

FERC Greenlights PJM and New Jersey Offshore Wind Transmission Agreement

The Federal Energy Regulatory Commission (FERC), on April 14, 2022, accepted a "State Agreement Approach" Agreement (SAA Agreement) between PJM Interconnection, LLC (PJM) and the New Jersey Board of Public Utilities (NJ Board) effective April 15, 2022. This agreement will advance New Jersey's offshore wind generation procurement goals by creating a path to address necessary onshore and offshore transmission upgrades. Under the SAA Agreement, PJM will evaluate and develop recommendations on transmission project proposals submitted in a competitive process; the NJ Board will ultimately determine whether to move forward with any transmission upgrades, with costs of such projects allocated to New Jersey customers. The SAA Agreement is not without controversy, however, particularly regarding whether costs could be allocated to customers outside New Jersey in the future. The April 14 order garnered one dissent as well as a concurrence as a result.

On November 18, 2020, the New Jersey Board issued an order requesting that PJM open a competitive proposal window during PJM's regional transmission expansion planning process (RTEP) to solicit transmission proposals to interconnect and ensure the deliverability of 7,500 MW of offshore wind generation by 2035 in the state of New Jersey. In so doing, New Jersey became the first state to exercise the State Agreement Approach under RTEP, which allows states to request that PJM develop transmission that would assist in implementing state public policy goals. If a state triggers the State Agreement Approach and selects a transmission project to be built, the costs of that project are recovered from customers in those states. As a result of New Jersey triggering the State Agreement Approach, PJM initiated (1) a competitive solicitation and received 80 proposals focused on solutions from upgrades to the existing grid, (2) extension of the onshore grid closer to offshore locations, (3) optimal landfall approaches to reduce environmental effects, and (4) interconnections between offshore substations to onshore infrastructure.

Subsequently, PJM filed the SAA Agreement that addresses PJM's and New Jersey's rights and responsibilities with respect to PJM's evaluation of proposals received, New Jersey's decision whether to select any proposals for construction, as well as New Jersey's right to assign the capacity on constructed projects to offshore wind generators or other public policy resources chosen by NJ Board in its ongoing solicitation processes. In terms of cost sharing, the SAA Agreement provides that any user of a selected project would be allocated a *pro rata* share of total costs of the project. However, the SAA Agreement reserved to future filings the specific process for allocating costs to future users. This possibility of allocating costs to future users solicited opposition from several quarters, including PJM transmission owners, who raised concerns that accepting such broad language could make it more likely that costs would be allocated to customers outside New Jersey, contrary to the State Agreement Approach.

The FERC majority accepted the SAA Agreement including the cost allocation provisions. The April 14 order clarified that it made no determinations as to any future cost allocation arrangements, punting those considerations to a future filing. However, the April 14 order was emphatic regarding "*who cannot be among the future users* in any future cost sharing arrangement: the future users may not include a state other than New Jersey or that state's customers unless that state, consistent with the State Agreement Approach, voluntarily agrees to make its customers responsible for any costs." April 14 Order at P 43 (emphasis original). FERC also emphasized that absent any future ruling, the allocation of costs from projects selected under the SAA

Agreement would be governed by existing provisions of the PJM tariff related to allocation of State Agreement Approach transmission project costs. Commissioner Christie issued a concurring opinion emphasizing these limitations with regard to cost allocation determinations, in keeping with his strong support for states' rights.

The April 14 order also triggered a sharply worded dissent from Commissioner Danly. Commissioner Danly argued that the SAA Agreement failed to sufficiently close off the possible allocation of costs to future users outside New Jersey. His dissent also suggests concern that the acceptance of the SAA Agreement prejudices whether costs may be allocated more widely in the future:

This order cannot be written off as a mere punt of an issue to a future filing because the now-approved tariff language *decides* a critical question. Many in the industry have been concerned that certain states might seek to shift or socialize the costs of the transmission projects that will be required to achieve their bold (some might say "brash") renewable portfolio goals to the ratepayers in other states. Now, the filed rate allows that very result. The State Agreement Approach Agreement states that PJM "shall allocate" these costs to "future users," as detailed in future filings. The majority codifies an answer to this critical question even as it argues that protests are premature because, although the issue is now decided, the details are yet to come. Danly Dissent at P 6 (emphasis original).

For now, FERC's acceptance of the SAA Agreement allows PJM to proceed with evaluating the many transmission project proposals it received in response to its solicitation, and allows PJM and New Jersey to coordinate next steps in allocating capacity on any selected projects. The April 14 order is an important step toward realizing New Jersey's offshore wind targets. Rehearing requests on the April 14 order are due May 16, 2022.

© 2022 Perkins Coie LLP

Authors



[Jane Rueger](#)

Partner

JRueger@perkinscoie.com [202.661.5834](tel:202.661.5834)

Explore more in

[Environment, Energy & Resources](#) [Climate Law](#) [Environmental Litigation](#) [Sustainability & Corporate Responsibility](#) [Infrastructure Development](#) [Land Use & Development](#) [Energy Infrastructure & Clean Technology](#)

Related insights

Update

Wrapping Paper Series: Issues and Trends Facing the Retail Industry During the Holiday Season

Update

Department of Commerce Adopts Final Rule Restricting Tech and Telecom Supply Chain Transactions With Foreign Adversaries