

169 FERC ¶ 61,114  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

New York Power Authority

Docket No. EL17-94-000

v.

PJM Interconnection, L.L.C., and PJM Transmission  
Owners in their Collective Capacity

ORDER DENYING COMPLAINT

(Issued November 21, 2019)

1. On September 28, 2017, New York Power Authority (NYPA), pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA),<sup>1</sup> and Rule 206 of the Commission Rules of Practice and Procedure,<sup>2</sup> filed a complaint (Complaint) against PJM Interconnection, L.L.C. (PJM) and the PJM Transmission Owners. In its Complaint, NYPA contends that PJM is violating its Open Access Transmission Tariff (Tariff) by continuing to invoice Regional Transmission Expansion Plan (RTEP) Transmission Enhancement Charges following Hudson Transmission Partner's (Hudson) notice that it had relinquished its Firm Transmission Withdrawal Rights and that such practice is unjust and unreasonable.<sup>3</sup> In addition, NYPA filed a motion to consolidate this proceeding with the investigation, initiated by the Commission in Docket No. EL17-84-000 pursuant to FPA section 206, to examine the justness and reasonableness of Hudson

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<sup>1</sup> 16 U.S.C. §§ 824e, 825e, and 825h (2018), respectively.

<sup>2</sup> 18 C.F.R. § 385.206 (2019).

<sup>3</sup> Hudson is an independent transmission company that owns and operates a Merchant Transmission Facility, a 660 megawatt (MW) high-voltage, direct-current transmission line under the control of PJM that connects PJM and New York Independent System Operator (NYISO). NYPA makes transmission capacity purchases from Hudson pursuant to a long-term transmission capacity purchase agreement, and is contractually entitled to Hudson's Firm Transmission Withdrawal Rights and transmission capacity. NYPA is directly invoiced by PJM for RTEP charges. Complaint at 8-9.

being unable to convert its Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights.

2. In this order, we deny the Complaint. In addition, we deny the motion to consolidate the proceeding with the investigation initiated by the Commission in Docket No. EL17-84-000.<sup>4</sup>

## **I. Background**

### **A. Tariff Provisions**

3. PJM files cost responsibility assignments for transmission projects that the PJM Board of Managers (PJM Board) approves as part of PJM's RTEP in accordance with Schedule 12 of PJM's Tariff and Schedule 6 of the Amended and Restated Operating Agreement of PJM (Operating Agreement).<sup>5</sup> Schedule 12 of the Tariff establishes Transmission Enhancement Charges for "[o]ne or more of the Transmission Owners [that] may be designated to construct and own and/or finance Required Transmission Enhancements by (1) the PJM RTEP periodically developed pursuant to Operating Agreement, Schedule 6; or (2) any joint planning or coordination agreement between PJM and another region or transmission planning authority set forth in Tariff, Schedule 12-Appendix B."<sup>6</sup> In developing the RTEP, PJM identifies transmission projects to

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<sup>4</sup> As discussed below, on December 15, 2017, in Docket No. EL17-84-000, the Commission found that the existing Interconnection Service Agreement is unjust and unreasonable insofar as it does not permit Hudson to convert its Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights. *See PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,262 (2017) (December 15, 2017 Order).

<sup>5</sup> In accordance with the Tariff and the Operating Agreement, PJM "shall file with FERC a report identifying the expansion or enhancement, its estimated cost, the entity or entities that will be responsible for constructing and owning or financing the project, and the market participants designated under Section 1.5.6(l) above to bear responsibility for the costs of the project." *See* PJM Operating Agreement, Schedule 6, § 1.6 (b). "Within 30 days of the approval of each Regional Transmission Expansion Plan or an addition to such plan by the PJM Board pursuant to Section 1.6 of Schedule 6 of the PJM Operating Agreement, the Transmission Provider shall designate in the Schedule 12-Appendix A and in a report filed with the FERC the customers using Point-to-Point Transmission Service and/or Network Integration Transmission Service and Merchant Transmission Facility owners that will be subject to each such Transmission Enhancement Charge 'Responsible Customers' based on the cost responsibility assignments determined pursuant to this Schedule 12." PJM Tariff, Schedule 12, § (b)(viii).

