

168 FERC ¶ 61,124  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur and Richard Glick.

PJM Interconnection, L.L.C.

Docket No. ER18-614-006

ORDER DISMISSING REHEARING REQUEST

(Issued August 28, 2019)

1. On July 2, 2018, the Commission accepted,<sup>1</sup> in part, amendments filed by PJM Interconnection, L.L.C. (PJM) to Schedule 12-Appendix A of the PJM Open Access Transmission Tariff (Tariff) in accordance with Schedule 12 of the Tariff and pursuant to Federal Power Act (FPA) section 205,<sup>2</sup> to be effective April 5, 2018 (PJM Tariff Filing). The PJM Tariff Filing included cost responsibility assignments for Targeted Market Efficiency Projects (TMEPs) between PJM and Midcontinent Independent System Operator, Inc. (MISO) under the PJM-MISO Joint Operating Agreement (PJM-MISO JOA). In the July 2018 Order, the Commission found that PJM improperly applied its Tariff in not allocating costs to certain Merchant Transmission Facility companies.<sup>3</sup> In

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,002 (2018) (July 2018 Order).

<sup>2</sup> 16 U.S.C. § 824d (2012).

<sup>3</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 Tariff, OATT Definitions – L – M – N, 21.0.1.

addition, the Commission instituted a proceeding pursuant to FPA section 206,<sup>4</sup> to require the PJM Transmission Owners to refile Schedule 12 of the PJM Tariff to clarify the Tariff provision relating to TMEPs.<sup>5</sup> Linden VFT, LLC (Linden),<sup>6</sup> and Hudson Transmission Partners (Hudson) together with New York Power Authority (NYPA) requested rehearing of the July 2018 Order.<sup>7</sup>

2. On July 31, 2018, PJM refiled Schedule 12-Appendix A of the PJM Tariff to restate the allocation of costs in accordance with the July 2018 Order (PJM Compliance Filing). On August 1, 2018, the PJM Transmission Owners, acting pursuant to the Consolidated Transmission Owners Agreement,<sup>8</sup> responded to the section 206 proceeding with revised Tariff provisions to clarify the TMEP Tariff provision. Linden protested the compliance filings by both PJM and the PJM Transmission Owners.

3. In an order dated June 20, 2019, the Commission denied the requests for rehearing of the July 2018 Order and accepted the compliance filings of PJM and the PJM Transmission Owners.<sup>9</sup> On July 22, 2019, Linden filed a request for rehearing of the June 2019 Order.

4. For the reasons discussed below, we dismiss Linden's request for rehearing of the June 2019 Order.

## **I. Background**

5. PJM files cost responsibility assignments for transmission projects that the PJM Board of Managers approves as part of PJM's Regional Transmission Expansion Plan (RTEP) in accordance with Schedule 12 of PJM's Tariff and Schedule 6 of the Amended

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<sup>4</sup> 16 U.S.C. § 824e. The FPA section 206 proceeding was docketed as EL18-173-000.

<sup>5</sup> The PJM Transmission Owners, not PJM, are responsible for filing Tariff provisions establishing a cost allocation method. *See Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002).

<sup>6</sup> Linden owns and operates a merchant transmission facility that connects the PJM transmission system and the transmission system of the NYISO.

<sup>7</sup> Hudson operates a merchant transmission facility.

<sup>8</sup> PJM Rate Schedule FERC No. 42.

<sup>9</sup> *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,233 (2019) (June 2019 Order).

and Restated Operating Agreement of PJM (Operating Agreement).<sup>10</sup> Schedule 12 of the Tariff establishes Transmission Enhancement Charges for “[o]ne or more of the Transmission Owners [that] may be designated to construct and own and/or finance Required Transmission Enhancements by (1) the RTEP periodically developed pursuant to Operating Agreement, Schedule 6 or (2) any joint planning or coordination agreement between PJM and another region or transmission planning authority set forth in Tariff, Schedule 12-Appendix B.”<sup>11</sup> In developing the RTEP, PJM identifies transmission projects to address different criteria, including PJM planning procedures, North American Electric Reliability Corporation (NERC) Reliability Standards, Regional Entity reliability principles and standards,<sup>12</sup> and individual transmission owner Form No. 715 local

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<sup>10</sup> In accordance with the PJM Tariff and the Operating Agreement, PJM is required to make a filing with the Commission under FPA section 205 that includes, among other things: (1) expansion or enhancement projects the PJM Board approved for inclusion in the RTEP; (2) estimated costs of the projects; (3) entities responsible for paying the costs of the projects; and (4) the entity PJM has designated to develop the projects. *See* Operating Agreement, Schedule 6, Section 1.6 (b) and PJM Tariff, Schedule 12, Section (b)(viii).

