, each of which has an annual revenue requirement exceeding $800 million, charge NITS rates higher than $100,000 per MW-year. The highest rate in the region exceeds $180,000. *See* PJM, Annual Transmission Revenue Requirements (ATRR) and Network Integration Transmission Service (NITS) Rates (Jun. 1, 2025).

costs in PJM, we assume that Network Upgrades cost $232 million for the 200 MW load.[20] The transmission owner designates these Network Upgrades as Supplemental Projects under the PJM Tariff.[21]

Consistent with current practice in PJM, the transmission owner adds the $232 million in Network Upgrade costs to its revenue requirement.[22] To convert the $232 million in total capital costs to an annual revenue requirement, we adopt utility industry estimates of weighted-average cost of capital, O&M, and depreciation that were filed in Docket No. RM26-4.[23] That yields a first-year revenue requirement of approximately $32.5 million.[24] We add $3.2 million as an income tax allowance.[25] The $232 million in Network Upgrade costs therefore adds $35.7 million to the annual revenue requirement in

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[20] *See* Supplemental Comments of WIRES to the Advanced Notice of Proposed Rulemaking, Docket No. RM26-4 (Mar. 30, 2026). At page 15, the whitepaper by Concentric Energy Advisors "assume[s] a large load's network upgrade cost contribution of approximately $1.16 million per MW," which "is derived by dividing approximately $23.3 billion of network upgrades identified on the PJM website as supporting large load interconnections by an estimated 20 GW of projected large load additions from 2025 to 2030." The report notes that Network Upgrade costs for an individual large load are generally not publicly available. *Id.*

[21] The whitepaper cited in the preceding note (the source of the $232 million figure) includes in its Network Upgrade cost estimate both regionally cost-allocated projects and Supplemental Projects assigned to a single PJM Transmission Zone. *Id.* at 22, n.21. For simplicity, we assume that all Network Upgrade costs are Supplemental Projects and therefore assigned to a single PJM Transmission Zone.

[22] Order at P 79 ("When a transmission owner constructs Network Upgrades to accommodate an Eligible Customer's request for transmission service on behalf of a large load, those transmission costs will be included in the transmission owner's transmission revenue requirement."); *see also supra* n. 14.

[23] Supplemental Comments of WIRES to the Advanced Notice of Proposed Rulemaking, Docket No. RM26-4 (Mar. 30, 2026) at 22 (using 8% as the weighted-average cost of capital (WACC), 20-year straight-line depreciation, and 1% of initial capital costs for annual O&M spending).

[24] The calculations are as follows:

- $232 M × 8% WACC = $18.6 M
- $232 M / 20 year straight-line depreciation = $11.6 M
- $232 M × 1% O&M = $2.3 M

[25] We assume a 50-50 debt-equity split. A 50-50 structure with 10.5% ROE and 5.5% cost of debt blends to 8% WACC (0.5 × 10.5 + 0.5 × 5.5 = 8.0%). The equity return = 50% × $232M × 10.5% = $12.2M. To compute the tax allowance, we assume a 21% federal income tax rate (t) multiply the equity return by [t ÷ (1 − t)], yielding a $3.2 M tax allowance.

the first year. For simplicity, we round up to $36 million. We compute the new annual zonal revenue requirement and NITS rate, as follows.[26]

New Annual Zonal Revenue Requirement =

$300 M (initial revenue requirement) + $36 M (Network Upgrades) = $336 M

New Zonal Peak Load =

3,000 MW (initial peak load) + 200 MW (new large load) = 3,200 MW

New NITS Rate =

$336 M / 3,200 MW = $105,000 per MW-Year.

The Hypothetical PJM Transmission Zone after adding a 200 MW Large Load:

	NITS Rate		Peak Demand		NITS Charges	Δ
DisCo	$105,000 / MW-yr	×	1,500 MW	=	$157.5 M	+$7.5 M
RetailCo	$105,000 / MW-yr	×	1,200 MW	=	$126 M	+$26 M
Muni	$105,000 / MW-yr	×	500 MW	=	$52.5 M	+$2.5 M

Because RetailCo's peak demand increases by 200 MW, it sees the largest increase in transmission charges. The remaining $10 million in annual revenue requirement increase is distributed between DisCo and Muni. Assuming the large load pays the NITS rate, it would be charged $21 million ($105,000 per MW-yr × 200 MW) by RetailCo. Other customers of RetailCo would be responsible for the remaining $5 million in higher charges billed to RetailCo under the PJM Tariff. Overall, 42 percent of

[26] *See* Order at P 26 (summarizing the methodology for computing the NITS rate and NITS charges for an Eligible Customer).

the increase in the annual zonal revenue requirement in the first year is allocated to entities other than the large load ($15 million / $36 million).

