

170 FERC ¶ 61,023  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Linden VFT, LLC

v.

Docket No. EL17-90-001

Public Service Electric and Gas Company and PJM  
Interconnection, L.L.C.

ORDER DENYING REHEARING

(Issued January 23, 2020)

1. On September 18, 2017, Linden VFT, LLC (Linden),<sup>1</sup> pursuant to section 206 of the Federal Power Act (FPA),<sup>2</sup> filed a complaint (Complaint) contending that Public Service Electric and Gas Company (PSEG) unreasonably withheld its consent to an amendment to the existing Linden interconnection service agreement (Original ISA) between Linden, PJM, and PSEG to allow Linden to convert Firm Transmission Withdrawal Rights (TWRs) to Non-Firm TWRs.<sup>3</sup> Additionally, or alternatively, Linden contended that the PJM Open Access Transmission Tariff (Tariff) was unjust and unreasonable to the extent that it did not permit a merchant transmission facility Owner to reduce all of its Firm TWRs to Non-Firm TWRs without an amendment to its ISA or the consent of the transmission owner that is party to that agreement.<sup>4</sup>

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<sup>1</sup> Linden owns and operates a controllable alternating-current Merchant Transmission Facility that connects PJM Interconnection, L.L.C. (PJM) with New York Independent System Operator, Inc. (NYISO).

<sup>2</sup> 16 U.S.C. § 824e (2018).

<sup>3</sup> See *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,070 (2013) (accepting Interconnection Service Agreement No. 3579).

<sup>4</sup> Firm TWRs are defined as the rights to schedule energy and capacity withdrawals from a Point of Interconnection of a Merchant Transmission Facility with the Transmission System. Non-Firm TWRs are defined as the rights to schedule energy withdrawals from a specified point on the Transmission System. See PJM Tariff § I, OATT Definitions 1.13A,E-F, 5.0.1 and L-M-N, 14.0.0.

2. In an order dated December 15, 2017, the Commission found that the Original ISA was unjust and unreasonable insofar as it did not permit Linden to convert its Firm TWRs to Non-Firm TWRs.<sup>5</sup> On January 12, 2018, New Jersey Board of Public Utilities (NJ BPU), and on January 16, 2018, PSEG and PJM Transmission Owners timely requested rehearing of the December 2017 Order. For the reasons discussed below, we deny the requests for rehearing of the December 2017 Order.

### **I. Background**

3. PJM's Tariff provides merchant transmission facilities with the right to elect TWRs in lieu of other transmission rights<sup>6</sup> and to request either Firm or Non-Firm TWRs. Firm TWRs allow the merchant transmission facility to schedule energy and capacity withdrawals from the PJM system.<sup>7</sup> In contrast, Non-Firm TWRs only allow the merchant transmission facility to schedule energy and, as such, are similar to Non-Firm Point-to-Point Transmission Service in that Non-Firm TWRs allow the merchant transmission facility to schedule transmission service on an as-available basis and are subject to curtailment.<sup>8</sup>

4. Once a merchant transmission facility has elected to obtain TWRs rather than another type of transmission right, PJM determines the necessary upgrades to support the

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<sup>5</sup> *Linden VFT, LLC v. Pub. Serv. Elec. & Gas Co.*, 161 FERC ¶ 61,264, at P 2 and ordering paragraphs (A) and (B) (2017) (December 2017 Order). In an order dated, March 5, 2018, the Commission accepted PJM's compliance filing in response to the December 2017 Order. *See PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,201 (2018).

<sup>6</sup> Interconnection customers can elect TWRs in lieu of Incremental Deliverability Rights, Incremental Auction Revenue Rights, Incremental Capacity Transfer Rights, and Incremental Available Transfer Capability Revenue Rights. *See* PJM Tariff § 232, Transmission Injection Rights and Transmission Withdrawal Rights.

<sup>7</sup> Firm TWRs are similar to the rights under Firm Point-to-Point Transmission Service. Firm TWRs are rights to schedule energy and capacity withdrawals between a Point of Interconnection of merchant transmission facility with the transmission system that can only be awarded to a merchant transmission facility, whereas Firm Point-to-Point Transmission Service is reserved or scheduled energy between specified Points of Receipt and Points of Delivery for transmission customers generally. *See* PJM Tariff § I, OATT Definitions 1.13A, E-F, 5.0.1 and Definitions L-M-N, 14.0.0. *See also* PJM Tariff § II, Point-to-Point Transmission Service.