<sup>6</sup> Required Transmission Enhancements are defined as "enhancements and expansions of the Transmission System that (1) a RTEP developed pursuant to

address different criteria, including PJM planning procedures, North American Electric Reliability Corporation (NERC) Reliability Standards, Regional Entity reliability principles and standards,<sup>7</sup> and individual transmission owner Form No. 715 local planning criteria. Types of Reliability Projects<sup>8</sup> identified in the RTEP include Regional Facilities,<sup>9</sup> Necessary Lower Voltage Facilities,<sup>10</sup> and Lower Voltage Facilities.<sup>11</sup>

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Schedule 6 of the Operating Agreement or (2) any joint planning or coordination agreement between PJM and another region or transmission planning authority set forth in Tariff, Schedule 12-Appendix B ‘Appendix B Agreement’ designates one or more of the Transmission Owner(s) to construct and own or finance.” *See*–PJM Tariff, OATT Definitions - R - S. Transmission Enhancement Charges are established to recover the revenue requirement with respect to a Required Transmission Enhancement. *See* PJM Tariff, Schedule 12, § (a)(i).

<sup>7</sup> As established by Reliability First Corporation, Southeastern Electric Reliability Council, and other applicable Regional Entities. *See* PJM Operating Agreement, Schedule 6, § 1.2(b) and 1.2(d) (Conformity with NERC and Other Applicable Reliability Criteria).

<sup>8</sup> Reliability Projects are Required Transmission Enhancements that are included in the RTEP to address one or more reliability violations or to address operational adequacy and performance issues. *See* PJM Tariff, Schedule 12, § (b)(i)(A)(2)(a).

<sup>9</sup> Regional Facilities are defined as Required Transmission Enhancements included in the RTEP that are transmission facilities that: (a) are AC facilities that operate at or above 500 kV; (b) are double-circuit AC facilities that operate at or above 345 kV; (c) are AC or DC shunt reactive resources connected to a facility from (a) or (b); or (d) are DC facilities that meet the necessary criteria as described in Section (b)(i)(D). PJM Tariff, Schedule 12, § (b)(i) (Regional Facilities and Necessary Lower Voltage Facilities).

<sup>10</sup> Necessary Lower Voltage Facilities are defined as Required Transmission Enhancements included in the RTEP that are lower voltage facilities that must be constructed or reinforced to support new Regional Facilities. PJM Tariff, Schedule 12, § (b)(i) (Regional Facilities and Necessary Lower Voltage Facilities).

<sup>11</sup> Lower Voltage Facilities are defined as Required Transmission Enhancements that: (a) are not Regional Facilities; and (b) are not “Necessary Lower Voltage Facilities.” PJM Tariff, Schedule 12, § (b)(ii) (Lower Voltage Facilities).

4. PJM utilizes a hybrid cost allocation method, which the Commission found complies with Order No. 1000,<sup>12</sup> for Regional Facilities and Necessary Lower Voltage Facilities that address a reliability need.<sup>13</sup> Under this method, PJM allocates 50 percent of the costs of Regional Facilities or Necessary Lower Voltage Facilities on a load-ratio share basis and the other 50 percent based on the solution-based distribution factor (DFAX) method.<sup>14</sup> PJM allocates all of the costs of Lower Voltage Facilities using the solution-based DFAX method.<sup>15</sup>

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<sup>12</sup> See *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011) (Order No. 1000), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and 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) (*S.C. Pub. Serv. Auth. v. FERC*); see also *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013), *order on reh'g and compliance*, 147 FERC ¶ 61,128 (2014), *order on reh'g and compliance*, 150 FERC ¶ 61,038, *order on reh'g and compliance*, 151 FERC ¶ 61,250 (2015).

<sup>13</sup> PJM identifies reliability transmission needs and economic constraints that result from the incorporation of public policy requirements into its sensitivity analyses and allocates the costs of the solutions to such transmission needs in accordance with the type of benefits that they provide. See *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 441; see also PJM Tariff, Schedule 12, § (b)(v) (Economic Projects) (assigning cost responsibility for Economic Projects that are either accelerations or modifications of Reliability Projects, or new enhancements or expansions that relieve one or more economic constraints); PJM Operating Agreement, Schedule 6, § 1.5.7(b)(iii).

<sup>14</sup> Prior to adopting the solution-based DFAX method for assigning cost responsibility, the Tariff included a violation-based DFAX method for assigning the costs of Lower Voltage Facilities. Under the violation-based DFAX method, to determine cost responsibility for Lower Voltage Facilities, PJM conducted studies to determine which loads contribute to the reliability violation that caused the upgrade by examining power flows on the constrained facilities at the time of a reliability violation. See *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 429.