This hypothetical presents what we believe is the likely outcome in most situations. We acknowledge, however, that, theoretically, it is possible to construct an example in which a new customer, which is larger than the 200-MW new customer used in the hypothetical but has similar or lower upgrade costs, could decrease the zonal transmission rate. Such a situation is not likely because a larger customer is likely to need more substantial upgrades, causing higher zonal transmission rates, consistent with the hypothetical above. Regardless, in any situation where the cost of the upgrades for adding a new customer, relative to the size of that customer, results in the zonal transmission rate decreasing, that potential benefit would inure only to the customers in the *same* zone. If the upgrade is a Regional Transmission Expansion Plan ("RTEP") baseline project and costs are allocated to other zones not hosting the large load (as they are under the existing PJM Tariff), the revenue requirement for those non-host zones would increase, and unless those non-host zones have sufficient data center load growth themselves, the higher revenue requirement will increase rates for all customers in those zones.

III. Requests for Rehearing

A. By failing to remedy a transmission tariff that facilitates systemic and predictable cost shifts, the Commission has not met its obligation to ensure that transmission rates are just and reasonable.

The Order fails to remedy the unjust and unreasonable PJM Tariff. As illustrated above, the PJM Tariff inevitably shifts costs caused by transmission customers serving a large load to other transmission customers. The Order recognizes that these other transmission customers "neither caused the need for nor benefit commensurately from" those upgrades.[27] The PJM Tariff is therefore unjust and unreasonable because it is "guaranteed to overcharge" transmission customers by "shift[ing] a grossly disproportionate share of the[] costs" of Network Upgrades onto transmission customers who do not benefit commensurately from and do not cause those facilities.[28] It is arbitrary and capricious and contrary to the FPA for the Commission to conclude that it "has a duty to address the risk of cost shifting among transmission customers"[29] while failing to remedy the actual cost shifts the PJM Tariff guarantees due to Network Upgrades for large loads.[30]

We are concerned that the Commission's conclusion about the scope of its obligation under the FPA is a final determination, not a preliminary finding. In Paragraph 68 of the Order, the Commission asserts, without qualification, that it has a "duty" and a "responsibility" to "address the *risk* of cost shifting among transmission customers" in order to ensure just and reasonable transmission rates.[31] The Commission anchors this duty-scope determination between uncontroversial statements of black-letter law about its

[27] Order at PP 79, 81.
[28] *Ill. Commerce Comm'n v. FERC*, 756 F.3d 556, 561, 565 (7th Cir. 2014).
[29] Order at P 68 ("The Commission has a duty to address the risk of cost shifting among transmission customers that may result in unjust and unreasonable transmission rates."); *id.* ("To fulfill its responsibility to ensure that transmission rates are just and reasonable, the Commission must act to address the risk of cost shifting among transmission customers . . ..")
[30] Our request for rehearing targets cost shifts due to Network Upgrades designated as Supplemental Projects or that are included in the Regional Transmission Expansion Plan and cost allocated pursuant to Schedule 12. *See* Order at P 72 ("Network Upgrades needed to accommodate a new transmission service request or designation of new network load may be designated as local transmission facilities (i.e., Supplemental Projects) or contribute to regional transmission system needs and be addressed by a Required Transmission Enhancement in the RTEP.").
[31] Order at P 68 (emphasis added).

exclusive jurisdiction over transmission rates.[32] This juxtaposition could signal that the Commission treats its conclusion about the scope of its duty as no less settled than its uncontested jurisdictional authority.

