

169 FERC ¶ 61,238  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket Nos. EL05-121-013  
ER18-2102-000  
ER18-2102-001

ORDER DENYING CLARIFICATION AND REHEARING, AND ACCEPTING  
COMPLIANCE FILINGS

(Issued December 19, 2019)

1. On May 31, 2018, the Commission approved a contested settlement (Settlement) of the assignment of cost responsibility for transmission facilities that operate at or above 500 kilovolt (kV) that were allocated pursuant to the cost allocation method accepted in Opinion No. 494,<sup>1</sup> and on July 30, 2018, PJM Interconnection, L.L.C. (PJM) submitted compliance filings to revise its Open Access Transmission Tariff (PJM Tariff) to implement the provisions of the Settlement.<sup>2</sup> Linden VFT, LLC (Linden), and Hudson Transmission Partners, LLC (Hudson) and New York Power Authority (NYPA) request clarification of the May 2018 Order, or in the alternative rehearing, and Neptune Regional Transmission System, LLC (Neptune) and Long Island Power Authority (LIPA) request rehearing.<sup>3</sup> In addition, Linden protests the PJM compliance filing.

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,168 (2018) (May 2018 Order). See *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007), *order on reh'g*, Opinion No. 494-A, 122 FERC ¶ 61,082 (2008).

<sup>2</sup> See Appendix B for PJM Tariff revisions.

<sup>3</sup> Linden, Neptune and LIPA, and Hudson and NYPA had filed comments opposing the Settlement (Opposing Parties).

2. In this order, we deny the requests for clarification and rehearing, and accept PJM's compliance filing.

### **I. Background**

3. On April 19, 2007, the Commission issued Opinion No. 494,<sup>4</sup> an order on an initial decision concerning the cost allocation method for existing and new transmission facilities contained in the PJM Tariff. In Opinion No. 494, the Commission, acting under section 206 of the Federal Power Act,<sup>5</sup> found, in relevant part, PJM's then-existing cost allocation method, which used a violation-based distribution factor (DFAX) method<sup>6</sup> to allocate 100 percent of the costs of new transmission facilities that operate at or above 500 kV, unjust and unreasonable. The Commission directed PJM to allocate 100 percent of the costs of such facilities on a load-ratio share basis (the 100 percent load-ratio share

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<sup>4</sup> Opinion No. 494, 119 FERC ¶ 61,063.

<sup>5</sup> 16 U.S.C. § 824e (2018).

<sup>6</sup> Under the violation-based DFAX method, to determine cost responsibility for all new Required Transmission Enhancements, PJM conducted studies to determine which loads contribute to the reliability violation that caused the need for the upgrade by examining power flows on the constrained facilities at the time of a reliability violation. The Zones that "cause" the violation and "benefit from" the addition of upgrades that eliminate the violation are allocated the costs of the Required Transmission Enhancements. See Opinion No. 494, 119 FERC ¶ 61,063 at P 2, n.2. Required Transmission Enhancements are defined as "enhancements and expansions of the Transmission System that (1) a Regional Transmission Expansion Plan 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 PJM Tariff, Schedule 12-Appendix B ("Appendix B Agreement") designates one or more of the Transmission Owner(s) to construct and own or finance." PJM, Intra-PJM Tariffs, OATT, R-S, OATT Definitions.

method)<sup>7</sup> to the Merchant Transmission Facilities<sup>8</sup> and Zones<sup>9</sup> of the Responsible Customers pursuant to Schedule 12 of the PJM Tariff.<sup>10</sup>

4. On review, the U.S. Court of Appeals for the Seventh Circuit (Court) remanded for further proceedings the Commission's determination regarding the allocation of all of the costs of new transmission facilities that operate at or above 500 kV on a load-ratio share basis.<sup>11</sup> On remand, the Commission reaffirmed the 100 percent load-ratio share method for new transmission facilities that operate at or above 500 kV.<sup>12</sup> The Commission found that, while there is imprecision in valuing the benefits of new

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<sup>7</sup> Opinion No. 494, 119 FERC ¶ 61,063 at P 82 (accepting PJM's proposal "to fully allocate, on a region-wide basis, the costs of new, centrally-planned facilities that operate at or above 500 kV", noting that "lower voltage facilities that are necessary to construct a particular new project at 500 kV and above would also be rolled in to the 500 kV and above postage stamp rate").

<sup>8</sup> Merchant Transmission Facilities are defined as "A.C. or D.C. transmission facilities that are interconnected with or added to the Transmission System pursuant to Tariff, Part IV and Part VI and that are so identified in Tariff, Attachment T, provided, however, that Merchant Transmission Facilities shall not include (i) any Customer Interconnection Facilities, (ii) any physical facilities of the Transmission System that were in existence on or before March 20, 2003; (iii) any expansions or enhancements of the Transmission System that are not identified as Merchant Transmission Facilities in the Regional Transmission Expansion Plan and Attachment T to the Tariff, or (iv) any transmission facilities that are included in the rate base of a public utility and on which a regulated return is earned." PJM, Intra-PJM Tariffs, OATT, L- M - N, OATT Definitions.

<sup>9</sup> The PJM Tariff defines Zone as an area within the PJM Region, as set forth in the PJM Tariff, Attachment J. PJM, Intra-PJM Tariffs, OATT, W - X - Y - Z, OATT Definitions. See PJM, Intra-PJM Tariffs, ATTACHMENT J (PJM Transmission Zones).

<sup>10</sup> Responsible Customers are those customers designated by PJM as responsible for Transmission Enhancement Charges. See PJM, Intra-PJM Tariffs, OATT, Schedule 12 § (b)(viii). Transmission Enhancement Charges are established to recover the revenue requirement with respect to a Required Transmission Enhancement. See PJM, Intra-PJM Tariffs, OATT, Schedule 12 § (a)(i).

<sup>11</sup> *Illinois Commerce Comm'n v. FERC*, 576 F.3d 470 (7th Cir. 2009).

<sup>12</sup> *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230 (2012) (Order on Remand), *order on reh'g*, 142 FERC ¶ 61,216 (2013).

transmission facilities that operate at or above 500 kV, the benefits of such facilities are sufficiently shared across the PJM region to justify region-wide cost allocation.<sup>13</sup> On appeal, the Court again remanded the case to the Commission, finding that the Order on Remand failed to respond to the directive “to quantify the benefits” of new transmission facilities that operate at or above 500 kV.<sup>14</sup>

5. While the second proceeding on remand was pending before the Commission, the PJM Transmission Owners proposed on compliance with Order No. 1000,<sup>15</sup> and the Commission accepted, a hybrid cost allocation method for Regional Facilities and Necessary Lower Voltage Facilities,<sup>16</sup> selected in the PJM Regional Transmission Expansion Plan (RTEP) for purposes of cost allocation.<sup>17</sup> Under the cost allocation method accepted as complying with Order No. 1000, for Regional Facilities and Necessary Lower Voltage Facilities that address a reliability need,<sup>18</sup> 50 percent of the

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<sup>13</sup> Order on Remand, 138 FERC ¶ 61,230 at P 55.

<sup>14</sup> *Illinois Commerce Comm’n v. FERC*, 756 F.3d 556, 562 (7th Cir. 2014).

<sup>15</sup> *See Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *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).

<sup>16</sup> Regional Facilities are defined as Required Transmission Enhancements included in the Regional Transmission Expansion Plan 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). Necessary Lower Voltage Facilities are defined as Required Transmission Enhancements included in the Regional Transmission Expansion Plan that are lower voltage facilities that must be constructed or reinforced to support new Regional Facilities. PJM Tariff, Schedule 12(b)(i). Lower Voltage Facilities are defined as Required Transmission Enhancements that: (a) are not Regional Facilities; and (b) are not “Necessary Lower Voltage Facilities.” PJM, Intra-PJM Tariffs, OATT, Schedule 12, § (b)(ii) (Lower Voltage Facilities).

<sup>17</sup> *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>18</sup> PJM identifies reliability transmission needs and economic constraints that result from the incorporation of public policy requirements into its sensitivity analyses,

costs are allocated on a load-ratio share basis and the other 50 percent of the costs are allocated using the solution-based DFAX method (Order No. 1000 hybrid cost allocation method).<sup>19</sup> The Commission granted a February 1, 2013 effective date for the cost allocation method accepted as complying with Order No. 1000.<sup>20</sup> As a result, the 100 percent load-ratio share method accepted by the Commission in Opinion No. 494 and at issue in the remand proceedings was applied only to those new transmission facilities that the PJM Board of Directors approved prior to February 1, 2013 and that are planned to operate at or above 500 kV.<sup>21</sup>

6. Subsequently, by order issued December 18, 2014 in the second remand proceeding, the Commission established hearing and settlement judge procedures to determine the appropriate cost allocation for the transmission projects that remain at issue in this proceeding (i.e., those new transmission facilities that the PJM Board of Directors approved prior to February 1, 2013 and that are planned to operate at or above 500 kV whose costs were allocated in accordance with the 100 percent load-ratio share method established in Opinion No. 494).<sup>22</sup> On June 15, 2016, the Settling Parties,<sup>23</sup> pursuant to Rule 602 of the Commission's rules of practice and procedure,<sup>24</sup> submitted an offer of settlement in the matter set for hearing and settlement judge procedures.

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and allocates the costs of the solutions to such transmission needs in accordance with the type of benefits they provide. *See PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 441. *See also* PJM, Intra-PJM Tariffs, OATT, Schedule 12 § (b)(v) Economic Projects (assigning cost responsibility for Economic Projects).

<sup>19</sup> “The Solution-Based DFAX method evaluates the projected relative use on the new Reliability Project by the load in each zone and withdrawals by merchant transmission facilities, and through this power flow analysis, identifies projected benefits for individual entities in relation to power flows.” *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 416.

<sup>20</sup> *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 1; *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128 at PP 18, 29.

<sup>21</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 12 § (a)(v).

<sup>22</sup> *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,233, at P 2 (2014).

<sup>23</sup> Appendix A lists the Settling and Non-Opposing Parties.

<sup>24</sup> 18 C.F.R. § 385.602(h) (2019).

## II. Settlement

7. The Settlement specifies the terms that will be incorporated into a new Schedule 12-C added to the PJM Tariff to be effective as of January 1, 2016. The Settlement defines Covered Transmission Enhancements as those “Required Transmission Enhancements that the PJM Board approved prior to February 1, 2013 and that are planned to operate at or above 500 kV.” The Covered Transmission Enhancements include any Necessary Lower Voltage Facilities (as defined in the PJM Tariff) associated with those Required Transmission Enhancements.<sup>25</sup> The Covered Transmission Enhancements, including those Covered Transmission Enhancements that were canceled or abandoned before entering service (Cancelled Projects), are listed in Appendix A to new Schedule 12-C of the PJM Tariff.<sup>26</sup>

8. The Settlement contains different methods for recovery of costs incurred for Covered Transmission Enhancements for the periods before and after January 1, 2016. From January 1, 2016 onward (going-forward period), and continuing until all charges authorized by the Commission with respect to each Covered Transmission Enhancement are fully recovered, the Settlement provides that PJM shall collect a “Current Recovery Charge” from Responsible Customers for each Covered Transmission Enhancement.<sup>27</sup> Specifically, PJM will assign cost responsibility for the revenue requirement associated with each Covered Transmission Enhancement through a hybrid method in which: (1) 50 percent of the cost responsibility shall be assigned to Responsible Customers on an annual load-ratio share basis, as set forth in section (b)(i)(A)(1) of Schedule 12 of the PJM Tariff; and (2) 50 percent of the cost responsibility shall be assigned to Responsible Customers based on the solution-based DFAX method, as set forth in subsection (b)(i)(A)(2)(a) of Schedule 12.<sup>28</sup>

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<sup>25</sup> As previously noted, Necessary Lower Voltage Facilities are defined as Required Transmission Enhancements included in the Regional Transmission Expansion Plan that are lower voltage facilities that must be constructed or reinforced to support new Regional Facilities. PJM, Intra-PJM Tariffs, OATT, Schedule 12 § (b)(i).

