

STATEMENTS

E-11: Chairman Christie's Concurrence in PJM/Transource, ER25-612

April 17, 2025

Docket No. [ER25-612-000](#)

In December 2023, I wrote a concurrence to a seemingly routine letter order closing the long running PATH transmission project.^[1] That was the transmission project for which consumers in PJM paid approximately a quarter billion dollars without a single state ever approving a certificate of public convenience and necessity (CPCN), nor a single ounce of steel ever going into the ground. I said in that concurrence that the letter order may not seem noteworthy, but “. . . as Willy Loman's wife said in *Death of a Salesman*, ‘attention must be paid.’”^[2] As the debate continues over whether to grant to transmission owners who joined PJM or other RTOs/ISOs a *perpetual* adder of 50 or more basis points to their return on equity (profit) – which flows right into hard-pressed consumers' power bills – attention must be paid to this seemingly routine order as well.

While I agree that PJM's waiver request in this matter is moot, what is remarkable is that this matter is even before us. This specific transmission project, being developed by Transource, was denied a certificate of public convenience and necessity (CPCN) by the Pennsylvania Public Utility Commission (PA PUC) *nearly four years ago*. After conducting its own proceeding under its state laws and considering the evidence, the PA PUC found the project was not needed to serve consumers in Pennsylvania.^[3] Not willing to accept the considered decision of the state utility commission of Pennsylvania, PJM and Transource then appealed the decision of the PA PUC to federal court.

In their federal court filings, PJM and Transource argue that the mere fact that PJM planned a project that was put into the PJM regional transmission plan (RTEP) was an act sufficient to preempt a state's sovereign police power authority to conduct a CPCN proceeding and to determine whether the project was needed to serve its own consumers.^[4] After all, *Pennsylvania consumers will pay* for the project under PJM's cost allocation formula.

The claim that, because PJM and other RTOs are federally regulated, the inclusion of a PJM-planned transmission project in PJM's RTEP effectively pre-empts a state's inherent police power authority to approve that and other utility projects within its borders is, frankly, outrageous. FERC Order No. 1000, which set up the entire regional planning regime under which PJM and other RTOs now operate, said the opposite.^[5]

Some history is quite relevant here:

In 2004, Virginia's largest utility, Dominion Virginia Power, received the approval it sought from

the Virginia State Corporation Commission (Virginia Commission or SCC) to join PJM.^[6] In the SCC order approving that application to join PJM, there was incorporated a Partial Stipulation agreed to by, among other parties, *PJM itself*. That Partial Stipulation included the following provision:

Nothing in this Partial Stipulation or the SCC's approval thereof shall be deemed to alter in any way the existing obligation of Dominion Virginia Power under the laws of the Commonwealth of Virginia to seek a certificate of public convenience and necessity prior to commencing to construct an electric generation facility or transmission facility.^[7]

But there's more history, much more:

Earlier that same year, Appalachian Power Company doing business as American Electric Power – Virginia (AEP-VA) also sought and received approval from the Virginia Commission to join PJM.^[8] As with Dominion's order of approval, AEP's approval order incorporated a Stipulation that included the following provision:

Nothing in this Stipulation or the SCC's approval thereof shall be deemed to alter in any way the existing obligation of Appalachian [AEP-VA] under the laws of the Commonwealth of Virginia to seek a certificate of public convenience and necessity prior to commencing to construct an electric generation facility or transmission facilities.^[9]

AEP is one of the owners of Transource.^[10]

Today both Transource Pennsylvania, majority owned by AEP, and PJM, are arguing in federal court that the Commonwealth of Pennsylvania – and by logical extension *all states including the Commonwealth of Virginia* – are *pre-empted* from exercising their CPCN laws to approve – or reject – a project once that project has been planned by PJM for its regional plan. Should AEP and PJM succeed in persuading a federal court that the mere selection of a transmission project planned by PJM acts to pre-empt the states' CPCN laws – a position vigorously opposed by all the states as expressed by the National Association of Regulatory State Commissioners (NARUC)^[11] – such a ruling will likely be a Pyrrhic victory of monumental proportions. Such an outcome will tell the states, which retain the authority under their inherent police powers to decide whether to allow their utilities to join, not join, or leave RTOs, that the rules of the game have been changed radically after the fact – without the states' agreement and, as the history recounted herein shows, *contrary to earlier pledges to respect state laws*. So perhaps state perspectives on RTO membership for their utilities should be reconsidered.