<sup>8</sup> *See* PJM Tariff § I, OATT Definitions L-M-N, 14.0.0, Non-Firm Transmission Withdrawal Rights.

Firm or Non-Firm TWRs requested through its interconnection process.<sup>9</sup> Upon receiving an interconnection request, PJM undertakes feasibility and system impact studies, and based on these costs, the merchant transmission facility decides the level of Firm or Non-Firm TWRs it wishes to obtain. The interconnecting merchant transmission facility is assigned the costs of the Merchant Network Upgrades that would not have been incurred “but for” the interconnection request.<sup>10</sup> The merchant transmission facility, PJM, and the transmission owner to which the facility will be interconnected enter into a three-party ISA establishing the costs and conditions of the interconnection. In addition, a merchant transmission facility is responsible, on an annual basis, for the costs of any post-interconnection network upgrades to the transmission system necessary to support the merchant transmission facility’s Firm TWRs.<sup>11</sup>

**A. Filing in Docket No. ER17-2267-000**

5. The Original ISA sets out the rights and responsibilities of PJM, Linden, and PSEG with respect to the interconnection to the PJM system of Linden’s facility, a 315 megawatt (MW) merchant transmission project consisting of three 105 MW variable frequency transformers connected between the PSEG system and the Consolidated Edison Company of New York, Inc. system. On August 9, 2017, PJM, at the request of Linden, filed, under section 205 of the FPA,<sup>12</sup> an unexecuted, amended ISA between

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<sup>9</sup> PJM Tariff § 232.3, Determination of Transmission Injection Rights and Transmission Withdrawal Rights to be Provided to Interconnection Customer.

<sup>10</sup> *PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,277, at P 4 (2003). Merchant Network Upgrades are additions or upgrades to, or replacement of, existing transmission system facilities by or on behalf of a merchant transmission facility developer. *See* PJM Tariff, § I, OATT Definitions - L - M - N, 11.0.0. In exchange for their Merchant Network Upgrades, merchant transmission facilities receive Firm TWRs and Financial Transmission Rights. *See* PJM Filing, Docket No. ER03-405-000, at 12 (filed Jan. 10, 2003) (identifying transmission-related rights to which merchant transmission facility developers may be entitled); PJM Tariff, § 206.5 Estimates of Certain Upgrade-Related Rights.

<sup>11</sup> *See* PJM Tariff Schedule 12, § (b), and PJM Tariff § 232.2, Right of Interconnection Customer to Transmission Injection Rights and Transmission Withdrawal Rights. *See also*, *PJM Interconnection, L.L.C.*, Opinion No. 503, 129 FERC ¶ 61,161 (2009), *order on reh’g*, Opinion No. 503-A, 139 FERC ¶ 61,243 (2012) (finding that merchant transmission facilities should be responsible for the costs of maintaining network reliability, including costs for Regional Transmission Expansion Plan (RTEP) responsibility assignments, based on their Firm TWRs).

<sup>12</sup> 16 U.S.C. § 824d (2018).

PJM, Linden, and PSEG. Linden sought to amend its Original ISA to convert its 330 MW of Firm TWRs to Non-Firm TWRs.<sup>13</sup> On October 5, 2017, the Commission rejected PJM's filing, finding that neither the Original ISA nor PJM's Tariff permitted PJM to file, under section 205, an unexecuted amended ISA with modifications requested by an interconnection customer. In so doing, the Commission noted that subsequent to the filing of amendments to the Linden ISA, Linden filed its Complaint.<sup>14</sup> The Commission stated that it would address concerns related to Linden's request to convert its Firm TWRs to Non-Firm TWRs in proceedings related to the Complaint.

6. On September 20, 2018, the Commission denied Linden's request for rehearing of the October 2017 Order.<sup>15</sup>

### **B. Linden Complaint**

7. In its Complaint, Linden argued that PSEG is unreasonably withholding its consent to the amendment of the Original ISA, which constitutes an abuse of power and violates principles of open access.<sup>16</sup> In support of its request that the Commission direct PSEG to consent to the amendment to the Original ISA, Linden argued that PSEG has not identified a legitimate objection to Linden's request to amend the Original ISA.<sup>17</sup> Linden also stated that it has fully paid for the network upgrades necessary to support its Firm TWRs. Linden argued that there were no reliability concerns or operational issues raised as a result of its request to reduce the level of service from Firm TWRs to Non-Firm TWRs, and, because PJM is not obligated to plan to support Non-Firm TWRs, PJM would not need to plan any additional upgrades as a result of the request. Linden added that its transmission facility would remain fully controllable by PJM, and in the event of a reliability or other operational issue, flow can be shut off consistent with applicable rules and procedures.<sup>18</sup>

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<sup>13</sup> PJM made this filing under Docket No. ER17-2267-000.