<sup>26</sup> Appendix B to Schedule C includes the specific allocations for the Potomac Appalachian Transmission Highline (PATH) and the Mid-Atlantic Power Pathway (MAPP) projects.

<sup>27</sup> Settlement, Section 2.2(c).

<sup>28</sup> *Id.* Because there will be no flow over the Cancelled Projects to allow for the use of the solution-based DFAX method, the 50 percent of the cost responsibility for Covered Transmission Enhancements that are not assigned on a load-ratio share basis

9. To address the period prior to January 1, 2016 (historical period), in which the costs of the Covered Transmission Enhancements were recovered under the method approved in Opinion No. 494, the Settlement also provides for “Transmission Enhancement Charge Adjustments” to the billings for the Covered Transmission Enhancements through a schedule of credits and payments from Responsible Customers.<sup>29</sup> The Transmission Enhancement Charge Adjustments are negotiated amounts that approximate the charges if the currently effective PJM Tariff applied to the historical period. Specifically, effective as of January 1, 2016 and continuing through December 31, 2025, in addition to the Current Recovery Charge, PJM shall collect from or credit to Responsible Customers the Transmission Enhancement Charge Adjustments set forth in Appendix C to Schedule 12-C for each Zone and each Merchant Transmission Facility.

### III. May 2018 Order

10. In the May 2018 Order, the Commission approved the Settlement under the second *Trailblazer* approach.<sup>30</sup> Under the second *Trailblazer* approach, the Commission may approve a contested settlement as a package if the overall result of the settlement is just and reasonable.<sup>31</sup> The Commission does not need to render a merits decision on whether each element of a settlement package is just and reasonable, so long as the overall package falls within a broad ambit of various rates which may be just and

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will be assigned to Responsible Customers based on the violation-based DFAX method.

<sup>29</sup> Settlement, Section 2.2(d). Section 2.2 (d) of the Settlement states that the total amounts credited or recovered for Covered Transmission Enhancements as Transmission Enhancement Charge Adjustments are the result of a “black box” Settlement.

<sup>30</sup> May 2018 Order, 163 FERC ¶ 61,168 at P 38. In *Trailblazer*, the Commission identified four approaches it can use to approve contested settlements. The four approaches laid out in *Trailblazer* are: (1) the Commission renders a binding merits decision on each contested issue, (2) the Commission approves the settlement based on a finding that the overall settlement as a package is just and reasonable, (3) the Commission determines that the benefits of the settlement outweigh the nature of the objections and the interests of the contesting party are too attenuated, and (4) the Commission approves the settlement as uncontested for the consenting parties, and severs the contesting parties to allow them to litigate the issues raised. *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345 at 62,342-45 (*Trailblazer*).

<sup>31</sup> *Trailblazer*, 85 FERC at 62,342-43.

reasonable.<sup>32</sup> As the Commission explained, this approach may involve analysis of the specific issues raised by a settlement in order to determine whether the result under the settlement is no worse for the contesting party than the likely result of continued litigation.<sup>33</sup> The Commission clarified that this approach “focuses on the end result of the overall settlement, and involves a balancing of the benefits of a settlement against the costs and potential effect of continued litigation.”<sup>34</sup> The Commission found the overall result of the Settlement just and reasonable as applied to the contesting parties.<sup>35</sup>

11. The Commission found that the Settlement applied the existing just and reasonable cost allocation method, subject to several simplifying assumptions and a negotiated black box adjustment.<sup>36</sup> For the going-forward period, the Settlement Tariff references Schedule 12 of the PJM Tariff to apply the currently effective PJM Tariff without modification (i.e., 50 percent of the costs of Covered Transmission Enhancements will be allocated on a load-ratio share basis and 50 percent of the costs of Covered Transmission Enhancements will be allocated according to the solution-based DFAX method). The Commission found that using the currently effective PJM Tariff to establish the cost responsibility assignments for the Covered Transmission Enhancements during the going-forward period is just and reasonable.<sup>37</sup>

12. For the historical period, in which the Settlement provides credits or payments based on a negotiated schedule, the Commission found that the negotiated adjustments to the cost responsibility assignments were consistent with what would have resulted if the currently effective PJM Tariff were applied to the historical period.<sup>38</sup> Further, the Commission found that under the Settlement, the contesting parties receive lower cost

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<sup>32</sup> *Id.*

<sup>33</sup> *Trailblazer Pipeline Co.*, 87 FERC ¶ 61,110, at 61439 (1999) (*Trailblazer III*).

<sup>34</sup> *Trailblazer III*, 87 FERC at 61,439.

<sup>35</sup> May 2018 Order, 163 FERC ¶ 61,168 at P 39.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 420).

<sup>38</sup> May 2018 Order, 163 FERC ¶ 61,168 at P 40. The Commission found persuasive Settling Parties’ representation that the rates for individual load Zones vary by at most 13.5 percent from what they would have been had the currently effective PJM Tariff been used to establish the rates without any subsequent adjustments.

responsibility assignments for all Covered Transmission Enhancements (with the exception of the Susquehanna-Roseland Project) than they received under the 100 percent load-ratio share method established in Opinion No. 494 and remanded by the Court.<sup>39</sup> The Commission also found that even for the Susquehanna-Roseland Project, the contesting parties received a slightly lower allocation of costs than they would have received had the Commission applied the currently effective rate.<sup>40</sup> Accordingly, the Commission concluded that the contesting parties would be in no worse position under the Settlement than under the method that would likely result from continued litigation.<sup>41</sup>

#### IV. Request for Clarification and Rehearing

##### A. Clarification

13. Linden, and Hudson and NYPA (together, Clarification Parties) request that the Commission clarify that they are not subject to any of the Current Recovery Charges or Transmission Enhancement Charge Adjustments provided for by the Settlement. The Clarification Parties contend that Schedule 12-C is focused on the actual “collection” of such charges. The Clarification Parties contend that, because they hold no Firm Transmission Withdrawal Rights as of the date of the May 2018 Order and as of the date that PJM begins collecting such rates, they are not Responsible Customers under Schedule 12 of the PJM Tariff.

##### B. Rehearing

14. In the alternative, Linden, Neptune and LIPA, and Hudson and NYPA<sup>42</sup> (together, Rehearing Parties) seek rehearing of the May 2018 Order. The Rehearing Parties argue that the Commission erred in approving the Settlement under the second *Trailblazer* approach. The Rehearing Parties argue that there cannot be a finding that the overall cost of the Settlement is just and reasonable without a detailed and independent cost-benefit analysis.

15. Linden contends that no such analysis was included with the Settlement, and the May 2018 Order is not based on such an analysis. Linden maintains that no party

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<sup>39</sup> *Id.* P 41.

<sup>40</sup> *Id.* P 43.

<sup>41</sup> *Id.* P 42.

<sup>42</sup> In their request for rehearing, Hudson and NYPA support the arguments set forth in the rehearing request of Neptune and LIPA.

presented evidence that Linden benefits from any of the projects covered by the Settlement, and reliance on the cost allocation provisions of the PJM Tariff is contrary to the requirements to conduct a cost-benefit analysis. Linden further maintains that any analysis of potential litigation outcomes, as required under the second *Trailblazer* approach, requires a comparison of the costs and benefits of the projects, and without such an analysis, approval under the second *Trailblazer* approach is in error. Linden further faults the analysis performed by the Commission, and questions the underlying information contained in supporting declarations provided by the PJM Transmission Owners on which the Commission relied, without responding to Linden's concerns.<sup>43</sup>

16. Neptune and LIPA state that there are genuine factual issues related to the identification of benefits that must be answered by substantial evidence that a cost allocation method assigns cost in a manner that satisfies the Court. They argue that the Commission's analysis is based on a false premise regarding the Court's remand and a misunderstanding of the facts in reaching the conclusion that the Settlement is just and reasonable.

17. Like Linden, Neptune and LIPA contend that the record does not contain substantial evidence to determine that the Settlement is just and reasonable, or to determine possible litigation outcomes. Neptune and LIPA assert that further hearings are necessary to assess the costs and benefits of the cost allocation method included in the Settlement and the consequences of its application.

18. The Rehearing Parties further contend that the Commission erred in accepting the cost allocation provisions of the Settlement for Cancelled Projects, arguing that the use of the violation-based analysis as a component of the cost allocation method is inconsistent with existing precedent and inadequately supported. In addition, the Rehearing Parties argue that the use of the current PJM Tariff as a basis for determining the cost allocation for the Covered Transmission Enhancements misapplies the prospective nature of the current PJM Tariff, and is inconsistent with Commission precedent accepting the current PJM Tariff provisions.

### **C. Responsive Pleadings**

19. The PJM Transmission Owners filed an answer to the requests for clarification and a motion to answer and answer to the requests for rehearing. With respect to the request for clarification, the PJM Transmission Owners state that under the Settlement, recovery of Current Recovery Charges and Transmission Enhancement Charge Adjustments is effective as of January 1, 2016, regardless of when the Commission approved the Settlement. The PJM Transmission Owners contend that responsibility for Current

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<sup>43</sup> Linden Rehearing Request at 35.

Recovery Charges is based on Schedule 12 of the PJM Tariff and clarification is unnecessary because Linden and Hudson will no longer be responsible for Current Recovery Charges, as of the effective date of termination of their responsibility for Transmission Enhancement Charges under the provisions of Schedule 12.<sup>44</sup> With respect to Transmission Enhancement Charge Adjustments, the PJM Transmission Owners maintain that the Clarification Parties held Firm Transmission Withdrawal Rights as of the effective date of the Settlement, and the Settlement did not relieve them of responsibility for Transmission Enhancement Adjustments for the period prior to January 1, 2018 when they maintained Firm Transmission Withdrawal Rights.

20. The PJM Transmission Owners state that they are authorized to state that PJM agrees with this interpretation of the Settlement.<sup>45</sup> The Michigan Public Service Commission and the Pennsylvania Public Utility Commission filed comments supporting the answer of the PJM Transmission Owners.

21. Linden filed a motion to answer and a limited answer to the PJM Transmission Owners answer. Linden argues that the PJM Transmission Owners' position is contrary to section 2.2 (e)(2) of the Settlement, and states that it did not hold Firm Transmission Withdrawal Rights at the time that the Current Recovery Charges and Transmission Enhancement Charge Adjustments began being collected. Linden relies on section 2.2(e)(2) of the Settlement and maintains the PJM Transmission Owners are trying to eliminate the meaning of "collected" from this provision of the Settlement.

