



# Status Update on Circuit Court Remand Regarding Challenges to Solution-Based DFAX Cost Allocation

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October 7, 2022

On August 9, 2022, the US Court of Appeals for the D.C. Circuit issued a ruling addressing 20 FERC orders relating to the use of the solution-based DFAX method as applied to two reliability projects in the PSEG Zone (*ConEd v. FERC*, 45 F.4th 265 (D.C. Cir. 2022) (August 9 Ruling))

The two northern New Jersey reliability projects (Projects) include:

- **Bergen-Linden Corridor (Bergen-Linden) Project** – a 2013 RTEP project that addressed short-circuit violations by converting a 138 kV path to double circuit 345 kV; and
- **Sewaren Project** – a 2014 RTEP project stemming from Public Service Electric & Gas Company's Form No. 715 consisting of upgrades to address short-circuit violations and prevent future storm damages

- Pursuant to the *Atlantic City Settlement Agreement*, the PJM Tariff and the Consolidated Transmission Owners Agreement:
  - Each Transmission Owner has the right to control cost allocation over their individual revenue requirements; and
  - The Transmission Owners, acting jointly through the TOA-AC, have the right to control the PJM regional rate design

February 2013: FERC accepted a new hybrid method – defined by voltage – for the allocation of costs associated with reliability projects:

- Regional Facilities (high-voltage facilities) and Necessary Lower Voltage Facilities (lower voltage facilities needed to support the Regional Facilities) are allocated:
  - 50% of the costs are socialized across the PJM region on a load ratio share; and
  - 50% of the costs are allocated based on solution-based DFAX
- Lower Voltage Facilities are allocated 100 percent using solution-based DFAX method

- DFAX is shorthand for “distribution factor”
- Distribution factor is a number, in percentage or decimal, that measures the proportional flow of energy from a source to a sink (load) across a particular transmission facility
- PJM uses a computer model of the electric network and power flow modeling software to simulate the flow on the new transmission facility to determine who benefits from the new facility
- PJM applies the one percent *de minimis* rule and netting procedures to the solution-based DFAX result

Con Edison, Linden and Hudson Transmission (collectively, Merchants) challenged solution-based DFAX allocations for the Projects (Merchants were allocated 94 percent of the Projects costs and PSEG Zone was allocated the remaining 6 percent) on the following bases:

- Solution-based DFAX method is unjust & unreasonable and was implemented incorrectly;
- *De minimis* rule and netting procedures resulted in unjust and unreasonable results; and
- FERC failed to distinguish why use of solution-based DFAX method for Artificial Island stability issues was unjust and unreasonable, but it was just and reasonable for the Projects' short-circuit solutions

In the August 9 Ruling, the DC Circuit Court of Appeals found:

- FERC failed to distinguish its Artificial Island decision approving a new cost allocation method from the Merchants' challenge
  - The Court directed FERC to either justify the distinction or apply the Artificial Island approach
- FERC found use of the *de minimis* rule violates cost causation principles because it favors large zones at the expense of smaller zones
  - The Court remanded this issue back to FERC to take a holistic review of the *de minimis* rule and solution-based DFAX method

- Depending on FERC's action on remand:
  - Potential need for a new cost allocation methodology for short-circuit projects
  - Potential changes to *de minimis* rule as applied to solution-based DFAX
  - Potential for rebilling transmission costs
  - Potential lack of clarity for planning and approving RTEP projects



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## Status Update on Circuit Court Remand



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