In subsequent paragraphs, the Commission consistently frames the harm it has a duty to address as a risk, not a certainty.[33] The Commission erred by limiting its duty to mitigating the risk of cost shifting without explaining why its duty does not extend to eliminating actual cost shifts guaranteed by the PJM Tariff. As our hypothetical illustrates, the NITS rate increases for all transmission customers in the PJM Transmission Zone that host a Network Upgrade needed for a large load. Transmission charges increase for all customers regardless of whether the large load that caused the upgrade fails to materialize, breaches its agreement, or performs as anticipated. That cost shift is not mitigated by transparency measures or cost-recovery agreements aimed at revenue shortfalls. The Commission's silence on why its duty to ensure just and reasonable transmission rates does not reach actual, guaranteed cost shifts renders the Order arbitrary and capricious and inconsistent with the FPA.

Transmission rates must reflect the costs of providing transmission service.[34] While the Commission need not "allocate costs with exacting precision,"[35] the

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[32] *Id.*

[33] *See, e.g., id.* at P 77 ("may result in unjust and unreasonable rates"); at P 79 ("could result in cost shifting"); *id.* ("may lead to unjust and unreasonable increases"); *id.* ("If, however, the Eligible Customer takes less transmission service than anticipated . . . or fails to materialize at all . . .").

[34] *See Ala. Elec. Co-op., Inc. v. FERC*, 684 F.2d 20, 27–28 (D.C. Cir. 1982); *K N Energy, Inc. v. FERC,* 968 F.2d 1295, 1300 (D.C. Cir. 1992).

[35] *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1369 (D.C. Cir. 2004).

Commission's allocation must be reasonably and adequately explained.[36] The Commission cannot look the other way when a transmission tariff embeds cross subsidies for the benefit of particular customers.[37] The Order fails to explain why the Commission has concluded that it "has a duty" to address certain *risks* of cost shifts but no obligation to remedy actual, inevitable, and significant cost shifts that are fixed by the PJM Tariff.[38]

The Commission's longstanding approval of rolled-in pricing for a transmission owner's integrated local network is not relevant here. In general, all transmission customers in a particular PJM Transmission Zone pay for local Network Upgrades because they all "receive the benefits that are inherent in [ ] an integrated system."[39] In the Order, the Commission distinguished Network Upgrades for large loads from other local projects, concluding that transmission customers do not cause upgrades for large loads and do not benefit commensurately from those upgrades and therefore should not pay for them.[40] Having found that cost allocation of Network Upgrades for large loads must consider who caused and benefits from those upgrades, the Commission must find that the PJM Tariff is unjust and unreasonable because it allocates those costs on a

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[36] *See Pac. Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1322 (D.C. Cir. 2004); *Sithe/Indep. Power Partners, L.P. v. FERC*, 285 F.3d 1, 4–5 (D.C. Cir. 2002); *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 477–78; *Ill. Commerce Comm'n*, 756 F.3d at 565.
[37] *See Elec. Consumers Res. Council v. FERC*, 747 F.2d 1511, 1516 (D.C. Cir. 1984) (finding that the Commission did not "even attempt[] to explain" the cross-subsidies embedded in an approved rate).
[38] *See* Order at P 68.
[39] *Otter Tail Power Co.*, 12 FERC ¶ 61,169, 61,420 (1980).
[40] *See* Order at PP 79, 81 (citing *Midwest ISO Transmission Owners*, 373 F.3d at1368; *Ill. Commerce Comm'n*, 576 F.3d at 476).

postage stamp basis without considering that the benefits accrue to the large loads that caused those Network Upgrades.[41]

Our argument is not backwards looking and does not cherry pick a "small selection of transmission projects."[42] Unlike the retrospective complaint the Commission addressed in *Kentucky Public Service Commission*, our request is forward looking and targets cost shifts that are hardwired into the PJM Tariff. These cost shifts are systemic, foreseeable, unending, and significant, and likely to grow.[43] And unlike in that proceeding, the Commission has now itself found that non-large load transmission customers neither cause nor benefit commensurately from Network Upgrades for large loads. Having made that finding, the Commission cannot maintain a transmission tariff that ignores it.