<sup>15</sup> The Commission accepted a PJM Transmission Owner Tariff proposed revision to allocate 100 percent of the costs for Required Transmission Enhancements that are included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria to the zone of the individual transmission owner whose Form No. 715 local planning criteria underlie each project. See *PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,096, *order on reh'g*, 157 FERC ¶ 61,192 (2016), *remanded sub nom. Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254 (D.C. Cir. 2018) (setting aside the Commission's order accepting the PJM Transmission Owners' proposed Tariff revisions to allocate the costs of projects identified in the RTEP only to address individual

5. With respect to transmission expansions or enhancements for which costs are assigned using the solution-based DFAX method, PJM makes a preliminary cost responsibility determination for each Required Transmission Enhancement at the time such Required Transmission Enhancement is included in the RTEP.<sup>16</sup> Beginning with the calendar year in which a Required Transmission Enhancement is scheduled to enter service, and thereafter annually at the beginning of each calendar year, PJM updates the preliminary cost responsibility determination for each Required Transmission Enhancement using the values and inputs used in the base case of the most recent RTEP approved by the PJM Board prior to the date of the update. All values and inputs used in the calculation of the DFAX in a determination of cost responsibility shall be the same values and inputs as used in the base case of the most recent RTEP approved by the PJM Board prior to the determination of cost responsibility.

6. With respect to Merchant Transmission Facilities, the 50 percent of cost responsibility for Regional Facilities and Necessary Lower Voltage Facilities that is assigned annually on a load-ratio share basis is based on:

(1) for the calendar year following the year in which it initiates operation, the actually awarded Firm Transmission Withdrawal Rights associated with its existing Merchant Transmission Facility; and (2) for all subsequent calendar years, the annual peak load of the Merchant Transmission Facility (not to exceed its actual Firm Transmission Withdrawal Rights) from the 12-month period ending October 31 of the calendar year preceding the calendar year for which the annual cost responsibility allocation is determined.<sup>17</sup>

7. The remaining 50 percent of cost responsibility assigned to a Merchant Transmission Facility for Regional Facilities and Necessary Lower Voltage Facilities,

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transmission owner Form No. 715 local planning criteria 100 percent to the zone of that transmission owner, and remanding for further proceedings); *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,133 (2019) (rejecting PJM Transmission Owner Tariff proposed revisions on remand).

<sup>16</sup> PJM Tariff, Schedule 12, § (b)(iii)(H)(2).

<sup>17</sup> PJM Tariff, Schedule 12, § (b)(i)(A)(1)(b).

and for all of the costs of Lower Voltage Facilities assigned, using the solution-based DFAX method, is based on:<sup>18</sup>

(i) the existing Firm Transmission Withdrawal Rights of the Merchant Transmission Facility being evaluated, if the Merchant Transmission Facility is in service, or (ii) for a Merchant Transmission Facility that is not yet in service, the planned Firm Transmission Withdrawal Rights of the Merchant Transmission Facility being evaluated as identified in the Interconnection Service Agreement in effect for such Merchant Transmission Facility.<sup>19</sup>

**B. Hudson Request to Convert Firm Transmission Withdrawal Rights to Non-Firm, Docket No. ER17-2073**

8. On July 10, 2017, at the request of Hudson, pursuant to FPA section 205, PJM filed an unexecuted, amended Interconnection Service Agreement among PJM, Hudson, and Public Service Electric and Gas Company (PSEG).<sup>20</sup> The amended Interconnection Service Agreement sought to convert Hudson's 320 megawatts (MW) of Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights. On September 8, 2017, the Commission rejected PJM's July 10, 2017 filing.<sup>21</sup> The Commission found that neither the existing Interconnection Service Agreement nor PJM's Tariff require PJM to file, under section 205, an unexecuted amended Interconnection Service Agreement with modifications requested by an interconnection customer.

**C. Show Cause Proceedings, Docket No. EL17-84-000**

9. In rejecting PJM's July 10, 2017 filing, the Commission found that the existing Interconnection Service Agreement appeared to be unjust and unreasonable and unduly discriminatory to the extent it fails to permit Hudson to convert Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights and that PSEG's withholding of consent to the amended Interconnection Service Agreement appeared to be unjust and unreasonable. Accordingly, on September 8, 2017, in Docket No. EL17-84-000, the Commission initiated a proceeding, pursuant to FPA section 206, to examine

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<sup>18</sup> PJM Tariff, Schedule 12, § (b)(i)(A)(2)(a).