Further, under this Commission's formula rate structure, Transource, like any other transmission developer that has been awarded the Construction Work In Progress (CWIP) incentive, can collect costs from consumers just as soon as the project goes into the RTEP, without regard to

whether a state commission has approved the project or, in this case, even if a state commission has actually considered and *rejected* the CPCN.^[12]

So this case is redolent of the infamous PATH case referenced in paragraph 1 above. As I wrote in my concurrence to the December 2023 letter order, in that case the developers collected roughly a *quarter billion dollars* from consumers through FERC's formula rates – rates that under FERC policy come with a presumption of prudence – and which were inflated by the many incentives (*i.e.*, “FERC candy”) that FERC showered on the developers of PATH.^[13]

More history: AEP was one of the developers of PATH.^[14]

As transmission costs rise rapidly in PJM, as well as in all other RTOs, it is past time for this Commission to fulfill its duty to ensure “just and reasonable rates” under the Federal Power Act by protecting consumers from the costs of FERC's own policies that are inflating those rapidly rising transmission costs. And to be more specific, as the debate continues over whether to give transmission developers/owners a perpetual ROE adder for joining an RTO, the history recited herein is extremely relevant. History matters.

For these reasons, I respectfully concur.

^[1] See *Potomac-Appalachian Transmission Highline, LLC*, 185 FERC ¶ 61,198 (2023) (Christie, Comm'r, concurring), <https://www.ferc.gov/news-events/news/e-4-commissioner-christies-concurrence-letter-order-approving-path-settlement-er12>.

^[2] *Id.* P 1 (emphasis in original).

^[3] See, *e.g.*, <https://www.puc.pa.gov/press-release/2021/puc-denies-transource-applications-for-high-voltage-transmission-line-projects-in-franklin-and-york-counties>.

^[4] See, *e.g.*, Brief of Appellee Transource Pennsylvania, LLC. (Transource Third Circuit Brief) at 3-7 and *passim*, *Steven DeFrank, et al., v. Transource Pennsylvania, LLC., No. 24-1045* (3d Cir. July 10, 2024); Brief for Amicus Curiae PJM Interconnection, L.L.C. Supporting Appellee [Transource] and Supporting Affirmance at 2-3 and *passim*, *Steven DeFrank, et al., v. Transource Pennsylvania, LLC., No. 24-1045* (3d Cir. July 17, 2024).

^[5] See, *e.g.*, *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051, at PP 227, 253 n.231, 287 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, at P 342, *order on reh'g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

^[6] *Commonwealth of Va. ex rel. State Corp. Comm'n*, Case No. PUE-2000-00551 (Nov. 10, 2004). I participated in the proceeding as a member of the Virginia Commission.

^[7] *Id.* at Partial Stipulation No. 6 (emphases added).

[8] *Commonwealth of Va. ex rel. State Corp. Comm’n*, Case No. PUE-2000-00550 (Aug. 30, 2004). I also participated in this proceeding as a member of the Virginia Commission.

[9] *Id.* at Stipulation No. 7 (emphasis added). AEP’s explicit agreement to this Stipulation was signed by its counsel in the case. PJM also signed and explicitly agreed to this Stipulation. See signature sheets attached to Stipulation.

[10] See, e.g., Transource Third Circuit Brief at i (“Transource Pennsylvania, LLC is owned 100% by Transource Energy, LLC. Transource Energy, LLC is owned 86.5% by AEP Transmission Holding Company, LLC AEP Transmission Holding Company, LLC is a wholly owned subsidiary of American Electric Power Company, Inc., which is a publicly traded company.”); see *RPC Power, LLC*, 188 FERC ¶ 61,123, at P 17 n.19 (2024); *Transource Pa., LLC*, 184 FERC ¶ 61,091, at P 9 (2023).

[11] See, e.g., Brief of Amicus Curiae the National Association of Regulatory Utility Commissioners Supporting Defendants-Appellants Petition Seeking Reversal, Steven DeFrank, et al., v. Transource Pennsylvania, LLC., No. 24-1045 (3d Cir. May 17, 2024).

[12] I note that Transource Pennsylvania, the specific portion of the Transource project that was rejected by the PA PUC, includes CWIP in recoverable rate base. As PJM notes in this docket, on September 22, 2021, the PJM Board endorsed the recommendation of PJM to suspend the project and that PJM reminded the developers that expenditures and obligations related to the project “should only be incurred as they are reasonably necessary. . . .” Waiver Request at 4-5; PJM December 17, 2024 Answer at 6 (citation omitted). At the end of 2021, Transource Pennsylvania’s April 14, 2022 FERC Form 1 showed \$77.9 million in CWIP (Account 107) for this project. April 14, 2022 Transource Pennsylvania FERC Form 1 Year End 2021/Q4 at 110-111, 216. In its April 8, 2025 FERC Form 1 filing made just 9 days ago, that figure as of the end of 2024 had risen to \$93.3 million (Account 107). April 8, 2025 Transource Pennsylvania FERC Form 1 Year End 2024/Q4 at 108-109, 216.

[13] See *Potomac-Appalachian Transmission Highline, LLC*, 185 FERC ¶ 61,198 (2023) (Christie, Comm’r, concurring at PP 2-3), <https://www.ferc.gov/news-events/news/e-4-commissioner-christies-concurrence-letter-order-approving-path-settlement-er12>.

[14] *E.g., id.* P 2 n.2.

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