<sup>14</sup> *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,021 (2017) (October 2017 Order).

<sup>15</sup> *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,193 (2018).

<sup>16</sup> Complaint at 9-10.

<sup>17</sup> *Id.* at 11.

<sup>18</sup> *Id.* at 11-12.

### C. December 2017 Order

8. In the December 2017 Order, the Commission granted the Complaint, in part, finding that the Original ISA was unjust and unreasonable insofar as it did not permit Linden to convert its Firm TWRs to Non-Firm TWRs. The Commission directed PJM to make a compliance filing amending section 2.2 of Specifications for the Original ISA to reflect the conversion of 330 MW Firm TWRs for a total of 0 MW Firm TWRs and 330 MW Non-Firm TWRs, to be effective on the date requested by Linden in its written notice to convert from Firm to Non-Firm, but no earlier than the date of that notice. Because the Commission found that Linden may convert its Firm TWRs to Non-Firm TWRs, the Commission further found that revisions to the *pro forma* Tariff were unnecessary.<sup>19</sup>

9. The Commission stated that Linden had already satisfied the interconnection requirements, and found that requiring Linden to maintain such Firm TWRs for the life of the merchant transmission facility is unjust and unreasonable in the absence of any operational or reliability basis for doing so. The Commission stated that converting those Firm TWRs to Non-Firm TWRs imposes no additional obligation on PJM and, in fact, is less burdensome in that PJM will no longer have to guarantee that its transmission system can support such use.<sup>20</sup>

10. The Commission disagreed with PSEG's assertion that allowing Linden to convert its Firm TWRs to Non-Firm TWRs will undermine the interconnection process, as Linden has already fulfilled its interconnection requirements. The Commission agreed with PJM that Linden's conversion of Firm TWRs to Non-Firm TWRs does not require any additional system upgrades as the Non-Firm TWRs do not increase system withdrawals and will not affect payments for previously constructed facilities.<sup>21</sup> The Commission also was not persuaded by arguments that: (1) the Original ISA is a bilateral contract governed by the *Mobile-Sierra*<sup>22</sup> public interest standard; and (2) that Linden

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<sup>19</sup> December 2017 Order, 161 FERC ¶ 61,264 at P 23.

<sup>20</sup> *Id.* PP 24-25.

<sup>21</sup> *Id.* P 26.

<sup>22</sup> *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Sierra*); *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 344 (1956) (*Mobile*) (together, *Mobile-Sierra*).

should not be allowed to convert its Firm TWRs to Non-Firm TWRs with the result that Linden would escape cost allocation for RTEP projects.<sup>23</sup>

## II. Discussion

### A. Procedural Matters

11. On January 31, 2018, Linden filed an answer in response to PJM Transmission Owners' request for clarification and rehearing. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2019), prohibits an answer to a request for rehearing. Because the Commission regards PJM Transmission Owners' request for clarification as a request for rehearing of the December 2017 Order, the Commission dismisses Linden's answer.

### B. Substantive Matters

#### 1. Mobile-Sierra

12. PSEG argues that the Commission's directive that PJM unilaterally amend the Original ISA erred by failing to apply the public interest standard of the *Mobile-Sierra* doctrine.<sup>24</sup> PSEG argues that the Commission erred in finding that the "just and reasonable" standard, rather than the "public interest" standard, applied to the ISA. PSEG maintains that, contrary to the Commission's assertions, the type of TWRs and the level of those TWRs' firmness are not *pro forma* provisions, and there were legitimate operational and reliability reasons why these provisions were negotiated by the parties, specific to Linden, and to which Linden consented. PSEG argues that the *Mobile-Sierra* doctrine applies to all contracts, unless parties establish a different standard of review or the terms at issue are rates set unilaterally by tariff.<sup>25</sup> PSEG argues that the Commission erred in relying on *Oklahoma Gas*<sup>26</sup> as an exception to the *Mobile-Sierra* doctrine

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<sup>23</sup> December 2017 Order, 161 FERC ¶ 61,264 at PP 27-35.