## V. Determination

### A. Procedural Matters

#### 1. Answers

22. Pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), we accept the PJM Transmission Owners' answer to the Clarification Parties' request for clarification and Linden's responsive pleading, but

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<sup>44</sup> The PJM Transmission Owners note that the Commission order allowing the conversions of Firm Transmission Withdrawal Rights to non-firm, effective as of January 1, 2018, is subject to rehearing. Issues raised on rehearing include when the conversion exempts Merchant Transmission Facilities from the assignment of cost responsibility for RTEP projects under the provisions of Schedule 12 of the PJM Tariff.

<sup>45</sup> PJM Transmission Owners Answer at 7.

deny the PJM Transmission Owner's request to answer the Clarification Parties' rehearing requests.<sup>46</sup>

## 2. Admissibility of Declarations

23. In comments opposing the Settlement,<sup>47</sup> Opposing Parties objected to declarations submitted in support of the Settlement by PJM and the PJM Transmission Owners, contending that the declarations rely on data that was provided in confidential settlement negotiations and as such has not been subject to review or cross-examination on the record.<sup>48</sup> The Opposing Parties filed motions to strike the declarations submitted by PJM and the PJM TOs in connection with their initial comments on the Settlement and the reply comments of the PJM TOs.<sup>49</sup> On August 15, 2016, the Acting Chief Judge denied the motion to strike the declarations supporting the Settlement of PJM and the PJM Transmission Owners. In its rehearing request, Linden argues that the May 2018 Order erred in failing to rule on the objections to evidence raised by Linden and other parties.<sup>50</sup> As discussed below, we affirm the Acting Chief Judge's order denying the motions to strike.

24. The Acting Chief Judge found the declarations permissible under the plain text of Rule 602(c)(1)(iii) that provides "An offer of settlement must include ... Copies of, or references to, any document, testimony, or exhibit, including record citations if there is a record, and any other matters that the offerer considers relevant to the offer of

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<sup>46</sup> Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2019), prohibits answers to a request for rehearing. Therefore, we reject the PJM Transmission Owner's answer to the requests for rehearing.

<sup>47</sup> Initial comments on the Settlement were filed on July 5, 2016, and reply comments were filed on July 15, 2016.

<sup>48</sup> With their initial comments on the Settlement, PJM and the PJM Transmission Owners included declarations from Paul F. McGlynn (McGlynn Declaration) and Raymond L. Gifford (Gifford Declaration), and with their reply comments on the Settlement, the PJM Transmission Owners included the declarations of Scott W. Gass (Gass Declaration) and Michael M. Schnitzer (Schnitzer Declaration).

<sup>49</sup> Linden, Neptune and LIPA, and Hudson and NYPA filed a joint motion to strike the McGlynn Declarations and Gifford Declarations on July 15, 2016, and joint motion to strike the Gass Declaration and Schnitzer Declaration on July 25, 2016.

<sup>50</sup> Linden Rehearing Request at 35.

settlement.”<sup>51</sup> The Acting Chief Judge further found that Rule 602(f)(4)<sup>52</sup> permits the filing of affidavits in contested settlements. Based on these rules, the Acting Chief Judge found “the declarations at issue here bear directly on the controversy in this proceeding of whether the Settlement’s cost allocation methodologies are just and reasonable and whether the [Rehearing] Parties’ objections to the Settlement have merit.”<sup>53</sup> The Acting Chief Judge further found that “[m]ovants are not prejudiced by allowing the declarations since the explanatory statement referenced the merits, Movants had access to the data and had a chance to respond to the declarations.”<sup>54</sup>

25. Neptune and LIPA, and Hudson and NYPA then filed a request for reconsideration of the denial of the motion to strike directed to the Acting Chief Judge. On September 21, 2016, the Acting Chief Judge denied the motion for reconsideration.<sup>55</sup> Although the Acting Chief Judge found her Office lacked jurisdiction, as the Report of Contested Settlement already had been submitted to the Commission, the Acting Chief Judge found that assuming the retention of jurisdiction, the motion should be denied. The Acting Chief Judge found that motions to strike are disfavored and again explained that the parties had access to the relevant data as they “had received the spreadsheet at issue, but did not ask PJM for the power flow model and any other information supporting the spreadsheet calculations.”<sup>56</sup>

26. The Acting Chief Judge further granted motions by Linden, Neptune and LIPA, and Hudson and NYPA to answer the reply comments in support of the Settlement filed by PJM Transmission Owners.<sup>57</sup> Following the Acting Chief Judge’s order granting the motions for leave to answer, Linden, Neptune and LIPA, and Hudson and NYPA filed

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<sup>51</sup> 18 C.F.R. § 385.602(c)(1)(iii) (2019).

<sup>52</sup> *Id.* § 385.602(f)(4).

<sup>53</sup> *PJM Interconnection, L.L.C.*, 156 FERC ¶ 63,025, at P 6 (2016) (internal cites omitted) (order of Chief Judge denying motions to strike and granting motions for leave to answer).

<sup>54</sup> *Id.*

<sup>55</sup> *PJM Interconnection, L.L.C.*, 156 FERC ¶ 63,049 (2016) (order of Chief Judge denying reconsideration and granting clarification).

<sup>56</sup> *Id.* at P 6 n.13.

<sup>57</sup> *PJM Interconnection, L.L.C.*, 156 FERC ¶ 63,022 (2016) (order of Chief Judge granting motions for leave to answer).

answers to the PJM Transmission Owners' reply comments, including their own declarations and affidavits. In fact, Linden filed an additional answer, including Linden's additional declaration identifying concerns with the information presented in the declarations supporting the Settlement.

27. We deny rehearing and affirm the Acting Chief Judge's determination to permit the declarations into the Settlement record. As the Acting Chief Judge found, Commission regulations permit the filing of affidavits and other material in support of and in opposition to a settlement.<sup>58</sup> Linden claims that it could not duplicate all of the analysis, but as the Acting Chief Judge found, Linden had requested and been provided the data underlying the declarations, had failed to ask for additional material,<sup>59</sup> and had a full opportunity to respond to these data with its own analyses and chose not to do so. Moreover, as we previously found, PJM's and the PJM Transmission Owners' declarations provide substantial evidence upon which the Commission can review the Settlement.<sup>60</sup>

**B. Requests for Clarification and Rehearing**

28. We deny the requests for clarification and rehearing, as discussed below.

**1. Clarification**

**a. Going-Forward Covered Transmission Enhancements**

29. With respect to the recovery of costs incurred for Covered Transmission Enhancements for the going-forward period, the Settlement provides that PJM shall

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<sup>58</sup> 18 C.F.R. § 385.602(c)(1)(iii) (permitting the inclusion of "any other matters that the offerer considers relevant to the offer of settlement"); *id.* § 385.602(f)(4) (requiring contesting parties disputing an issue of fact to include an affidavit).

<sup>59</sup> *PJM Interconnection, L.L.C.*, 156 FERC ¶ 63,049 at P 6 n.13.

<sup>60</sup> May 2018 Order, 163 FERC ¶ 61,168 at P 43. *See also R.E. Ginna Nuclear Power Plant, LLC*, 154 FERC ¶ 61,157 at P 26 (2016) (relying on an affidavit and finding no issue of material of fact warranting rejection of the contested settlement); *Koch Gateway Pipeline Co.*, 75 FERC ¶ 61,132, at 61,458 (1996) (concluding that in contested settlements, the Commission need not completely discount or ignore all

submission if there has not been full discovery as parties can submit answering testimony with the comments opposing the settlement).

collect a Current Recovery Charge from Responsible Customers for each Covered Transmission Enhancement, effective January 1, 2016, and continuing until all charges authorized by the Commission with respect to each Covered Transmission Enhancement are fully recovered.<sup>61</sup> Hudson and Linden converted their Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights effective as of January 1, 2018.<sup>62</sup> During the period prior to January 1, 2018, Hudson and Linden were Responsible Customers, subject to Transmission Enhancement Charges. In fact, Hudson and Linden sought to convert their Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights because they were subject to Transmission Enhancement Charges.<sup>63</sup>

30. Clarification Parties request that the Commission clarify that they are not subject to any of the Current Recovery Charges. The Clarification Parties contend that Schedule 12-C should apply only to Responsible Parties (those that hold Firm Transmission Withdrawal Rights) at the time the rates are collected by PJM under the Settlement. The Clarification Parties contend that although they held Firm Transmission Withdrawal Rights between the January 1, 2016 effective date and January 1, 2018, they

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<sup>61</sup> Settlement, Section 2.2(c).

<sup>62</sup> Opinion No. 503 established that Firm Transmission Withdrawal Rights would be used to calculate the cost responsibility assignments for Merchant Transmission Facilities for Reliability Projects. *PJM Interconnection, L.L.C.*, Opinion No. 503, 129 FERC ¶ 61,161 (2009); see *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,002, at P 34 (2018). See also, *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,201 (2018) (accepting proposed revisions to Linden’s Interconnection Service Agreement converting their Firm Transmission Withdrawal Rights to Non-firm Transmission Withdrawal Rights, effective January 1, 2018); and *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,200 (2018) (accepting proposed revisions to Hudson’s Interconnection Service Agreement converting their Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights, effective January 1, 2018).

<sup>63</sup> As a result of the assignment of cost responsibility for the Bergen-Linden Corridor Project included in the PJM RTEP, in its complaint seeking to convert its Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights, Linden states that it and Hudson sought to reduce their Firm Transmission Withdrawal Rights to zero “in order to avoid these unjust and unreasonable and unduly discriminatory and preferential cost allocations.” Linden Complaint, Docket No. EL17-90, at 8; see *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,262, at P 50 (2017) (allowing Hudson to convert its Firm Transmission Withdrawal Rights to Non-firm Transmission Withdrawal Rights); *Linden VFT, LLC v. PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,264, at P 32 (2017) (allowing Linden to convert its Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights).

should not be required to pay for the charges for this period, because the Commission did not approve the settlement until May 31, 2018, and the Transmission Owners therefore will not begin collection of those two years' worth of charges until after Clarification Parties ceased to be Responsible Customers.

31. Section 2 of Schedule 12-C states:

This Schedule 12-C shall apply to the assignment of cost responsibility with respect to the Covered Transmission Enhancements from and after January 1, 2016.

Cost responsibility under this provision does not depend on the date on which the Commission approves the Settlement or the date on which the Transmission Owners begin collection of these charges. Because Clarification Parties held Firm Transmission Withdrawal Rights from the period from January 1, 2016 to January 1, 2018, we find that they are responsible for paying for the Current Recovery Charges for that period.