<sup>19</sup> PJM Tariff, Schedule 12, § (b)(iii)(A)(3).

<sup>20</sup> See Complaint, Attachment A (letter from Hudson to PJM, dated June 2, 2017).

<sup>21</sup> *PJM Interconnection, L.L.C.*, 160 FERC ¶ 61,056 (2017), *reh'g denied*, 164 FERC ¶ 61,192 (2018).

why the existing Interconnection Service Agreement and PSEG's failure to consent to the amended Interconnection Service Agreement is not unjust and unreasonable and unduly discriminatory.<sup>22</sup>

10. On December 15, 2017, in Docket No. EL17-84-000, the Commission found that the existing Interconnection Service Agreement is unjust and unreasonable insofar as it does not permit Hudson to convert its Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights.<sup>23</sup> The Commission required PJM to make a compliance filing amending the existing Interconnection Service Agreement to reflect the conversion of Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights, effective the date of the December 15, 2017 Order.<sup>24</sup>

11. On December 22, 2017, PJM submitted a compliance filing in response to the December 15, 2017 Order that required PJM to revise an existing Interconnection Service Agreement among Hudson, PSEG, and PJM to reflect Hudson's conversion of its Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights.

12. On March 5, 2018, the Commission accepted PJM's compliance filing, effective December 15, 2017,<sup>25</sup> finding that proposed revisions to the existing Interconnection Service Agreement satisfy the requirements of the December 15, 2017 Order by properly reflecting the conversion of Hudson's Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights.

## II. Complaint

13. On September 28, 2017, while the FPA section 206 investigation in Docket No. EL17-84-000 remained pending, NYPA filed its Complaint. NYPA contends that PJM violated its Tariff by continuing to charge RTEP costs following Hudson's June 2, 2017 notice that it had relinquished its Firm Transmission Withdrawal Rights,<sup>26</sup> and that such practice is unjust, unreasonable and unduly discriminatory or preferential. NYPA states that Schedule 12 requires PJM to discontinue charges once a Merchant

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<sup>22</sup> See December 15, 2017 Order, 161 FERC ¶ 61,262.

<sup>23</sup> December 15, 2017 Order, 161 FERC ¶ 61,262 at P 41.

<sup>24</sup> *Id.*

<sup>25</sup> *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,200 (2018).

<sup>26</sup> With its Complaint, NYPA included a June 2, 2017 Letter from Hudson to PJM requesting to change its existing Interconnection Service Agreement to convert its Firm Transmission Withdrawal Rights to non-firm. Complaint, Exhibit A.

Transmission Facility relinquishes its Firm Transmission Rights. Specifically, NYPA contends that PJM “*shall base the collection of Transmission Enhancement Charges associated with Required Transmission Enhancements from a Merchant Transmission Facility on the actual Firm Transmission Withdrawal Rights that have been awarded to the Merchant Transmission Facility[.]*”<sup>27</sup> NYPA further states that RTEP transmission enhancement charges shall be calculated as a “fixed *monthly* charge,” collected on a “monthly basis.”<sup>28</sup>

14. NYPA further contends that, while the Tariff provides express instances that require PJM to update the RTEP cost allocations,<sup>29</sup> the Tariff does not preclude adjusting RTEP cost allocations commensurate with Firm Transmission Withdrawal Rights that have been relinquished mid-year. NYPA argues that it is overly rigid and illogical to preclude reallocation of RTEP costs in all other instances as may be necessary to effectuate the provisions and purposes of the Tariff. NYPA contends that PJM should be required to reallocate RTEP costs and reimburse NYPA for RTEP charges as of June 2, 2017,<sup>30</sup> or no later than September 18, 2017, the refund effective date established in the FPA section 206 investigation established in Docket No. EL17-84-000. If the Commission does not provide the relief requested pursuant to section 309 of the FPA, NYPA requests that the Commission provide prospective relief pursuant to section 206 of the FPA with the filing of this Complaint.

15. In support of its request, NYPA argues that continuing to charge Hudson RTEP costs after Hudson notified PJM that it has relinquished its Firm Transmission Withdrawal Rights violates cost causation principles on which the Tariff is based. Specifically, NYPA contends that in a paradigm in which the solution-based DFAX method assigns cost responsibility based on use of the facility, entities that no longer use the facility should not be assigned cost responsibility. NYPA argues that, because Hudson had relinquished its Firm Transmission Withdrawal Rights, it is unjust and unreasonable to continue to assign cost responsibility.