"Here we're talking about the allocation of the huge costs of building [ ] transmission lines that do not provide uniform benefits to all the [customers] in the [Zone] in which the lines are built."[44] The PJM Tariff is unjust and unreasonable because it arbitrarily spreads those costs to all transmission customers on a postage stamp basis.[45]

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[41] *See Ill. Commerce Comm'n*, 576 F.3d at 475–76; *Ill. Commerce Comm'n*, 756 F.3d at 561–65.
[42] *Ky. Pub. Serv. Comm'n v. AEP, et al.*, 193 FERC ¶ 61,110, P 57 (2025).
[43] *See* Order at P 6 (noting "unprecedented current and expected growth of large loads seeking to interconnect to the transmission system"); *id.* at PP 8–9 (discussing large loads in PJM).
[44] *Ill. Commerce Comm'n*, 756 F.3d at 559.
[45] *See Ill. Commerce Comm'n*, 576 F.3d at 475–76; *Ill. Commerce Comm'n*, 756 F.3d at 561–65.

B. The Commission failed to rationally connect Network Upgrade cost transparency to state authority over retail cost allocation and arbitrarily and capriciously ignored the PJM Tariff's legal and practical limitations.

Rather than remedying unjust and unreasonable cost shifts embedded in the PJM Tariff, the Commission concludes that states can "sub-allocate" transmission charges to "appropriate retail customers" who are the cost causers and beneficiaries of the relevant transmission spending.[46] As just discussed, the PJM Tariff is unjust and unreasonable regardless of how transmission costs are allocated by states. The Commission offers no limiting principle that might prevent it from ignoring transmission cost shifts entirely, based on the premise that states can address *any* deficiency in the PJM Tariff through retail cost allocation.[47] We respectfully request rehearing on the Commission's conclusion that its remedy "respect[s] the cooperative federalism approach established under the FPA."[48]

We also respectfully request rehearing on the Commission's finding that transparency requirements in the PJM Tariff about Network Upgrade costs will allow states to "sub-allocate" transmission charges "as they see fit."[49] To the extent this reflects a final conclusion, the Commission's finding is arbitrary and capricious and contrary to the FPA because it ignores substantial legal and practical obstacles that may prevent states from protecting retail ratepayers from the costs of Network Upgrades due to large

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[46] Order at P 70.
[47] *Fed. Power Comm'n v. Texaco*, 417 U.S. 380, 394 (1974) (stating that the Federal Power Commission may not "simply choose not to regulate rates.").
[48] Order at P 70.
[49] *Id.*

loads. Transmission owners and customers have attacked state efforts to re-allocate transmission charges set by the PJM Tariff as contrary to the FPA and Commission orders.[50] If a state can overcome threshold legal objections, it can only offer retail ratepayers partial protection. Network Upgrade costs are spread regionally, across state lines zonally, and to municipal and cooperative utilities. A state cannot reach beyond its borders to reallocate transmission charges billed to transmission customers in other states.

We are concerned that the Order's relevant determinations could be construed as not preliminary. In Paragraph 70, the Commission finds that a "benefit" of additional transparency about Network Upgrades is that states "can use that information to protect residential and small commercial customers by incorporating those costs into the retail rates as they see fit . . ."[51] This determination builds upon Commission findings about "aspects of the process for integrating large loads onto the transmission system [that] fall squarely within the Commission's exclusive jurisdiction" and about state authority over retail cost allocation.[52] Request for rehearing is appropriate now because the Commission's determinations may be construed as not preliminary, and they fail to consider how its orders and the PJM Tariff constrain state authority to "sub-allocate" transmission charges.

In PJM, retail choice states have adopted two models for recovery of transmission charges at retail. State efforts to sub-allocate transmission charges in a way that departs

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[50] *See*, *e.g.*, Reply Brief of Commonwealth Edison Co., Ill. Com. Comm'n Docket Nos. 25-0677, 25-0679 (Nov. 18, 2025) at 28-37.
[51] Order at P 70.
[52] Order at PP 45–49, 69.

from the PJM Tariff have been challenged under both models. It is arbitrary and capricious for the Commission to conclude that states may sub-allocate charges without considering how the PJM Tariff affects retail allocation.

Under the first model of transmission cost recovery at retail, each retail supplier separately pays the charges assessed by the PJM Tariff. Returning to our hypothetical, this model requires each of the three transmission customers to pay its own NITS charges.

The Hypothetical PJM Transmission Zone after adding a 200 MW Large Load:

	NITS Rate		Peak Demand		NITS Charges	Δ
DisCo	$105,000 / MW-yr	×	1,500 MW	=	$157.5 M	**+$7.5 M**
RetailCo	$105,000 / MW-yr	×	1,200 MW	=	$126 M	**+$26 M**
Muni	$105,000 / MW-yr	×	500 MW	=	$52.5 M	**+$2.5 M**

Assuming that a state's utility commission has retail cost allocation authority over each of the three transmission customers, the state commission could sub-allocate charges paid by a particular transmission customer among retail ratepayers taking service from that transmission customer.