<sup>24</sup> PSEG Request for Rehearing at 4.

<sup>25</sup> *Id.* at 5-8 (citing *NRG Power Mktg., LLC v. Me. Pub. Utils. Comm'n*, 558 U.S. 165, 175 (2010); *Morgan Stanley Cap. Group, Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527, 530-34, 546 n.3 (2008) (internal citations omitted); *Texaco Inc. v. FERC*, 148 F.3d 1091, 1094, 1097 (D.C. Cir. 1998) (internal citations omitted); *New England Power Generators Ass'n v. FERC*, 707 F.3d 364, 366 (D.C. Cir. 2013); *Mojave Pipeline Co.*, 62 FERC ¶ 61,195, at 62,361 (1993)).

<sup>26</sup> *Okla. Gas & Elec. Co. v. FERC*, 827 F.3d 75, 76, 79-80 (D.C. Cir. 2016) (*Oklahoma Gas*).

because *Oklahoma Gas* only provided an additional exception to *Mobile-Sierra* where competitors agreed to exclude future competition, which is inapplicable to Linden's ISA.<sup>27</sup> PSEG argues that section 22.6 of the Original ISA grants to interconnection parties, not the Commission, the right to bring a complaint pursuant to section 206 of the FPA. PSEG contends that the Commission acted on its own behalf by granting to Linden relief that Linden did not request, specifically a finding that the Original ISA itself is unjust and unreasonable.<sup>28</sup>

13. We are not persuaded by PSEG's arguments that the Commission erred in applying the "just and reasonable" rather than the "public interest" standard of *Mobile-Sierra*. As the Commission stated in the December 2017 Order, the *Mobile-Sierra* "public interest" presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption.<sup>29</sup> In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm's length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm's-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption.<sup>30</sup>

14. PSEG is correct that the D.C. Circuit in *Oklahoma Gas* found that the *Mobile-Sierra* presumption does not apply where competitors agree to exclude competition. But the court did not restrict exceptions to application of the *Mobile-Sierra* presumption in the manner that PSEG suggests, nor did the court disturb the Commission's earlier

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<sup>27</sup> PSEG Request for Rehearing at 8-9.

<sup>28</sup> *Id.* at 9-10.

<sup>29</sup> *See* December 2017 Order, 161 FERC ¶ 61,264 at P 27.

<sup>30</sup> The Commission has followed this approach in other contexts. *See, e.g., Southwest Power Pool, Inc.*, 144 FERC ¶ 61,059 (2013), *order on reh'g and compliance*, 149 FERC ¶ 61,048, at PP 100-104 (2014), *denying petition for review, Oklahoma Gas*, 827 F.3d at 76; *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 184 (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) (citing *Carolina Gas Transmission Corp.*, 136 FERC ¶ 61,014, at P 17 (2011) (holding that the terms of an agreement that are "incorporated into the service agreements of all present and future customers . . . are properly classified as tariff rates and the *Mobile-Sierra* presumption would not apply.")).

distinction between the types of agreements subject and not subject to the *Mobile-Sierra* presumption.<sup>31</sup>

15. We reaffirm the December 2017 Order’s finding that the terms in the ISA were generally applicable and, therefore, were not protected by the *Mobile-Sierra* presumption. Section 232.3 of PJM’s Tariff governs the conditions under which a transmission interconnection customer receives Firm and Non-Firm TWRs: “The Office of Interconnection [PJM] shall determine the . . . Transmission Withdrawal Rights . . . to be provided to eligible Transmission Interconnection Customer(s).”<sup>32</sup> Once determined by PJM following a System Impact Study, those rights became available to the Transmission Interconnection Customer (e.g., Linden) pursuant to execution of an ISA based on the *pro forma* ISA attached to the PJM Tariff as Attachment O. Because PJM determined the TWRs available to Linden following that study conducted under terms and conditions that are generally applicable (even though the results of that study were specific to Linden), we regard those terms as generally applicable and therefore subject to the “just and reasonable” standard, rather than the *Mobile-Sierra* presumption.