**b. Historic Period Transmission Enhancement Charges Adjustments**

32. Historic period Transmission Enhancement Charge Adjustments (sometimes referred to here as Adjustments) are monthly charges and credits to adjust amounts that had been collected from customers from 2007 until January 1, 2016, which were based on the 100 percent load-ratio share method that was remanded by the Court. Schedule 12-C provides for revisions to the Adjustments in only two circumstances, including, as relevant here, when Merchant Transmission Facilities no longer are Responsible Customers. Specifically, section 4(c)(i)(2) states, in pertinent part:

If all Responsible Customers in a Zone or Merchant Transmission Facility are no longer subject to Transmission Enhancement Charges under the PJM Tariff *during the period in which Transmission Enhancement Charge Adjustments are collected*, then, during the portion of that period that such Responsible Customers are not subject to Transmission Enhancement Charges, the payments from or credits to such Responsible Customers shall cease and PJM shall adjust the Transmission Enhancement Charge Adjustments payable by and credited to other remaining Responsible Customers on a pro rata basis...(emphasis added).

33. As with Current Recovery Charges, the Clarification Parties contend that they are not subject to any Adjustments. The Clarification Parties' position centers around use of the phrase "are collected" in section 4(c)(i)(2). They essentially argue that "are collected" means "are actually collected." Because PJM did not actually collect

Transmission Enhancement Charges until after the Commission approved the settlement in May 2018—after the Clarification Parties relinquished their Firm Transmission Withdrawal Rights and thus became “no longer subject to Transmission Enhancement Charges”—the Clarification Parties claim they are not responsible for any Transmission Enhancement Charge Adjustments at all. We disagree.

34. We find that the meaning of the phrase “are collected” in section 4(c)(i)(2) is ambiguous when read in context of the surrounding text in Section 4(c) and other sections of Schedule 12-C. However, careful consideration of those sections, as well as provisions in the Settlement and the circumstances under which the Settlement was filed, do not support the Clarification Parties’ position. We find that under the most reasonable interpretation of the Settlement and Schedule 12-C as a whole, section 4(c)(i)(2) refers to the entire Adjustment period (which as discussed below runs from January 1, 2016 – December 31, 2025), not just the period that PJM actually collected Adjustments. As such, Responsible Parties, including the Clarification Parties, remain responsible for Adjustments that accrue or accrued anytime between January 1, 2016 and December 31, 2025, except for any period within that entire timeframe when they are not liable for Transmission Enhancement Charges.

35. Section 4(c)(i)(2) must be considered in conjunction with the surrounding text and other sections of Schedule 12-C, many of which specify that the Adjustments began, became effective, or accumulated starting January 1, 2016. And, of particular import here, some of these provisions expressly separate the effective date of the Adjustments from the effective date of the Settlement, the latter of which hinged on the date of Commission action on the Settlement as a whole. For example, Section 2.1 of the Settlement, Effective Date, states, “the rates and charges set forth in section 2.2 for the recovery of charges associated with [Adjustments] shall take effect as of January 1, 2016, regardless of when the Effective Date [of the Settlement] occurs.” Section 2.2(d) of the Settlement states, “[e]ffective as of January 1, 2016 and continuing through December 31, 2025 . . . PJM shall collect from or credit to Responsible Customers the [Adjustments.]” Schedule 12-C, section 4(c)—under which section 4(c)(i)(2) is located—states, “During each month during the period beginning on the [sic] January 1, 2016 and continuing through December 31, 2025, the [Adjustment] determined under this subsection 4.c. shall be applied to Responsible Customers in addition to the Current Recovery Charges.” And section 2.3 of the Settlement and section 3 of Schedule 12-C require that PJM “shall track and accumulate” Responsible Customers’ liability for Adjustments “between January 1, 2016 and the date of a FERC order . . . authorizing PJM to begin collecting the rates specified in this Schedule 12-C.” Based upon the foregoing provisions, we find that the Responsible Parties’ liability for Adjustments triggered as of January 1, 2016, and this liability “accumulated” regardless of when PJM

actually billed for the adjustments, which depended on the effective or implementation date of the Settlement as a whole.<sup>64</sup>

36. We next turn to whether that liability dissipated under section 4(c)(i)(2) when the Clarification Parties relinquished their Firm Withdrawal Rights, before PJM actually began collecting the Adjustments. We find that it did not. We find that section 4(c)(i)(2), and specifically the language, “during the period in which Transmission Enhancement Charge Adjustments are collected,” refers to the entire Adjustment period between January 1, 2016 and December 31, 2025, not just the period when PJM actually collects the Adjustments, which was contingent upon Commission approval.

37. While the Clarification Parties claim that “are collected” in section 4(c)(i)(2) refers only to the period when PJM is actually collecting Adjustments, we find that the language simply conforms to other sections referenced above, which use similar, temporal phrasing. For example, the Settlement requires that PJM “shall collect” or “apply” Adjustments “effective” or “beginning . . . on January 1, 2016,” referring to the January 1, 2016 through December 31, 2025 period, which had already begun when the Settlement was filed in June 2016. If interpreted in the manner the Clarification Parties advocate, these sections would require that PJM take actions in the past, which is an interpretation we find to be unreasonable.<sup>65</sup> Rather, we find that the phrasing of these sections, including section 4(c)(i)(2), is more reasonably explained by the circumstances under which the Settlement was drafted, negotiated and filed: Settlement discussions began two years prior to January 1, 2016 and continued for approximately six months thereafter.<sup>66</sup> Moreover, as discussed above, section 2.3 of the Settlement and Schedule

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<sup>64</sup> Our finding is further supported by the fact that section 3 provides a framework for billing for Adjustments with interest back to January 1, 2016, “[t]o reflect those differences and implement the rates and charges applicable under this Schedule 12-C as of January 1, 2016.” Indeed, as described in section 3, the very purpose of tracking and accumulating Adjustments is so that PJM would be able to bill Responsible Parties later, with interest, after the Commission approved Schedule 12-C.

<sup>65</sup> For example, viewed in isolation, Section 4(c)’s requirement that “beginning” January 1, 2016, the Adjustments “shall be applied to Responsible Customers” could be read as requiring that, on January 1, 2016, PJM must actually apply Adjustments to Responsible Customers (such as by billing them) on that date, but such a reading belies the fact that the Settlement had not been filed, much less approved by the Commission, at that time. Similarly, considering the circumstances, Section 2.2’s requirement that “effective January 1, 2016,” PJM “shall collect” Adjustments cannot be taken to mean that PJM must actually start collecting Adjustments on that date.

<sup>66</sup> As the record reflects, the Commission’s order establishing hearing and settlement judge procedures in this case issued in December 2014, and over the next

12-C, section 3, require PJM to “track and accumulate” Responsible Parties’ liability starting January 1, 2016. Indeed, the Clarification Parties’ interpretation of section 4(c)(i)(2), which would tie liability for Adjustments to the date of a Commission order approving the Settlement, fails to account for those sections, as well as other sections of the Settlement and Schedule 12-C, which, as discussed above, expressly separate the effective date of the Adjustments from the effective date of the Settlement and provide that Responsible Parties’ liability began January 1, 2016. Not only do the Clarification Parties fail to address those provisions, they offer no substantive or logical reason, and the record reveals none, as to why section 4(c)(i)(2) would refer to anything other than the January 1, 2016 through December 31, 2025 Adjustment period.

38. Based upon the foregoing, we deny the request for clarification of the collection of Transmission Enhancement Charge Adjustment sought by the Clarification Parties. Clarification Parties remain liable for Adjustments from January 1, 2016 – December 31, 2025, except for any period within that timeframe during which they were not subject to Transmission Enhancement Charges.

## 2. Rehearing Requests

### a. Reliance on the Just and Reasonable Provisions in the Tariff

39. The Rehearing Parties contend that the Commission erred in approving the Settlement under the second *Trailblazer* approach, arguing that under the second *Trailblazer* approach, there must first be a finding that “the overall result of the Settlement is just and reasonable,”<sup>67</sup> and that there cannot be a finding that the overall cost of the Settlement is just and reasonable without a detailed and independent cost-benefit analysis. The Rehearing Parties contend that that no such analysis was included with the Settlement. The Rehearing Parties argue that relying on the current just and reasonable Tariff methodology for these projects does not respond to the Court directive to quantify the benefits.

40. We deny rehearing. In the May 2018 Order, the Commission found the overall result of the Settlement to be just and reasonable as applied to the contesting parties under the second *Trailblazer* approach. The Commission found that, under this approach, the Commission does not need to render a merits decision on whether each element of a settlement package is just and reasonable, so long as the overall package falls within a

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two years, the settlement judge issued a series of status reports noting that settlement discussions were ongoing.

<sup>67</sup> Linden Rehearing Request at 14 (citing *Trailblazer*, 85 FERC at 62,342).

broad ambit of various rates which may be just and reasonable.<sup>68</sup> In affirming our finding in the May 2018 Order that the overall result of the Settlement is just and reasonable,<sup>69</sup> we address the challenges to that finding below.

41. The Commission recognized that the “Settling Parties applied the existing just and reasonable cost allocation method, subject to several simplifying assumptions and a black box adjustment.”<sup>70</sup> The PJM Transmission Owners developed, and the Commission accepted, the PJM Tariff as part of the Order No. 1000 process, taking into account the Court’s decision in the *Illinois Commerce Commission*.<sup>71</sup> The Commission found that

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<sup>68</sup> May 2018 Order, 163 FERC ¶ 61,168 at P 39 (citing *Trailblazer*, 85 FERC at 62,342-43).

<sup>69</sup> While finding the overall result of the Settlement to be just and reasonable under the second *Trailblazer* approach, we recognize the Court’s concern with this lengthy proceeding, and pursuit of an attainable resolution, “lest this case drag on forever.” *Illinois Commerce Comm’n v. FERC*, 756 F.3d 556, 565. In discerning a just and reasonable cost allocation, the Commission has further recognized that “allocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science.” Opinion No. 494, 119 FERC ¶ 61,063 at P 38 (citing *Colorado Interstate Co. v. FPC*, 324 U.S. 581, 589 (1945)).

<sup>70</sup> *Id.*

<sup>71</sup> See *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 413 (“We find that a method that blends recognition of broad, regional benefits with specifically identifiable benefits over time satisfies Regional Cost Allocation Principle 1 (i.e., that costs be allocated in a manner that is roughly commensurate with benefits received) and Regional Cost Allocation Principle 2 (i.e., that costs are not allocated to entities with little to no benefits.”); *Illinois Commerce Comm’n v. FERC*, 576 F.3d 470, at 477 (7th Cir. 2009) (“ If [the Commission] cannot quantify the benefits to the midwestern utilities from new 500 kV lines in the East, even though it does so for 345 kV lines, but it has an articulable and plausible reason to believe that the benefits are at least roughly commensurate with those utilities’ share of total electricity sales in PJM’s region.”). See generally, Order No. 1000, 136 FERC ¶ 61,051 at P 622 (requiring cost allocation in Order No. 1000 proceedings to be at least roughly commensurate with estimated benefits); *Old Dominion Elec. Cooperative v. FERC*, 898 F.3d 1254, 1261 (D.C. Cir. 2018) (recognizing that “nothing in those decisions [Seventh Circuit remands] casts doubt on the unchallenged, narrower findings [in the Order No. 1000 cost allocation method for PJM].”).

the Order No. 1000 hybrid cost allocation method “ensures that the costs are allocated in a manner that is roughly commensurate with benefits received.”<sup>72</sup>

42. We continue to find that the Commission’s reliance on the Order No. 1000 hybrid cost allocation method is consistent with the Court’s decision, and that the Settlement’s application of the Order No. 1000 hybrid cost allocation method achieves an overall just and reasonable result. While the Court did discuss using a cost-benefit analysis, it did not require exact quantification of costs and benefits, but rather required that the benefits be “roughly commensurate” with costs.<sup>73</sup> Indeed, the Rehearing Parties do not particularly question the 100 percent load-ratio share method allocation of costs, as they argue only that the Settlement makes them responsible for costs greater than the amounts they were allocated under the 100 percent load-ratio share method.<sup>74</sup> In particular, they object to the use of the solution-based DFAX method analysis to determine the cost allocation for the 50 percent of the costs, an issue that is not the subject of the remand.