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<sup>27</sup> Complaint at 14 (emphasis in original) (citing Schedule 12 § (b)(x)(B)(2)).

<sup>28</sup> *Id.* at 15 (citing Schedule 12 § (c)(2), (d)(2)) (emphasis in original).

<sup>29</sup> Specifically, (1) annually, on January 1; (2) following the PJM Board’s approval of a new RTEP plan; and (3) following the termination of Consolidated Edison Company of New York, Inc.’s (Con Edison) transmission service agreement implementing the PJM/NYSO wheeling arrangement.

<sup>30</sup> As noted above, this is the date that Hudson notified PJM that it was seeking to amend its existing Interconnection Service Agreement to convert its Firm Transmission Withdrawal Rights to non-firm.

16. NYPA further argues that, where PJM filed revisions to reallocate cost responsibility that had been assigned to Con Edison upon termination of the transmission service agreement that implemented the PJM/NYISO wheeling arrangement, to continue assigning cost responsibility to a merchant transmission facility that relinquishes its Firm Transmission Withdrawal Rights discriminates against or provides an undue preference to similarly situated customers.

17. In its motion to consolidate, NYPA argues that the Complaint raises issues inextricably linked to the investigation by the Commission into Hudson's request to relinquish its Firm Transmission Withdrawal Rights in Docket No. EL17-84-000. NYPA states that the proceedings involve the same parties and the same foundation of facts, and contends that consolidation of the two proceedings will avoid delay and administrative inefficiencies.

### **III. Notice, Intervention, and Responsive Pleadings**

18. Notice of the Complaint was published in the *Federal Register*, 82 Fed. Reg. 47,194 (2017), with interventions and protests due on or before October 18, 2017.

19. The New Jersey Board of Public Utilities (New Jersey Board) filed a notice of intervention. Timely motions to intervene were filed by FirstEnergy Service Company, Exelon Corporation, Monitoring Analytics as the PJM independent market monitor, Hudson, Long Island Power Authority, PPL Electric Utilities Corporation, Dominion Energy Services, Inc., Duke Energy Corporation, American Electric Power Service Corporation, ITC Lake Erie Connector, LLC, Rockland Electric Company, Linden VFT, LLC (Linden), PSEG, the Dayton Power and Light Company, NRG Power Marketing LLC and GenOn Energy Management, LLC, and ITC Interconnection, LLC. Duquesne Light Company (Duquesne) and Wabash Valley Power Association, Inc. (Wabash) submitted late-filed motions to intervene.

20. PJM filed an answer to the Complaint and motion to consolidate. The PJM Transmission Owners filed a motion to dismiss and an answer in opposition to the Complaint. The New Jersey Board and Linden filed comments, and NYPA filed an answer.

### **IV. Pleadings**

21. In its answer, PJM acknowledges that Hudson's cost responsibility under the Tariff will end when it relinquishes its Firm Transmission Withdrawal Rights. However, PJM argues that there are no facts to support the premise that Hudson surrendered its Firm Transmission Withdrawal Rights on June 2, 2017. Instead, PJM argues that by letter dated June 2, 2017, Hudson provided formal written notice of a request to surrender its Firm Transmission Withdrawal Rights and acknowledged that Commission acceptance was required to effectuate such a change.

22. In support of their motion to dismiss, the PJM Transmission Owners contend that NYPA has incorrectly included them in the Complaint. The PJM Transmission Owners argue that, while they have exclusive rights to submit filing pursuant to FPA section 205 of the FPA to modify transmission rate design, PJM administers the Tariff and is responsible for amending the appendices to Schedule 12 of the Tariff which implements the cost allocation methodologies. Accordingly, the PJM Transmission Owners request that the Commission dismiss the Complaint against them.

23. In opposition to the Complaint, the PJM Transmission Owners argue that Hudson did not surrender its obligation to pay RTEP costs on the date it voluntarily decides to terminate its Firm Transmission Withdrawal Rights on June 2, 2017. Instead, the PJM Transmission Owners contend that Hudson's June 2, 2017 letter was a request, which was denied by the Commission. As a result, the PJM Transmission Owners contend that the Hudson Interconnection Service Agreement, with the full contingent of Firm Transmission Withdrawal Rights, remains in effect as the legal and contractual basis for Hudson's RTEP cost responsibility.