16. We also reaffirm the December 2017 Order’s finding that the *Memphis* clause<sup>33</sup> in the Original ISA permitted the Commission to apply the “just and reasonable” rather than the “public interest” standard. Section 22.3 of the Original ISA, which is the same as

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<sup>31</sup> As neither party advocates for restricting *Mobile-Sierra* exclusively to rates, there is no need to decide that question. We assume *arguendo* that the presumption is not so limited. More importantly, this precedent reflects that no matter the contract provision at issue, even if the *Mobile-Sierra* doctrine might apply to it generally, FERC did not err in determining that the doctrine does not extend to anti-competitive measures that were not arrived at through arms-length bargaining. In other words, the *term must be the product of adversarial negotiations between sophisticated parties pursuing independent interests.*

*Oklahoma Gas*, 827 F.3d at 79-80 (emphasis added).

<sup>32</sup> PJM Tariff § 232.3, Determination of Transmission Injection Rights and Transmission Withdrawal Rights to be Provided to Interconnection Customer.

<sup>33</sup> *United Gas Co. v. Memphis Gas Div.*, 358 U.S. 103 (1958) (contracts can preserve the rights of parties to revise rates under the ordinary just and reasonable standard).

section 22.3 of the *pro forma* ISA in Attachment O in PJM's Tariff, provided in relevant part that:

[N]othing contained in this Interconnection Service Agreement shall be construed as affecting in any way any of the rights of any Interconnection Party with respect to changes in applicable rates or charges under Section 205 of the Federal Power Act and/or FERC's rules and regulations thereunder, or any of the rights of any Interconnection Party under Section 206 of the Federal Power Act and/or FERC's rules or regulations thereunder.

17. This provision preserves the rights of parties to seek changes under the "just and reasonable" standard of the FPA. We also reaffirm the December 2017 Order's determination that Commission precedent preserves this right for the Commission to do so as well, and does not restrict the Commission from acting under section 206 of the FPA as it did in the December 2017 Order: "where provisions in an Interconnection Agreement allow either party to unilaterally request changes under FPA sections 205 or 206, the Commission has the authority to require changes to the contracts under the just and reasonable standard."<sup>34</sup> Moreover, because only the Commission can change a rate under FPA section 206,<sup>35</sup> we are not persuaded by PSEG's argument that this provision extends rights only to the Interconnection Parties.

## 2. Operational and Reliability Impacts

18. PSEG argues that the Commission erred in finding no operational or reliability rationale preventing it from directing that PJM convert Linden's Firm TWRs to Non-Firm TWRs and in accepting PJM's and Linden's statements that this conversion would cause no adverse reliability or operational impacts on PJM's system.<sup>36</sup> PSEG

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<sup>34</sup> *Ontelaunee Power Operating Co. v. Metropolitan Edison Co.*, 119 FERC ¶ 61,181, at P 24 (citing *Duke Energy Hinds, LLC*, 102 FERC ¶ 61,068, at P 21 (2003), *order on reh'g and compliance*, 117 FERC ¶ 61,210 (2006)). See also *Papago Tribal Util. Auth. v. FERC*, 723 F.2d 950, 954 (D.C. Cir. 1983) ("specific acknowledgement of the possibility of future rate change is virtually meaningless unless it envisions a just-and-reasonable standard").

<sup>35</sup> 16 U.S.C. § 824e (2018) ("the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order"). See *Md. Pub. Serv. Comm'n v. FERC*, 632 F.3d 1283, 1285 n.1 (D.C. Cir. 2011).

<sup>36</sup> PSEG Request for Rehearing at 4.

states that the Commission ignored the affidavit of PSEG's witness, Esam A.F. Khadr, which raised concerns about the operational, reliability, and locational marginal price impacts from HTP's FTWR conversion and impacts such that the Commission should have set this issue of material fact for hearing and settlement judge procedures.<sup>37</sup> PSEG states that the Commission had no support for its assertions that PJM could shut off flows if a reliability or other operational problem arose and that the Linden and New York ratepayers will continue to benefit from their connection to New Jersey and PJM after the quality of Linden's service is reduced.<sup>38</sup>