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<sup>72</sup> *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128 at P 326 (denying rehearing of order accepting the Order No. 1000 hybrid cost allocation method).

<sup>73</sup> *Illinois Commerce Comm'n v. FERC*, 756 F.3d 556, 561-62. The Court also left open the possibility that the Commission could not quantify certain benefits. “If the Commission after *careful* consideration concludes that the benefits can't be quantified even roughly, it can do something like use the western utilities' estimate of the benefits as a starting point, adjust the estimate to account for the uncertainty in benefit allocation, and pronounce the resulting estimate of benefits adequate for regulatory purposes. If best is unattainable second best will have to do, lest this case drag on forever.” *Id.* at 564-65. *See Illinois Commerce Comm'n v. FERC*, 721 F.3d 764, 775 (7th Cir. 2013) (“It’s not enough for Illinois to point out that MISO’s and FERC’s attempt to match the costs and the benefits of the MVP program is crude; if crude is all that is possible, it will have to suffice.”). The Commission adopted the Order No. 1000 hybrid cost allocation method proposed by the PJM Transmission Owners, concluding that 50 percent of the costs of transmission facilities that operate at or above 500 kV roughly approximate the reliability benefits of such facilities.

<sup>74</sup> The Rehearing Parties suggest that the Commission should seek to reaffirm the 100 percent load-ratio share method allocation of the costs of the Susquehanna-Roseland high voltage project. Linden Comments in Opposition at 11, Linden Rehearing Request at 17-19 (maintaining that as a result of the Settlement, Linden would be allocated costs on a basis that is significantly higher than its load-ratio share); Hudson and NYPA Comments in Opposition at 23 (commenting that the Court premised the remand on an inadequacy of the record and rationales, “rather than a finding that the method [load-ratio share] was impermissible”).

43. We find that the Order No. 1000 hybrid cost allocation method, including the portion of costs allocated pursuant to the solution-based DFAX method analysis as applied to the projects at issue here, allocates costs to those that benefit from the projects. Moreover, the Order No. 1000 hybrid cost allocation method is the current cost allocation method, which has been found to be just and reasonable. We find the use of the Order No. 1000 hybrid cost allocation method in the Settlement achieves an overall just and reasonable result, without the need for further inquiry.

44. Nonetheless, even if the Commission were required to further justify that the Order No. 1000 hybrid cost allocation method appropriately allocates costs to those that benefit from the project, we conclude that this method allocates costs appropriately with respect to the transmission facilities that operate at or above 500 kV at issue in the

remand. In its acceptance of the Order No. 1000 hybrid cost allocation method,<sup>75</sup> the Commission recognized “the widespread, although difficult to quantify benefits of Regional Facilities and Necessary Lower Voltage Facilities, by allocating costs to all parties within PJM’s integrated network.”<sup>76</sup> The Commission further recognized that the solution-based DFAX method “evaluates the projected relative use of a new Reliability Project by load in each zone and withdrawals by merchant transmission facilities, and through this power flow analysis, identifies projected benefits for individual entities in relation to power flows.”<sup>77</sup> For the portion of costs assigned pursuant to the solution-based DFAX method, allocating costs on the basis of the projected relative use of facilities recognizes the “more specific benefits” of projects.<sup>78</sup> For purposes of the assignment of cost responsibility under the solution-based DFAX method, PJM calculates distribution factors representing the portions of a transfer of energy from a defined source to a defined sink that will flow across a particular transmission facility or group of transmission facilities.<sup>79</sup> The distribution factors represent a measure of the use by the load of each Zone or Merchant Transmission Facility based on power flow modeling.<sup>80</sup>

45. We recognize that the Commission has found that “solely relying on the solution-based DFAX method to allocate all of the costs of Lower Voltage Facilities that address stability-related reliability issues, and 50 percent of the costs of Regional Facilities and Necessary Lower Voltage Facilities that address stability-related reliability issues, does not allocate the costs of such transmission projects in a manner that is at least roughly commensurate with their benefits.”<sup>81</sup> But these circumstances do not apply to the

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<sup>75</sup> As previously noted, under the Order No. 1000 hybrid cost allocation method, for Regional Facilities and Necessary Lower Voltage Facilities that address a reliability need, 50 percent of the costs are allocated on a load-ratio share basis and the other 50 percent of the costs are allocated using the solution-based DFAX method.

<sup>76</sup> *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 413.

<sup>77</sup> *Id.* P 416.

<sup>78</sup> *Id.* P 413.

<sup>79</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 12 § (b)(iii)(A).

<sup>80</sup> These factors represent the ratio of (i) a change in megawatt flow on a Required Transmission Enhancement to (ii) a change in megawatts transferred to aggregate load within a Zone or, in the case of a Merchant Transmission Facility, the point of withdrawal associated with Firm Transmission Withdrawal Rights over such Merchant Transmission Facility. PJM, Intra-PJM Tariffs, OATT, Schedule 12 § (b)(iii)(A)(2).

<sup>81</sup> *Delaware Pub. Serv. Comm'n and Maryland Pub. Serv. Comm'n v. PJM*

Covered Transmission Enhancements because none of the projects in this proceeding resolved a stability-related reliability issue.<sup>82</sup>

46. The Rehearing Parties contend that the Commission's approval of the Order No. 1000 hybrid cost allocation method limited its use to prospective application.<sup>83</sup> But that does not preclude the parties and the Commission from using a just and reasonable cost method in a settlement to resolve a remanded proceeding.

**b. Historical Period Cost Allocation**

47. While the Settlement applied the Order No. 1000 hybrid cost allocation method to the projects subject to the remand for the period after 2016, the Settlement determined a Transmission Enhancement Charge Adjustment based on a negotiated schedule of charges and credits for the costs paid prior to 2016. As shown in the McGlynn Declaration,<sup>84</sup> many of the projects went into service after 2014, with the Susquehanna-

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*Interconnection, L.L.C.*, 164 FERC ¶ 61,035, at P 38 (2018). Stability events, the Commission noted, result from an imbalance of generation and load caused by a sudden event on the transmission system where the rotational inertia of the generator could cause the generator to lose synchronism with the rest of the transmission system. *Id.* P 40. The Commission found that transmission facilities that address stability-related reliability issues require a different analysis of costs and benefits than the solution-based DFAX method. *Id.* (“Unlike a thermal overload, for example, the parties whose load made the Artificial Island Project necessary are not the same parties that have flows on the transmission facility identified by PJM to address the stability-related reliability issue.”).

<sup>82</sup> In fact, the PJM Transmission Owners refer to the 2007 and 2008 PJM RTEPs, which details the load deliverability and generation deliverability violations in New Jersey that were the impetus for the Susquehanna-Roseland Project – violations which are in the Zones in which the Rehearing Parties' withdrawal points are located. Further, the PJM Transmission Owners stated that the violation-based DFAX method analysis for Susquehanna-Roseland Project performed by PJM demonstrates that the interconnection service and Firm Transmission Withdrawal Rights that had been granted to Linden and Neptune at the time of the violation-based DFAX method planning studies contributed to the need for the Susquehanna-Roseland Project. Schnitzer Declaration at P 11.

<sup>83</sup> Neptune Rehearing Request at 36 (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 433); Linden Rehearing Request at 25.

<sup>84</sup> McGlynn Declaration, Attachment A.

Roseland Project not going into service until 2015. Therefore, the pre-2016 costs amount to a relatively small percentage of the overall costs of these projects.

48. The Commission approved the Transmission Enhancement Charge Adjustment mechanism in the Settlement because it found the proposed cost responsibility assignments for the historical period just and reasonable, as the negotiated adjustments to the cost responsibility assignments generally reflected the currently effective PJM Tariff as if it were applied to the historical period, with the difference ranging from between 7 percent to 13 percent. In making this determination, the Commission relied on the comparison presented by the affidavits and declarations of the costs allocated by the Transmission Enhancement Charge Adjustment and those that would have been allocated using the current just and reasonable methodology using the 2019 RTEP power flows as proxy test year.<sup>85</sup>

49. The Commission also concluded that contesting parties fared no worse under the Settlement than the likely result of continued litigation. For the total cost of all the Covered Transmission Enhancements, with the exception of the Susquehanna-Roseland Project, the Rehearing Parties receive lower cost allocations than they did under the 100 percent load-ratio share that was remanded by the Court.<sup>86</sup> Moreover, the Commission found that the adjustments for the Susquehanna-Roseland Project resulted in essentially equal or lower cost allocations than would the application of the current PJM Tariff.

50. The Rehearing Parties contend that the Commission erred in finding that the Transmission Enhancement Charge Adjustments are substantially similar to what would have been allocated under the Order No. 1000 hybrid cost allocation method.<sup>87</sup> The Rehearing Parties contend that use of the McGlynn Declaration is unsupported and cannot be tested, and does not represent a sound comparison of what just and reasonable cost allocations would be to satisfy the requirement that the results be analyzed on an individual party basis. Specifically, Linden contends that the McGlynn Declaration does not specify whether the variance of between 7.5 to 13.5 percent applies to each or any individual entity, or to the Merchant Transmission Facilities as a group. The Rehearing Parties conclude that the 7.5 to 13.5 percent comparison “do not represent a sound comparison to what just and reasonable cost allocations would be and do not satisfy the requirement that the results of a Contested Settlement be analyzed on an individual basis

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<sup>85</sup> May 2018 Order, 163 FERC ¶ 61,168 at P 40.

<sup>86</sup> *Id.* P 41 (citing PJM Transmission Owners Reply Comments, Exhibit No. PTO-5 at P 15 (Gass Declaration)).

<sup>87</sup> Linden Rehearing Request at 28-29.

by party.”<sup>88</sup> The Rehearing Parties contend that there is no reason to believe that the results of the solution-based DFAX method, a forward looking analysis that uses a 2019 power flow, are indicative of flows in 2007, or in any year covered by the Settlement. For this reason, they contend that solution-based DFAX method is ill-suited for use in allocating costs for the historic period, and that its use over a ten-year period is particularly inappropriate. Linden further argues that the McGlynn Declaration appears to allocate costs to Linden for Covered Transmission Enhancements before the Linden (or Hudson) facility existed, specifically noting that Construction Work in Progress should not be reallocated.

