

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection LLC

Docket No. EL05-121-006

**MOTION FOR LATE INTERVENTION OF THE
ELECTRICITY CONSUMERS RESOURCE COUNCIL (“ELCON”)**

Pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission’s Rules of Practice and Procedure, and the Commission’s January 21, 2010 Order Establishing Paper Hearing Procedure (the “January 21 Order”), the Electricity Consumers Resource Council (“ELCON”) hereby moves for late intervention in the above-captioned proceeding. The remand by the U.S. Court of Appeals for the Seventh Circuit and the corresponding January 21 Order raise new issues in this proceeding that are likely to set precedents respecting the nature and amount of evidence needed to support allocation methods for new transmission capacity in PJM and other regions, particularly related to the critically important issue of reliability. In view of the current significance of this issue in the context of efforts to bring renewable supplies to load, and because ELCON’s participation will not disrupt the proceeding or burden the parties, ELCON’s late intervention would be appropriate and consistent with the Commission’s rules governing late intervention.

Description and Standing of ELCON

ELCON is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. As operators of hundreds of major facilities and major consumers of electricity, ELCON members are significantly impacted by charges imposed for the cost of new transmission. Many ELCON members operate major facilities and are consumers of electricity in the footprint of the PJM region and therefore will be directly affected by the outcome of this proceeding.

Basis for ELCON's Late Intervention

ELCON's late intervention in this proceeding would be consistent with Rule 214(b)(3) and (d).

First, the impact of the Seventh Circuit decision, as reflected in the Commission's expansive inquiries posed in the January 21 Order, gives rise to good cause for filing at this time. This proceeding has entered an unanticipated phase, with a new substantive focus on the nature and amount of evidence required to support alleged reliability benefits, that will impact this and future proceedings on the important issue of transmission cost allocation in PJM and other regions. These issues are discussed further below.

Second, permitting ELCON's intervention will not disrupt the proceeding. ELCON does not offer new comments now but rather will follow the same timeline to which other parties are subject under the January 21 Order, with comments due 45 days after PJM's forthcoming filing.¹

Third, ELCON's interests are not adequately represented by other parties to this proceeding. ELCON's members are substantial industrial users of transmission not only in PJM

¹ ELCON further notes that this motion is filed within 15 days of the January 21 Order which initiated the current, new phase of this proceeding.

but also in other regions. ELCON has significant expertise in these matters having participated extensively in other Commission proceedings addressing cost allocation and renewable resources.

Fourth, ELCON's intervention would not prejudice or impose burdens on existing parties. ELCON accepts the existing record of the proceeding and seeks merely the opportunity to submit comments in accordance with the timeline of the January 21 Order.

In particular, this new phase of this proceeding arose from Seventh Circuit's decision overturning the Commission's prior order in this docket and its October 28, 2009 remand to the Commission. The court's decision provided new guidance on the nature and degree of evidence required to support transmission cost allocation methodologies and therefore changed the subject matter and scope of this proceeding in a fashion that was not previously anticipated. The Seventh Circuit found:

FERC is not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities from which its members derive no benefits, or benefits that are trivial in relation to the costs sought to be shifted to its members. "[A]ll approved rates [must] reflect to some degree the costs actually caused by the customer who must pay them." [citations omitted]. Not surprisingly, we evaluate compliance with this unremarkable principle by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.²

The Seventh Circuit determined that the Commission, in implementing this standard, needed to carefully support its conclusions respecting the reliability benefits of new transmission, potentially including "ballpark estimates" of those benefits. In particular, the court focused on the need to "compare the reliability of a 500 kV line to that of a 345 kV line."³

The significant new demands imposed by the Seventh Circuit decision are reflected in the substantial, broad ranging questions posed to PJM and other parties in the January 21 Order,

² 576 F.3d 470 at 476.

³ *Id.* at 476-77.

including: how PJM determines the relative priorities of resolving numerous priority issues with one project; the anticipated reliability requirements addressed by the PJM RTEP; the differences in regional benefits between 500 kV and lower voltage facilities; the relevant types of benefits that transmission expansions that operate at or above 500 kV; and whether the reliability, economic, or other benefits of transmission expansions are greater for customers located in areas that import electricity than for customers located in areas that export electricity.

These newly raised issues are significant both for the current PJM matter and for similar transmission cost allocation issues that are being and will be raised in other regions.

ELCON's Comments

As noted above, in order not to burden this proceeding ELCON does not offer any substantive comments at this time. Rather, if its motion for late intervention is granted, ELCON would submit comments in accordance with the timeline set out in the January 21 Order -- within 45 days of PJM's forthcoming filing -- just as would any other party to this proceeding.

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In consideration of the foregoing, ELCON respectfully requests that the Commission grant its Motion for Late Intervention in this proceeding.

Notices and Communications

Notices and communications with regard to these proceedings should be addressed to:

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Respectfully submitted,

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Dated: February 5, 2010

Certificate of Service

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary of this proceeding.

Dated at Washington, D.C.: February 5, 2010

/s/ W. Richard Bidstrup
W. Richard Bidstrup