19. We disagree with these PSEG arguments. The Commission in the December 2017 Order determined that the conversion cannot exceed the nominal rated capability of Linden VFT's facility, and no additional facilities would be necessary to support Linden's conversion from Firm TWRs to Non-Firm TWRs.<sup>39</sup> Linden is under the operational control of PJM, so that PJM can curtail or interrupt the Linden schedule if required to maintain reliable operation of the facility and the interconnected PJM system.<sup>40</sup> While PSEG cited its expert's statements in Docket No. EL17-84-000 to assert reliability consequences in NYISO due to the conversion of Hudson Transmission Partner's Firm TWRs to Non-Firm TWRs, PSEG raises them on rehearing for the first time in this proceeding.<sup>41</sup> Even if PSEG had properly raised these arguments regarding reliability that it made in Docket No. EL17-84-000, we would reject them here for the same reasons the Commission rejected them in Docket No. EL17-84-000.<sup>42</sup> The

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<sup>37</sup> *Id.* at 13. The Khadr affidavit was submitted in Docket No. EL17-84-000, a show cause proceeding established by the Commission pursuant to section 206 of the FPA to examine the justness and reasonableness of Hudson Transmission Partners, LLC (Hudson) being unable to convert its Firm TWRs to Non-Firm TWRs. In its rehearing request, PSEG argues that the arguments presented in Docket No. EL17-84-000 are equally applicable to Linden.

<sup>38</sup> PSEG Request for Rehearing at 12-14.

<sup>39</sup> December 2017 Order, 161 FERC ¶ 61,264 at P 25 (citing Complaint at 11).

<sup>40</sup> *Id.* See PJM Tariff, Schedule 16, § Curtailment of Linden VFT Schedules.

<sup>41</sup> See *Exxon Corp. v. FERC*, 114 F.3d 1252, 1260 (D.C. Cir. 1997) ("Under normal circumstances, the Commission has no obligation to consider new factual evidence that petitioners failed to submit prior to their petitions for rehearing.")

<sup>42</sup> See *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,262 (2017). In a separate order issued today in that proceeding, we reject similar rehearing requests from PSEG, NJ BPU, and PJM Transmission Owners. See *PJM Interconnection, L.L.C.*, 170 FERC ¶ 61,021 (2020).

Commission therefore reasonably found that there was no dispute of material fact warranting a hearing.<sup>43</sup>

### 3. Cost Allocation

20. PSEG argues that the Commission erred in rejecting arguments that cost allocation principles do not preclude Linden from terminating its Firm TWRs.<sup>44</sup> PSEG argues that the December 2017 Order ignores Commission policy requiring merchant transmission facilities to assume full market and financial risks for their projects.<sup>45</sup> PSEG argues that Linden will continue to benefit from its connection to the PJM system “built to accommodate its existence,” but escape the cost allocation provisions of Schedule 12 of PJM’s Tariff that will now be borne by New Jersey ratepayers.<sup>46</sup>

21. NJBPU argues that the Commission failed to address whether reducing Linden’s TWRs to Non-Firm results in unjust and unreasonable rates to New Jersey and other PJM ratepayers while granting an unlawfully preferential rate to New York ratepayers. NJBPU describes escaping RTEP cost allocation as the primary reason why Linden and NYPA favored converting Linden’s TWRs to Non-Firm in this proceeding.<sup>47</sup>

22. We find that the Commission acted appropriately in addressing PSEG’s and NJ BPU’s arguments regarding cost allocation. Linden, as a Merchant Transmission Facility provider requesting Firm TWRs, had to pay for necessary upgrades to support that service during the interconnection process. As long as Linden maintains Firm TWRs, it also receives a cost allocation for upgrades necessary to support that service. However, once Linden converted its Firm TWRs to Non-Firm TWRs, PJM no longer needs to plan transmission upgrades to support Non-Firm TWRs, and under PJM’s Tariff, Linden

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<sup>43</sup> See *Penn. Pub. Util. Comm'n v. FERC*, 881 F.2d 1123, 1126 (D.C. Cir. 1989); *Union Pac. Fuels, Inc. v. FERC*, 129 F.3d 157, 164 (D.C. Cir. 1997); *Woolen Mill Assoc. v. FERC*, 917 F.2d 589, 592 (D.C. Cir. 1990) (citing *Penn. Pub. Utility Comm'n*, 881 F.2d at 1126 and *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124, 124 (D.C. Cir. 1982)).

<sup>44</sup> PSEG Request for Rehearing at 4.

<sup>45</sup> *Id.* at 14 (citing *PJM Interconnection, L.L.C.*, Opinion No. 503-A, 139 FERC ¶ 61,243 (2012)).