51. We reaffirm our conclusion that the declarations and affidavits provide a reasonable basis for concluding the Transmission Enhancement Charge Adjustments set forth in the Settlement achieve an overall just and reasonable result, and indicate that the Rehearing Parties are not worse off under the Settlement than if the Commission had applied the Order No. 1000 hybrid cost allocation method, the current just and reasonable method for these facilities. The McGlynn Declaration compares whether the Transmission Enhancement Charge Adjustments are similar to what would have been allocated under the just and reasonable Order No. 1000 hybrid cost allocation method, and provides the calculation for the total credits and payments for Transmission Enhancement Charge Adjustments for the historical period using PJM’s 2019 power flow model as a reasonable proxy because “it would have been infeasible to re-create power flow cases for each year starting in 2007” since “the older power flow cases are not available” or “outdated.”<sup>89</sup> The McGlynn Declaration found the 2019 power flow analysis a reasonable one because most of the Covered Transmission Enhancements would be in service by 2014 and PJM customarily uses the power flow analysis five years later than the year in which it does the cost responsibility update.<sup>90</sup> This calculation addresses all projects regardless of year, and while not perfect, the historic period analysis supports the conclusion that the Rehearing Parties fare no worse under the Settlement than if they had litigated.<sup>91</sup>

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<sup>88</sup> *Id.* at 28.

<sup>89</sup> McGlynn Declaration at 8. Additionally, the McGlynn Declaration notes that credits and payments using the Transmission Enhancement Charge Adjustments vary from the theoretical payments in range of between 7.5 to 13.5 percent on a zonal or Merchant Transmission Facility basis. *Id.* at 9-10.

<sup>90</sup> *Id.*

<sup>91</sup> May 2018 Order, 163 FERC ¶ 61,168 at P 40 (citing McGlynn Declaration at 10).

c. Cancelled Projects

52. The Rehearing Parties contend that the May 2018 Order erred in accepting the cost allocations for the projects cancelled during the historic period.<sup>92</sup> For the Cancelled Projects, the Settlement includes specific cost responsibility assignments.<sup>93</sup> In support of the Settlement, the PJM Transmission Owners explained that the Settlement provides that the 50 percent of the cost responsibility for Cancelled Projects that are not assigned on a load-ratio share basis is assigned to Responsible Customers based on the violation-based DFAX method.<sup>94</sup> Application of the solution-based DFAX method analysis requires flow on the facility. Since PJM cancelled these projects and there are no flows on the facilities, the Transmission Owners could not use the solution-Based DFAX method analysis.<sup>95</sup> Instead, they used a violation-based DFAX method analysis in which costs are allocated based on the flows at the time the project is planned. The PJM Transmission Owners further explained that the violation-based DFAX method analysis had previously been submitted by PJM in this proceeding.<sup>96</sup>

53. Linden contends that the use of the violation-based DFAX method analysis is not adequately supported, and that the analysis is flawed because it is inconsistent with the current version of the PJM Tariff. Specifically, Linden contends that the *de minimis* threshold had been changed since the 2010 analysis had been performed,<sup>97</sup> which could have a significant effect on the costs for the Cancelled Projects that are allocated under

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<sup>92</sup> Linden Rehearing Request at 19, Neptune Rehearing Request at 42.

<sup>93</sup> Settlement, Schedule 12-C, Appendix B.

<sup>94</sup> PJM and PJM Transmission Owner Initial Comments at 28.

<sup>95</sup> May 2018 Order, 163 FERC ¶ 61,168 at P 45.

<sup>96</sup> The violation-based DFAX method analysis was submitted in response to paper hearing procedures established in this proceeding to allow parties to supplement the record. *PJM Interconnection, L.L.C.*, 130 FERC ¶ 61,052 (2010). The PJM Transmission Owners included the results of the violation-based DFAX method analysis as Exhibit PTO-10. PJM Transmission Owner Reply Comments at 19.

<sup>97</sup> Under the *de minimis* threshold, no cost responsibility shall be assigned to a Responsible Zone unless the magnitude of the distribution factor is greater than or equal to one percent. See PJM Tariff, Schedule 12, §(b)(iii) (DFAX Analysis for Reliability Projects) (6.1.0). The threshold was initially set at 0.1 percent, but was modified in 2012 to one percent to address concerns related anomalous allocations to non-adjacent Zones. See *PSEG Services. Corp.*, Docket No. ER12-2412-000 (Sept. 19, 2012) (delegated

the Settlement. PJM Transmission Owners responded to Linden's claim stating that the violation-based DFAX method analysis included the *de minimis* threshold values that were applicable at the time that the projects were cancelled, and explained the approach and assumptions in calculating the violation-based DFAX method analysis.<sup>98</sup> The *de minimis* threshold was initially set at 0.1 percent, and was modified to one percent subsequent to cancellation of the MAPP and PATH projects.<sup>99</sup> For the Cancelled Projects, Linden provides no support for using a *de minimis* threshold that is different from the value in use at the time the transmission facilities were included in the RTEP.

54. Neptune and LIPA argue that the Commission had previously determined that the use of the violation-based DFAX method was unjust and unreasonable, and that there is no further quantitative analysis to support the increased allocations for the Cancelled Projects.<sup>100</sup> We disagree. As an initial matter, as explained in the May 2018 Order, the Commission's previous concerns regarding the use of the violation-based DFAX method related to use of the method as the sole method for allocating the costs of the transmission facilities operating at or above 500 kV.<sup>101</sup> The Commission explained that the Settlement does not use the violation-based DFAX method as the sole cost allocation method, but applies a hybrid method using the violation-based DFAX method for the 50 percent that is not allocated on a load-ratio share basis. Moreover, as noted above, flow cannot be determined for the Cancelled Projects. We therefore find that the use of the violation-based DFAX method value a reasonable means of determining the 50 percent of the costs not allocated on a load-ratio share basis.<sup>102</sup>

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order).

<sup>98</sup> PJM Transmission Owner Reply Comments at 18-20, Exhibit PTO 10 at 3-8.

<sup>99</sup> See Docket No. ER13-607-000, Exhibit No. PHI 120 (MAPP and PATH were cancelled by the PJM Board of Directors on August 24, 2012).

<sup>100</sup> Neptune and LIPA Rehearing Request at 41.

<sup>101</sup> May 2018 Order, 163 FERC ¶ 61,168 at P 45 (citing *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 427).

<sup>102</sup> See, e.g., PJM, Intra-PJM Tariffs, OATT, Schedule 12§ (b)(iii)(G) ("If Transmission Provider determines in its reasonable engineering judgment that, as a result of applying the provisions in section (b)(iii) of this Schedule 12, the DFAX analysis cannot be performed or that the results of such DFAX analysis are objectively unreasonable, the Transmission Provider may use an appropriate substitute proxy for the Required Transmission Enhancement in conducting the DFAX analysis.").

55. Neptune and LIPA also argue that the violation-based DFAX method analysis for projects that PJM determined were not needed should not serve as the basis for the cost allocations for the Cancelled Projects. However, the Settlement specifically recognizes that recovery of cost for the PATH are pending, and recovers the costs for the projects, as authorized by the Commission,<sup>103</sup> and Neptune and LIPA provide no basis for challenging the recovery of the authorized costs in this proceeding.

**d. Rehearing Parties are Not Harmed by the Settlement**

56. As further support for accepting the Settlement, the Commission found that Rehearing Parties were not harmed by the Settlement.<sup>104</sup> Since the just and reasonable methodology would apply for the period after 2016, the Commission analyzed the costs allocated for the pre-2016 historic period. Except for the allocation of costs for the Susquehanna-Roseland Project, the Settlement produced lower cost allocations for all other projects for the Rehearing Parties than the load-ratio share allocations remanded by the Court. For the Susquehanna-Roseland Project, the Commission found because that project went into effect in 2015, the vast majority of the costs would be allocated under the just and reasonable Order No. 1000 hybrid cost allocation method.<sup>105</sup> To further confirm that the allocation of the costs of the Susquehanna-Roseland Project would not adversely affect the Rehearing Parties, the Commission did an analysis based on the data in the Gass Declaration finding that the cost allocation for the Susquehanna-Roseland Project approximately equaled the allocation the Rehearing Parties would receive under PJM's Order No. 1000 hybrid cost allocation method.

57. Linden contends that, assuming it is correct that a cost assignment using the Order No. 1000 hybrid cost allocation method would prevail in continued litigation, the proper analysis would be to compare the cost allocation for all Covered Transmission Enhancements to the cost allocation using the Order No. 1000 hybrid cost allocation method, not just the Susquehanna-Roseland Project.<sup>106</sup> We disagree. The majority—approximately 92 percent—of the increased costs for Covered Transmission Enhancements for which the Rehearing Parties receive an allocation under the Order No. 1000 hybrid cost allocation method are attributed to the Susquehanna-Roseland Project.<sup>107</sup> Therefore, it was reasonable for the Commission to determine that it did not

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<sup>103</sup> Settlement at section 2.2(e) (citing Docket No. ER12-2708-003).

<sup>104</sup> May 2018 Order, 163 FERC ¶ 61,168 at P 45.

<sup>105</sup> *Id.* P43.

<sup>106</sup> Linden Rehearing Request at 21.

<sup>107</sup> The Rehearing Parties receive a solution-based DFAX method allocation for

need to do a comparison of all the Covered Transmission Enhancements to the Order No. 1000 hybrid cost allocation method. The Commission found persuasive the PJM Transmission Owners' analysis to explain the increased costs of the Settlement attributed to the Susquehanna-Roseland Project.<sup>108</sup>

58. The Commission also analyzed the Susquehanna-Roseland Project to determine if the greater allocation for that project was reasonable, and found that it was, as it was similar to the allocation that would likely have occurred using the Order No. 1000 hybrid cost allocation method, the current just and reasonable rate.<sup>109</sup> Finally, as the Commission noted, the Susquehanna-Roseland Project went into service in 2015, and as a result, most of the costs are recovered in the going-forward period and allocated pursuant to the Order No. 1000 hybrid cost allocation method, the current just and reasonable rate.<sup>110</sup> Thus, the Commission examined the relevant data to show that the Settlement did not harm the Rehearing Parties by comparing the results to those under the Order No. 1000 hybrid cost allocation method, the current just and reasonable rate, and we affirm that approach here.

59. Neptune and LIPA argue that the Commission is incorrect in finding that the majority of costs for the Susquehanna-Roseland Project would be recovered in the going-forward period. Neptune and LIPA claim the table included in the May 2018 Order identifying the costs for the Susquehanna-Roseland Project allocated \$11.2 million of historic costs to Neptune and \$10.3 million of going forward costs.<sup>111</sup> Neptune and LIPA misread the table, which is reproduced below:

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only five of the 33 Covered Transmission Enhancements, and the Susquehanna-Roseland Project represents approximately 92 percent of the costs of those five projects. PJM Transmission Owners Reply Comments, Exhibit No. PTO-5 at 5 (Gass Declaration); Gass Declaration, Table 1 (the total costs of projects for which the Rehearing Parties receive a solution-based DFAX method allocation equally approximately \$1,488 million, with the Susquehanna-Roseland Project accounting for approximately \$1,368 million of that total).

<sup>108</sup> *Id.* P 43.

<sup>109</sup> *Id.*

<sup>110</sup> May 2018 Order, 163 FERC ¶ 61,168 at P 43.