24. Linden opposes the mid-year reallocation of cost responsibility assignment in this proceeding.<sup>31</sup> Linden contends that the Complaint conflates RTEP cost allocations with the request to relinquish Firm Transmission Withdrawal Rights, and, accordingly, Linden opposes the motion to consolidate. Linden further contends that NYPA mistakenly assumes that Hudson's request to convert its Firm Transmission Withdrawal Rights to non-firm will automatically result in a termination of RTEP cost allocations.

25. The New Jersey Board contends that the Commission should consider the cost allocation impacts resulting from eliminating the Firm Transmission Withdrawal Rights. It argues that if Hudson and NYPA are successful, the effect will be to leave New Jersey ratepayers with the bill for benefits received in New York.

26. NYPA answers that the PJM Tariff contains no requirement for notice for a merchant transmission facility to relinquish its Firm Transmission Withdrawal Rights. NYPA further argues that the premise underlying a notice requirement is undermined by

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<sup>31</sup> On September 18, 2017, in Docket No. EL17-90-000, Linden filed a complaint contending that PSEG unreasonably withheld its consent to an amendment to the existing Linden Interconnection Service Agreement to provide for Linden to convert Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights. Linden requested that the Commission act on its complaint prior to December 31, 2017, in order to allow reallocation of RTEP costs prior to the annual update to take effect on January 1, 2018. *See Linden VFT, LLC v. Public Serv. Elec. and Gas Co.*, 161 FERC ¶ 61,264 (2017) (finding that the Linden's existing Interconnection Service Agreement is unjust and unreasonable insofar as it does not permit Linden to convert its Firm Transmission withdrawal Rights to non-firm).

revisions to cost responsibility assignments following PJM Board approval of RTEP projects, which does not occur on a scheduled basis.

**V. Discussion**

**A. Procedural Matters**

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>32</sup> the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures,<sup>33</sup> we grant the late-filed motions to intervene of Duquesne and Wabash given their interests in the proceeding, the early stages of the proceeding, and the absence of undue prejudice or delay.

28. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest and or answer unless otherwise ordered by the decisional authority.<sup>34</sup> We accept the answers and responsive pleadings because they have provided information that assisted us in our decision-making process.

**B. Determination**

29. We deny the Complaint. Hudson's Firm Transmission Withdrawal Rights were established pursuant to the accepted existing Interconnection Service Agreement.<sup>35</sup> As previously noted, NYPA is contractually entitled to Hudson's Firm Transmission Withdrawal Rights, and PJM directly invoices NYPA for RTEP charges.

30. NYPA contends that PJM violated PJM's Tariff by continuing to charge RTEP costs following Hudson's June 2, 2017 notice that it had relinquished its Firm Transmission Withdrawal Rights. While Hudson advised PJM that it sought to amend its existing Interconnection Service Agreement to convert its Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights to be effective June 2, 2017, the Commission, on September 8, 2017, rejected the unexecuted amendments to the existing

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<sup>32</sup> 18 C.F.R. § 385.214 (2019).

<sup>33</sup> 18 C.F.R. § 385.214(d).

<sup>34</sup> 18 C.F.R. § 385.213(a)(2) (2019).

<sup>35</sup> The Hudson Interconnection Service Agreement was accepted effective June 9, 2010, and was designated as Original Service Agreement No. 2536. *PJM Interconnection, L.L.C.*, Docket No. ER10-1740-000, at 1 & n.1 (August 31, 2010) (delegated order).

Interconnection Service Agreement that PJM filed on July 10, 2017.<sup>36</sup> Therefore, NYPA's responsibility for paying for those upgrades were not extinguished on June 2, 2017, as NYPA alleges.

31. In the December 15, 2017 Order, the Commission permitted Hudson to convert its Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights, effective as of that date.<sup>37</sup> However, until that date, Hudson's existing Interconnection Service Agreement providing Hudson with Firm Transmission Withdrawal Rights remained in effect, and Hudson received service from PJM pursuant to that agreement. Because Hudson (and therefore NYPA) held Firm Transmission Withdrawal Rights until December 15, 2017, and received service pursuant to those Firm Transmission Withdrawal Rights, we find no basis to support NYPA's contention that PJM should not invoice NYPA for the period prior to December 15, 2017.

The Commission orders:

NYPA's Complaint is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>36</sup> *PJM Interconnection, L.L.C.*, 160 FERC ¶ 61,056 (2017), *reh'g denied*, 164 FERC ¶ 61,192.

<sup>37</sup> December 15, 2017 Order, 161 FERC ¶ 61,262 at P 41.