In an ongoing proceeding before the Illinois Commerce Commission, transmission owner Commonwealth Edison (an Exelon subsidiary), however, has argued that the Illinois Commerce Commission may not "reallocate transmission costs between ComEd and [competitive retailers] without effectively attacking the underlying

FERC-jurisdictional rate design."[53] ComEd argues that "the way that transmission costs are allocated between transmission customers is a question subject to FERC's exclusive jurisdiction" and therefore cannot be modified through sub-allocation by a state.[54] Under ComEd's legal theory, Illinois is powerless to remedy the transmission costs shifted to Disco and Muni by the PJM Tariff.

ComEd further argues that Illinois law prevents the Illinois regulators from sub-allocating transmission costs paid by a competitive supplier.[55] Thus, under ComEd's legal arguments, *all* retail ratepayers in ComEd's PJM Transmission Zone taking service from a competitive supplier will immediately face higher transmission costs due to Network Upgrades for large loads, and the state will be powerless to protect them.

Delaware, Maryland, New Jersey, Pennsylvania, and the District of Columbia are retail-choice jurisdictions that have adopted similar approaches to retail transmission cost recovery. Other transmission owners have filed arguments that echo ComEd's preemption claims.[56]

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[53] Commonwealth Edison Co., Response to the Joint Non-Governmental Organizations' Motion for Clarification, Docket Nos. 25-0677, 25-0679 (Apr. 24, 2026) at 6.
[54] *Id.* at 4.
[55] *Id.* at 4–5 (citing various provisions of Illinois law about ICC authority over competitive retailers).
[56] *See, e.g.,* Joint Comments of FirstEnergy Pennsylvania Electric Co., et al., Pa. Pub. Util. Comm'n Docket No. M-2025-3054271 (Dec. 22, 2025) at 8–9 ("the Commission is preempted from directing what cost-allocation method or ratemaking approach should be used for the costs of such [transmission] facilities or upgrades to such facilities."); Comments of the Energy Association of Pennsylvania (EAP), Pa. Pub. Util. Comm'n Docket No. M-2025-3054271 (Dec. 22, 2025) at 3–4, 9 ("Transmission cost allocation, network upgrade determinations, and rate recovery mechanisms are governed by FERC-approved tariffs and established federal precedent, not through the PUC. . . . Pennsylvania EDCs and their affiliated transmission companies cannot implement cost allocation methodologies that conflict with FERC-approved tariffs and orders.") (EAP's members include several PJM Transmission Owners).

Under the second model, a transmission owner recovers transmission charges from all of its retail distribution ratepayers through a non-bypassable rider, including ratepayers served by competitive suppliers. Ohio has adopted this model. In 2015, the Public Utilities Commission of Ohio ("PUCO") approved a non-bypassable rider filed by transmission owner AEP that recovers transmission costs for all of its retail ratepayers, including ratepayers who are served by a competitive supplier.[57] A state statute authorizes PUCO to approve such a rider.[58]

This model, too, has been attacked as inconsistent with the PJM Tariff. Shortly after the PUCO approved the rider, an alliance of Ohio industrial consumers filed a complaint at this Commission arguing that PUCO's approval is inconsistent with the PJM Tariff and Order No. 888.[59] Because AEP's non-bypassable rider used different billing determinants than the PJM Tariff, they argued that PUCO's order forces customers to obtain transmission services at rates, terms, and conditions different than those provided by the PJM Tariff.[60] The industrial consumers claimed that because this Commission asserted jurisdiction over "retail transmission in interstate commerce," PUCO may not approve different rates, terms, and conditions than those offered by the PJM Tariff without Commission authorization.[61]

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[57] *See In re Application of Ohio Power Co.*, 180 Ohio St. 3d 556, 558–59 (2025) (summarizing history of AEP's rider).
[58] *Id.* at 561 (pointing to OHIO REV. CODE ANN. § 4928.05).
[59] Complaint of the Industrial Energy Users-Ohio, Docket No. EL16-10 (Nov. 15, 2015).
[60] *Id.* at 3.
[61] *Id.* at 7 (quoting Order No. 888, *Promoting Wholesale Competition Through Nondiscriminatory Transmission Services by Public Utilities*, 61 Fed. Reg. 21,540, 21,625 (May 10, 1996)); *see also* Order at P 45 (reiterating the Commission has exclusive jurisdiction over unbundled retail transmission service).