<sup>111</sup> Neptune and LIPA Rehearing Request at 25 (citing May 2018 Order, 163 FERC ¶ 61,168 at P 41).

		\$ Allocation Based on Load Ratio Share			\$ Allocation Based on Settlement Agreement		
RTEP Project	RTEP Cost Estimate (MM)	Hudson (0.2%)	Neptune (0.4%)	Linden (0.2%)	Hudson	Neptune	Linden
Total Cost (All Projects except S-R)	\$2,700	\$5.4	\$10.8	\$5.4	\$3.5	\$9.1	\$4.3
PSEG S-R	\$746	\$1.5	\$3.0	\$1.5	\$12.6	\$11.3	\$10.8
PPL S-R	\$622	\$1.2	\$2.5	\$1.2	\$8.3	\$10.2	\$7.7
Total Cost	\$4,068	\$8	\$16	\$8	\$24	\$31	\$23

The PSEG S-R and PPL S-R lines in the table refer to the total cost to two transmission owners with construction responsibility for the Susquehanna-Roseland Project, not to the historic and going forward costs as Neptune and LIPA contend. Therefore, the line to which Neptune and LIPA refer (PSEG S-R) with the \$11.3 million allocation to Neptune and LIPA does not refer to historic cost, as Neptune and LIPA argue.<sup>113</sup> Rather it refers to the total project costs over the life of the project allocated to Neptune and LIPA for the portion of the Susquehanna-Roseland Project that Public Service Electric and Gas (PSEG) is constructing. Similarly, the \$10.2 million refers to the total project cost allocated to Neptune and LIPA for the portion of the Susquehanna-Roseland Project that PPL Corporation (PPL) is constructing.<sup>114</sup> As the Commission pointed out in the May 2018 Order, most of the costs of the Susquehanna-Roseland Project arise going forward since the project went into service in 2015, one year prior to the cut off between the historic and going forward periods, and the costs referenced by Neptune and LIPA

<sup>112</sup> The Table at P 41 of the May 2018 Order inadvertently truncated \$10.8 to \$10. The correct value should read \$10.8.

<sup>113</sup> While Neptune and LIPA state that the historic costs as \$11.2 million, the table identifies the total project costs over the life of the project allocated to Neptune and LIPA for the portion of the project that PSEG is constructing as \$11.3 million.

<sup>114</sup> While Neptune and LIPA state that the going-forward costs as \$10.3 million, the table identifies the total project costs over the life of the project allocated to Neptune and LIPA for the portion of the project that PPL is constructing as \$10.2 million.

reflect their portion of the project cost responsibility assigned to Neptune and LIPA for the Susquehanna-Roseland Project.

60. Linden also contends the Commission erred in its calculation that the Rehearing Parties are no worse off under the Settlement than a resolution that results from continued litigation, because the results of the Commission's analysis are inconsistent with other information in the Gass Declaration. In the May 2018 Order, the Commission, using Gass Declaration Table 2, calculated an assignment of the cost responsibility to Linden for the Susquehanna-Roseland Project of \$18.47 million under the Order No. 1000 hybrid cost allocation method, while the Commission's calculated the cost allocated to Linden under the Settlement at \$17.78 million. Linden maintains that the Gass Declaration on Table 1 shows the allocation to Linden for the Susquehanna-Roseland Project as \$18.5 million (\$10.8 + \$7.7 million).<sup>115</sup> Linden argues that if the \$18.5 million cost allocated to Linden under the Settlement from Table 1 of the Gass Declaration is used, it fares worse under the Settlement when compared to the \$18.47 million assignment of the cost responsibility to Linden for the Susquehanna-Roseland Project as calculated by the Commission in the May 2018 Order.

61. We reject Linden's arguments based on Table 1 of the Gass Declaration and affirm our finding that the Rehearing Parties are no worse off under the Settlement than a resolution that results from continued litigation. In order to compare the results of the Order No. 1000 hybrid cost allocation method to the allocation under the Settlement for the Susquehanna-Roseland Project, the Commission relied on Table 2 of the Gass Declaration—not Table 1—because the data needed for that calculation was in Table 2, not Table 1. The Commission's calculation of the allocation to Linden under the Settlement for the Susquehanna-Roseland Project multiplied the total cost of the Susquehanna-Roseland project (\$1,368 million) by the 1.30 percent allocation under the Settlement for Linden as reported on Table 2 of the Gass Declaration. We agree with Linden that this result (\$17.78 million) differs from the \$18.5 million allocation to Linden under the Settlement reported on Table 1 of the Gass Declaration. However, the Gass Declaration did not explain the reason for the discrepancy between Table 1 and Table 2 of that declaration, and the Commission did not rely on the Table 1 value in its analysis.<sup>116</sup>

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<sup>115</sup> Linden Rehearing Request at 22 (citing May 2018 Order, 163 FERC ¶ 61,168 at P 43 and Gass Declaration at Table 1, at P 15).

<sup>116</sup> However, even if the Commission were to rely on the \$18.5 million value in Table 1, it would show that Linden's cost responsibility for the Susquehanna-Roseland Project under the Order No. 1000 hybrid cost allocation method on one hand, and the Settlement method on the other hand, were the same if rounded to the nearest decimal

e. Other Issues

62. Neptune and LIPA contend that the Commission erred by accepting a Settlement that infringes on their rights to have the issues resolved on the merits. Neptune and LIPA note that issues related to the assignment of cost responsibility pursuant to the solution-based DFAX method are pending in other proceedings,<sup>117</sup> as acknowledged by the Commission.<sup>118</sup> Furthermore, Neptune and LIPA argue that because the assignment of cost responsibility has not been litigated, approval of the Settlement extinguishes their rights to have the issues of whether the solution-based DFAX method is just and reasonable litigated on the merits.

63. We disagree with Neptune and LIPA. The Settlement agreement resolves only the issues regarding the allocation of costs subject to the Court remand in Docket No. EL05-121 (and all sub-dockets) and has no effect or impact on other existing cases challenging the use of the solution-based DFAX method analysis. The Settlement provides that “all remaining issues in all sub-dockets of Docket No. EL05-121, including any issues raised in a request for rehearing or a petition for judicial review, shall be fully and finally resolved on the basis of this Settlement and no Settling Party or Non-Opposing Party shall retain any right to pursue any such issue.”<sup>119</sup> In fact, the Settlement specifically recognizes that changes to any component of the PJM Tariff, including a revision to the solution-based DFAX method, will apply to the projects at issue in the Settlement. Section 2.2(c)(ii) of the Settlement provides that “nothing in this Settlement shall prevent the Commission from adjusting the Current Recovery Charges, as necessary, if the Commission modifies the charges that the owner(s) of a Covered Transmission Enhancement are authorized to recover.”<sup>120</sup> Thus, the Settlement does not affect the concerns raised by Neptune and LIPA in other pending proceedings.

64. Finally, Linden contends that the May 2018 Order is inconsistent with Commission precedent in which the Commission rejected a contested settlement that

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point.

<sup>117</sup> Neptune and LIPA Rehearing Request at 35 (referencing *Linden VFT, LLC v. PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,089 (2016)).

<sup>118</sup> May 2018 Order, 163 FERC ¶ 61,168 at P 44.

<sup>119</sup> Settlement, Section 2.4.

<sup>120</sup> Settlement, Section 2.2(c)(ii).

contained a special negotiated rate for certain customers while submitting provisions that impose costs on other parties not exempted by the settlement provisions.<sup>121</sup>

65. The case cited by Linden is inapposite. In that case, the Commission rejected a settlement that explicitly contained special consideration only for the settling parties. The settlement in that proceeding failed to apply the same rates to similarly situated customers who received service from the utility's uncontestable affiliates. Here, in contrast, the Settlement applies to all the parties, and Linden has cited no evidence that the Settlement treated it differently than other customers, many of whom also received higher cost allocations, many much higher than Linden's allocation. Despite Linden's objection, we find here the Settlement applies the Order No. 1000 hybrid cost allocation method, the current just and reasonable to all customers.

## **VI. Compliance Filings**

### **A. PJM**

66. In Docket No. ER18-2102-000, PJM submitted revisions to the PJM Tariff to include Schedule 12-C to be effective January 1, 2016.<sup>122</sup> In addition, PJM submitted revisions to Schedule 12 Appendix to be effective January 1, 2016; revisions to Schedule 12 Appendix to be effective January 1, 2017; revisions to Schedule 12 Appendix to be effective February 1, 2017;<sup>123</sup> revisions to Schedule 12 Appendix to be effective May 1, 2017;<sup>124</sup> and revisions to Schedule 12 Appendix to be effective January 1, 2018.

67. In Docket No. ER18-2102-001, PJM submitted revisions to Schedule 12-C Appendix B, and revisions to Schedule 12-C Appendix C to revise the Transmission

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<sup>121</sup> Linden Rehearing Request at 34 (citing *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,207, at P 52 (2013)).

<sup>122</sup> Schedule 12-C includes: (1) Appendix A (List of Covered Transmission Elements), (2) Appendix B (Allocations for Cancelled Plants), and (3) Appendix C (Transmission Enhancement Charge Adjustments).

<sup>123</sup> Reflecting the Mid-Atlantic Interstate Transmission, LLC integration of Metropolitan Edison Company and Pennsylvania Electric Company. See *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,062 (2017).

<sup>124</sup> Reflecting the termination of Consolidated Edison of New York, Inc., transmission service agreements. See PJM, Intra-PJM Tariffs, OATT, Schedule 12 § (b)(xi).

Enhancement Charge Adjustments as a result of the Linden and Hudson conversion of Firm Transmission Withdrawal Rights to non-firm, to be effective January 1, 2018.

## **B. Notice and Interventions**

68. Notice of Applicant's filing was published in the *Federal Register*, 83 Fed. Reg. 38,137 (2018), with interventions and protests due on or before August 20, 2018. Notice of intervention was filed by the Illinois Commerce Commission, and timely motions to intervene were filed by FirstEnergy Service Company, American Electric Power Service Corporation, Exelon Corporation, Linden, PPL Electric Utilities Corporation, American Municipal Power Inc., and Dominion Energy Services, Inc. PSEG filed a late-filed motion to intervene.

69. Restating issues raised in its rehearing request of the May 2018 Order, that it no longer holds Firm Transmission Withdrawal Rights at the time the Current Recovery Charges and Transmission Enhancement Charges Adjustment are collected, Linden protests the PJM compliance filings.

## **C. Determination**

### **1. Procedural Matters**

70. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We grant PSEG's late-filed motion to intervene, given its interest in the proceeding and the absence of undue prejudice or delay.

### **2. Substantive Matters**

71. As discussed above, we deny Linden's request for rehearing of the May 2018 Order, which serves as the basis for its protest of the compliance filings. Linden's protest of the compliance filings raises no new issues. We find that the PJM compliance filings, which reflect the effective date of the Settlement of January 1, 2016, and are revised to reflect the assignment of cost responsibility for the Covered Transmission Enhancements consistent with the Tariff provisions implementing the Settlement, including the conversions of the Hudson and Linden Firm Transmission Withdrawal Right to non-firm, which became effective January 1, 2018, correctly implement the provisions of the Settlement. Accordingly, we deny Linden's protest and accept the compliance filings.