<sup>46</sup> *Id.* at 14-15.

<sup>47</sup> NJBPU Request for Rehearing at 5-8.

would no longer be subject to future cost allocations based on Firm TWRs.<sup>48</sup> As the Commission stated in the December 2017 Order, Schedule 12 of the PJM Tariff calculates a merchant transmission facility's cost responsibility for RTEP reliability projects based only on that facility's Firm TWRs.<sup>49</sup> To the extent PSEG or NJ BPU challenge the formula for PJM's Tariff's allocation of costs to holders of Firm or Non-Firm TWRs as unjust and unreasonable to PJM ratepayers, we dismiss that issue as beyond the scope of this proceeding. As the December 2017 Order states, "neither PSEG nor NJ BPU has contended that these provisions are unjust and unreasonable."<sup>50</sup>

#### 4. PJM Transmission Owners' Request for Clarification

23. PJM Transmission Owners ask the Commission to clarify that the December 2017 Order only requires PJM to convert Linden's TWRs from Firm to Non-Firm but does not require PJM to reduce Linden's cost responsibility in a manner inconsistent with the terms of Schedule 12 of PJM's Tariff. PJM Transmission Owners state that when PJM submitted a filing in Docket No. ER18-579-000 to comply with the December 2017 Order, PJM terminated Linden's RTEP cost responsibility effective January 1, 2018. PJM Transmission Owners contend that PJM misread the December 2017 Order because Schedule 12 required PJM to adjust RTEP cost responsibility over time, rather than immediately.<sup>51</sup>

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<sup>48</sup> December 2017 Order, 161 FERC ¶ 61,264 at P 32 (citing *PJM Interconnection, L.L.C.*, Opinion No. 503, 129 FERC ¶ 61,161 at P 80).

<sup>49</sup> December 2017 Order, 161 FERC ¶ 61,264 at PP 31-32.

Cost responsibility for Regional Facilities and Necessary Lower Voltage Facilities shall be allocated among Responsible Customers as defined in this Schedule 12 as follows: . . . Fifty percent (50%) shall be assigned annually on a load-ratio share basis as follows: . . . With respect to Merchant Transmission Facilities, . . . for the calendar year following the year in which it initiates operation, the actually awarded Firm Transmission Withdrawal Rights associated with its existing Merchant Transmission Facility.

PJM Tariff Schedule 12, § (b)(i)(A)(1)(b).

<sup>50</sup> December 2017 Order, 161 FERC ¶ 61,264 at P 31.

<sup>51</sup> PJM Transmission Owners Request for Clarification at 5-6.

24. PJM Transmission Owners describe Schedule 12 of PJM’s Tariff as requiring that cost allocation be determined based on several inputs for calculating annual load ratio share and the solution-based distribution factor (DFAX) method. These inputs include the level of Firm TWRs held by merchant transmission facilities for the year preceding the year for which costs are allocated. PJM Transmission Owners reason that Linden’s cost allocation responsibility that is based on a load ratio share of zero Firm TWRs cannot be adjusted until, at the earliest, the year beginning January 1, 2019, to account for the complete twelve (12) month period beginning after the December 2017 Order.<sup>52</sup>

25. PJM Transmission Owners alternatively request rehearing of the December 2017 Order to modify it to “hold that adjustments to Linden’s cost responsibility for RTEP projects would be made on the schedule established by the applicable provisions of Schedule 12.”<sup>53</sup> PJM Transmission Owners state that the Commission did not find Linden’s RTEP project cost responsibility pursuant to Schedule 12 of PJM’s Tariff unjust and unreasonable or unduly preferential or discriminatory and that its allocations constitute the filed rate.<sup>54</sup>

26. The Commission addressed the same protest in response to the PJM cost allocation compliance filing in Docket No. ER18-579-000,<sup>55</sup> which we find to be the appropriate proceeding in which to address this issue.

The Commission orders:

(A) PSEG’s and NJ BPU’s requests for rehearing of the December 2017 Order are hereby denied, as discussed in the body of this order.

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<sup>52</sup> *See id.* at 6-11.

<sup>53</sup> *Id.* at 11.

<sup>54</sup> *Id.* at 12.

<sup>55</sup> *See PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,197, at PP 25-29 (2018), *reh’g pending*.

(B) PJM Transmission Owners' request for clarification and rehearing of the December 2017 Order is hereby dismissed, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.