Six weeks after it filed the complaint, the industrial consumers moved for voluntary dismissal based on an unspecified "change in circumstances."[62] The Office of the Ohio Consumers' Counsel urged the Commission to reject that request, claiming that the complaint articulated a "clear potential for Ohio retail customers to either pay twice for transmission services in PJM or to be denied direct access to PJM's transmission system" and that dismissal may lead Ohio ratepayers to "pay more for transmission services than the filed rate authorized under the PJM Tariff."[63] Before any other parties filed substantive responses, the Commission granted the industrial consumers' request for voluntary dismissal.[64] The legal questions raised by the complaint remain unresolved.

Even if the second model for retail transmission cost allocation survives legal attack, the PJM Tariff prevents state regulators from sub-allocating transmission charges "as they see fit."[65] The Order recognizes that Network Upgrades for large loads include projects that are included in PJM's RTEP and regionally cost allocated pursuant to Schedule 12 of the PJM Tariff.[66] Schedule 12 distributes costs of an individual project across multiple PJM Transmission Zones. A state cannot reach beyond its borders to sub-allocate charges that the PJM Tariff assigns to transmission customers in other states.[67]

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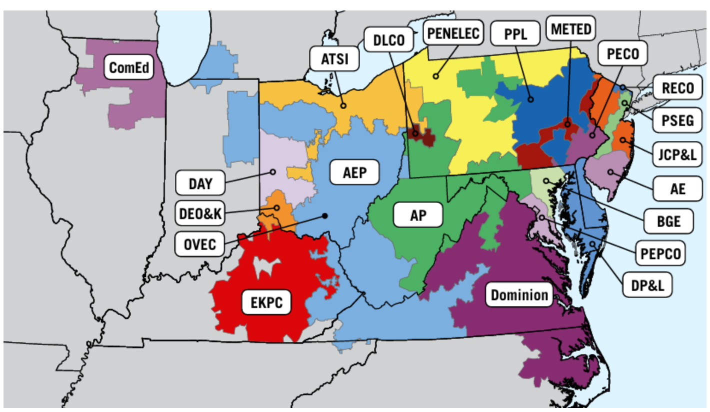
[62] Motion to Dismiss Complaint Without Prejudice, Docket No. EL16-10 (Dec. 22, 2015).
[63] Response to Industrial Energy Users-Ohio's Motion to Dismiss Complaint by the Office of the Ohio Consumers' Counsel, Docket No. EL16-10 (Jan. 6, 2016) at 3.
[64] *Industrial Energy Users-Ohio v. The Ohio Power Company and PJM*, 154 FERC ¶ 61,047 (2016) (letter order).
[65] Order at P 70.
[66] Order at P 72.
[67] *See, e.g., Miss. Power & Light Co. v. Miss. ex rel. Moore*, 487 U.S. 354, 371 (1988) ("States may not alter FERC-ordered allocations . . . by substituting their own determinations of what would be just and fair.").

Similarly, a state cannot protect ratepayers from costs of Network Upgrades designated as Supplemental Projects in a PJM Transmission Zone that spans more than one state. It appears that the following seven zones include substantial territories in at least two states: American Electric Power (AEP), Allegheny Power Systems (AP), American Transmission Systems, Inc. (ATSI), Delmarva Power & Light (DP&L), Dominion, Duke Energy Ohio and Kentucky (DEO&K), and Potomac Electric Power (PEPCO). These seven multi-state Zones comprise 52 percent of PJM's peak load.[68] Two other Zones (EKPC and JCP&L) have small protrusions into a second state. Because large loads occupy small geographic footprints, even these modest extensions into a second state could enable significant cost shifts that a state commission would be incapable of remedying. Thus, across more than half of PJM, retail sub-allocation cannot undo cost shifts that have already occurred among transmission customers through the PJM Tariff.