The Commission orders:

(A) The requests for clarification and rehearing of the May 2018 Order are hereby denied, as discussed in the body of this order.

(B) The PJM compliance filings are hereby accepted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

## Appendix A

### Settling Parties

American Electric Power Service Corporation;<sup>125</sup>  
Blue Ridge Power Agency, Inc.  
Dayton Power and Light Company;  
Delaware Municipal Electric Corporation, Inc.;  
Duke Energy Business Services, LLC;<sup>126</sup>  
Duquesne Light Company;  
East Kentucky Power Cooperative, Inc.;  
Exelon Corporation;<sup>127</sup>  
FirstEnergy Utilities;<sup>128</sup>  
PPL Electric Utilities Corporation;  
UGI Utilities, Inc.;  
PJM Interconnection, L.L.C.;  
Public Service Commission of West Virginia;  
Public Utilities Commission of Ohio;  
Illinois Commerce Commission;  
Indiana Utility Regulatory Commission (Indiana Commission);  
Michigan Public Service Commission (Michigan Commission); and  
Pennsylvania Public Utility Commission (Pennsylvania Commission).

### Non-Opposing Parties

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<sup>125</sup> On behalf of its operating companies: Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company.

<sup>126</sup> On behalf of Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.

<sup>127</sup> For Commonwealth Edison Company and PECO Energy Company (with Baltimore Gas and Electric Company, Pepco Holdings, LLC, Potomac Electric Power Company, Delmarva Power & Light Company and Atlantic City Electric Company).

<sup>128</sup> On behalf of affiliates: American Transmission Systems, Incorporated, Cleveland Electric Illuminating Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Ohio Edison Company, Monongahela Power Company, Pennsylvania Electric Company, Pennsylvania Power Company, Potomac Edison Company, Toledo Edison Company, and West Penn Power Company.

Delaware Public Service Commission; Maryland Public Service Commission; New Jersey Board of Public Utilities; Public Service Commission of the District of Columbia; Consolidated Edison Company of New York, Inc. (Con Edison); Old Dominion Electric Cooperative; PSEG Energy Resources & Trade LLC; Public Power Association of New Jersey; Public Service Electric and Gas Company; Rockland Electric Company; Virginia Electric and Power Company, and the Virginia State Corporation Commission are listed in the Settlement as not opposing the Settlement. American Municipal Power, Inc. filed comments noting it neither supports nor opposes the Settlement, but should be considered as a non-opposing party.

## Appendix B

### Tariff Records Filed and Accepted in Docket No. ER18-2102-000

#### PJM Interconnection, L.L.C. Intra-PJM Tariffs

Accepted Effective January 1, 2016

[SCHEDULE 12.APPENDIX 1, OATT SCHEDULE 12.APPENDIX 1 Atlantic City Electric Company, 11.0.1](#)

[SCHEDULE 12.APPENDIX 3, OATT SCHEDULE 12.APPENDIX 3 Delmarva Power & Light Company, 12.0.1](#)

[SCHEDULE 12.APPENDIX 5, OATT SCHEDULE 12.APPENDIX 5 Metropolitan Edison Company, 14.0.1](#)

[SCHEDULE 12.APPENDIX 7, OATT SCHEDULE 12.APPENDIX 7 Pennsylvania Electric Company, 15.0.1](#)

[SCHEDULE 12.APPENDIX 8, OATT SCHEDULE 12.APPENDIX 8 PECO Energy Company, 14.0.1](#)

[SCHEDULE 12.APPENDIX 9, OATT SCHEDULE 12.APPENDIX 9 PPL Electric Utilities Corpora, 14.0.1](#)

[SCHEDULE 12.APPENDIX 10, OATT SCHEDULE 12.APPENDIX 10 Potomac Electric Power Compan, 13.0.1](#)

[SCHEDULE 12.APPENDIX 12, OATT SCHEDULE 12.APPENDIX 12 Public Service Electric and G, 15.0.1](#)

[SCHEDULE 12.APPENDIX 14, OATT SCHEDULE 12.APPENDIX 14 Monongahela Power Company, Th, 17.0.1](#)

[SCHEDULE 12.APPENDIX 17, OATT SCHEDULE 12.APPENDIX 17 AEP Service Corporation, 15.0.1](#)

[SCHEDULE 12.APPENDIX 20, OATT SCHEDULE 12.APPENDIX 20 Virginia Electric and Power, 15.0.1](#)

[OATT SCHEDULE 12-C, OATT SCHEDULE 12-C - Assignment of Cost Responsibility CTE, 0.0.0](#)

[OATT SCHEDULE 12-C APPX A, OATT SCHEDULE 12-C.APPENDIX A List of Covered Trans. Enhance, 0.0.0](#)

[OATT SCHEDULE 12-C APPX B, OATT SCHEDULE 12-C.APPENDIX B Allocations for Canceled Proj, 0.0.0](#)

[OATT SCHEDULE 12-C APPX C, OATT SCHEDULE 12-C.APPENDIX C TEC Adjustments - Monthly, 0.0.0](#)

**Accepted Effective January 1, 2017**

[SCHEDULE 12.APPENDIX 1, OATT SCHEDULE 12.APPENDIX 1 Atlantic City Electric Company, 12.1.1](#)

[SCHEDULE 12.APPENDIX 3, OATT SCHEDULE 12.APPENDIX 3 Delmarva Power & Light Company, 13.1.1](#)

[SCHEDULE 12.APPENDIX 5, OATT SCHEDULE 12.APPENDIX 5 Metropolitan Edison Company, 16.0.1](#)

[SCHEDULE 12.APPENDIX 7, OATT SCHEDULE 12.APPENDIX 7 Pennsylvania Electric Company, 17.0.1](#)

[SCHEDULE 12.APPENDIX 8, OATT SCHEDULE 12.APPENDIX 8 PECO Energy Company, 15.0.1](#)

[SCHEDULE 12.APPENDIX 9, OATT SCHEDULE 12.APPENDIX 9 PPL Electric Utilities Corpora, 15.0.1](#)

[SCHEDULE 12.APPENDIX 10, OATT SCHEDULE 12.APPENDIX 10 Potomac Electric Power Compan, 14.0.1](#)

[SCHEDULE 12.APPENDIX 12, OATT SCHEDULE 12.APPENDIX 12 Public Service Electric and G, 16.0.1](#)

[SCHEDULE 12.APPENDIX 14, OATT SCHEDULE 12.APPENDIX 14 Monongahela Power Company, Th, 18.0.1](#)

[SCHEDULE 12.APPENDIX 17, OATT SCHEDULE 12.APPENDIX 17 AEP Service Corporation, 16.1.1](#)

[SCHEDULE 12.APPENDIX 20, OATT SCHEDULE 12.APPENDIX 20 Virginia Electric and Power, 16.1.1](#)

**Accepted Effective February 1, 2017**

[SCHEDULE 12.APPENDIX 5, OATT SCHEDULE 12.APPENDIX 5 Metropolitan Edison Company, 16.0.2](#)

[SCHEDULE 12.APPENDIX 7, OATT SCHEDULE 12.APPENDIX 7 Pennsylvania Electric Company, 17.0.2](#)

**Accepted Effective May 1, 2017**

[SCHEDULE 12.APPENDIX 1, OATT SCHEDULE 12.APPENDIX 1 Atlantic City Electric Company, 13.0.1](#)

[SCHEDULE 12.APPENDIX 3, OATT SCHEDULE 12.APPENDIX 3 Delmarva Power & Light Company, 14.0.1](#)

[SCHEDULE 12.APPENDIX 5, OATT SCHEDULE 12.APPENDIX 5 Metropolitan Edison Company, 17.0.1](#)

[SCHEDULE 12.APPENDIX 7, OATT SCHEDULE 12.APPENDIX 7 Pennsylvania Electric Company, 18.0.1](#)

[SCHEDULE 12.APPENDIX 8, OATT SCHEDULE 12.APPENDIX 8 PECO Energy Company, 16.0.1](#)

[SCHEDULE 12.APPENDIX 9, OATT SCHEDULE 12.APPENDIX 9 PPL Electric Utilities Corpora, 16.0.1](#)

[SCHEDULE 12.APPENDIX 10, OATT SCHEDULE 12.APPENDIX 10 Potomac Electric Power Compan, 15.0.1](#)

[SCHEDULE 12.APPENDIX 12, OATT SCHEDULE 12.APPENDIX 12 Public Service Electric and G, 17.0.1](#)

[SCHEDULE 12.APPENDIX 14, OATT SCHEDULE 12.APPENDIX 14 Monongahela Power Company, Th, 19.0.1](#)

[SCHEDULE 12.APPENDIX 17, OATT SCHEDULE 12.APPENDIX 17 AEP Service Corporation, 17.0.1](#)

[SCHEDULE 12.APPENDIX 20, OATT SCHEDULE 12.APPENDIX 20 Virginia Electric and Power, 17.0.1](#)

**Accepted Effective January 1, 2018**

[SCHEDULE 12.APPENDIX 1, OATT SCHEDULE 12.APPENDIX 1 Atlantic City Electric Company, 16.0.0](#)

[SCHEDULE 12.APPENDIX 3, OATT SCHEDULE 12.APPENDIX 3 Delmarva Power & Light Company, 17.0.0](#)

[SCHEDULE 12.APPENDIX 5, OATT SCHEDULE 12.APPENDIX 5 Metropolitan Edison Company, 19.0.0](#)

[SCHEDULE 12.APPENDIX 7, OATT SCHEDULE 12.APPENDIX 7 Pennsylvania Electric Company, 21.0.0](#)

[SCHEDULE 12.APPENDIX 8, OATT SCHEDULE 12.APPENDIX 8 PECO Energy Company, 19.0.0](#)

[SCHEDULE 12.APPENDIX 9, OATT SCHEDULE 12.APPENDIX 9 PPL Electric Utilities Corpora, 19.0.0](#)

[SCHEDULE 12.APPENDIX 10, OATT SCHEDULE 12.APPENDIX 10 Potomac Electric Power Compan, 18.0.0](#)

[SCHEDULE 12.APPENDIX 12, OATT SCHEDULE 12.APPENDIX 12 Public Service Electric and G, 20.0.0](#)

[SCHEDULE 12.APPENDIX 14, OATT SCHEDULE 12.APPENDIX 14 Monongahela Power Company, Th, 22.0.0](#)

[SCHEDULE 12.APPENDIX 17, OATT SCHEDULE 12.APPENDIX 17 AEP Service Corporation, 20.0.0](#)

[SCHEDULE 12.APPENDIX 20, OATT SCHEDULE 12.APPENDIX 20 Virginia Electric and Power, 19.0.0](#)

**Tariff Records Filed and Accepted in Docket No. ER18-2102-001**

**PJM Interconnection, L.L.C.  
Intra-PJM Tariffs**

**Accepted Effective January 1, 2018**

[OATT SCHEDULE 12-C APPX B, OATT SCHEDULE 12-C.APPENDIX B Allocations for Canceled Proj, 1.0.0](#)

[OATT SCHEDULE 12-C APPX C, OATT SCHEDULE 12-C.APPENDIX C TEC Adjustments - Monthly, 1.0.0](#)