Source: PJM

[68] *See* PJM Network Service Peak Loads (NSPL) for 2026. Note that we did not include EKPC and JCP&L because each is nearly entirely within a single state. That said, there could be significant loads in the small portion of the zone in a second state, which could exacerbate interstate cost shifts that a state could not address.

In addition, states may be unable to re-allocate charges assessed through the PJM Tariff on municipal or cooperative utilities. For instance, the Ohio model only reaches retail ratepayers who take distribution service from the utility subject to PUCO's rate-regulation authority. Municipal and cooperative utilities are outside that authority.

IV. Requests for Clarification

A. The Commission should clarify that a just and reasonable cost-recovery agreement requires the Eligible Customer to pay the full incremental cost of Network Upgrades needed to accommodate the large load.

The Order preliminarily finds that a cost-recovery agreement should be based on the level of jurisdictional transmission service requested by the Eligible Customer on behalf of a large load.[69] The Commission also finds that such Eligible Customers should be "ultimately responsible for the costs incurred to provide [them with requested] transmission service, including the costs of any needed Network Upgrades."[70] These two measures will diverge when the cost of Network Upgrades exceeds the NITS charges attributable to the large load's forecasted demand.

Our hypothetical illustrates the gap between the two approaches. A cost-recovery agreement that requires RetailCo to pay only the NITS rate based on the large load's forecasted demand will yield $21 million in the first year ($105,000 NITS rate × 200 MW demand). That falls $15 million short of the $36 million increase in the annual zonal revenue requirement caused by the Network Upgrades the transmission owner identified

[69] Order at P 83.
[70] Order at P 80; *see also* PP 66, 77.

to accommodate the large load. Under such an agreement, the other transmission customers in the zone and RetailCo's other retail customers absorb the $15 million difference in the first year alone, with comparable shortfalls recurring for the life of the assets.

Because the Commission identified two approaches to cost-recovery agreements, we respectfully request that the Commission clarify that just and reasonable cost-recovery agreements will require Eligible Customers taking service on behalf of a large load to pay the full incremental cost of Network Upgrades. Transmission customers will bear the costs of any delay in clarifying the governing standard.

B. The Commission should clarify that transmission owners must immediately credit revenue received under cost-recovery agreements to the other transmission customers in the zone.

Collection from the large-load cost-causer and protection of the non-causers are two separate issues, and a cost-recovery agreement only addresses the first. The Commission's stated objective is to ensure that Eligible Customers serving a large load, "as opposed to other transmission customers . . . are ultimately responsible for . . . the costs of any needed Network Upgrades."[71] A remedy that fixes only what the Eligible Customer must pay, without requiring those payments to flow to the customers onto whom the costs were shifted, cannot achieve that objective.

The Order says that the Commission "expect[s]" that payments "will be appropriately credited toward transmission owners' transmission revenue requirements

[71] Order at P 80.

consistent with the Commission's cost-of-service regulations."[72] Crediting payments against the revenue requirement prevents the transmission owner from over-collecting, but it does not, by itself, protect other transmission customers from cost shifts. Only immediate crediting of the full incremental costs will prevent transmission customers from subsidizing the large load. Any later credit from a cost recovery agreement payment, by contrast, would reduce the revenue requirement, and thus the NITS rate, in whatever future year the payment is received and credited, divided across the zonal peak load in that year, which may include different customers, different peak-demand shares, and a new revenue requirement that has changed due to unrelated factors.

We therefore respectfully request that the Commission clarify that transmission owners must immediately credit all revenue received under cost-recovery agreements to transmission customers in the relevant zone. Transmission customers will bear the costs of any delay in clarifying the governing standard.

CONCLUSION

The Order correctly finds that the PJM Tariff shifts the costs of Network Upgrades for large loads to transmission customers that neither caused nor benefit from them. We respectfully request that the Commission grant rehearing and clarification, as discussed herein, to protect transmission customers as soon as possible from unjust and unreasonable cost shifts.

[*signature page follows*]

[72] Order at P 84.

Respectfully submitted,

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Certificate of Service

Pursuant to Rules 206 and Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.206 and 18 C.F.R. § 2010, it is hereby certified that, on this 17th day of July 2026, a copy of the foregoing has been served upon the Parties and Intervenors in this Proceeding.

Respectfully submitted,

/s/ Philip L. Sussler
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