<sup>11</sup> Required Transmission Enhancements are defined as “enhancements and expansions of the Transmission System that (1) a RTEP developed pursuant to Schedule 6 of the Operating Agreement or (2) any joint planning or coordination agreement between PJM and another region or transmission planning authority set forth in PJM Tariff, Schedule 12-Appendix B (“Appendix B Agreement”) designates one or more of the Transmission Owner(s) to construct and own or finance.” *See* PJM Tariff Definitions - R - S, PJM Tariff Definitions - R - S, 13.0.0. Transmission Enhancement Charges are established to recover the revenue requirement with respect to a Required Transmission Enhancement. *See* PJM Tariff, Schedule 12, Section (a)(i).

<sup>12</sup> As established by Reliability First Corporation, Southeastern Electric Reliability Council, and other applicable Regional Entities. *See* PJM Tariff, Operating Agreement, Schedule 6, Section 1.2(b) and Section 1.2(d) (Conformity with NERC and Other Applicable Reliability Criteria) (2.0.0).

planning criteria.<sup>13</sup> Types of Reliability Projects<sup>14</sup> identified in the RTEP include Regional Facilities<sup>15</sup> (which, as a general matter, are AC facilities that are single-circuit 500 kV or double-circuit 345 kV and above), Necessary Lower Voltage Facilities,<sup>16</sup> and Lower Voltage Facilities.<sup>17</sup>

6. PJM uses a hybrid cost allocation method, which the Commission found complies with Order No. 1000,<sup>18</sup> for Regional Facilities and Necessary Lower Voltage Facilities

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<sup>13</sup> The Commission accepted a PJM Transmission Owner Tariff proposed revision to allocate one hundred percent of the costs for Required Transmission Enhancements that are included in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria to the zone of the individual transmission owner whose Form No. 715 local planning criteria underlie each project. *See PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,096, *order on reh'g*, 157 FERC ¶ 61,192 (2016). *See Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254 (D.C. Cir. 2018) (setting aside the Commission's order accepting the PJM Transmission Owners' proposed PJM Tariff revisions to allocate the costs of projects identified in the RTEP solely to address individual transmission owner Form No. 715 local planning criteria to the transmission zone of the transmission owner whose Form No. 715 local planning criteria underlie each project).

<sup>14</sup> Reliability Projects are included in the RTEP to address one or more reliability violations or to address operational adequacy and performance issues. *See PJM Tariff*, Schedule 12, Section (b)(i)(A)(2)(a).

<sup>15</sup> Regional Facilities are defined as Required Transmission Enhancements included in the RTEP that are transmission facilities that: (a) are AC facilities that operate at or above 500 kV; (b) are double-circuit AC facilities that operate at or above 345 kV; (c) are AC or DC shunt reactive resources connected to a facility from (a) or (b); or (d) are DC facilities that meet the necessary criteria as described in Section (b)(i)(D). PJM Tariff, Schedule 12, Section (b)(i) (Regional Facilities and Necessary Lower Voltage Facilities) (6.1.0).

<sup>16</sup> Necessary Lower Voltage Facilities are defined as Required Transmission Enhancements included in the RTEP that are lower voltage facilities that must be constructed or reinforced to support new Regional Facilities. PJM Tariff, Schedule 12, Section (b)(i) (Regional Facilities and Necessary Lower Voltage Facilities) (6.1.0).

<sup>17</sup> Lower Voltage Facilities are defined as Required Transmission Enhancements that: (a) are not Regional Facilities; and (b) are not "Necessary Lower Voltage Facilities." PJM Tariff, Schedule 12, Section (b)(ii) (Lower Voltage Facilities) (6.1.0).

<sup>18</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*,

that address a reliability need.<sup>19</sup> Under this method, PJM allocates 50 percent of the costs of Regional Facilities or Necessary Lower Voltage Facilities on a load-ratio share basis and the other 50 percent based on the solution-based distribution factor (DFAX) method. PJM allocates all of the costs of Lower Voltage Facilities using the solution-based DFAX method.

7. Schedule 12 of the PJM Tariff also includes provisions for the assignment of cost responsibility for Required Transmission Enhancements constructed as TMEPs under the PJM-MISO JOA Coordinated System Plan.<sup>20</sup> Specifically, Schedule 12, Section (b)(xvii) provides, in part:

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Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (*S.C. Pub. Serv. Auth. v. FERC*). *See also PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013), *order on reh'g and compliance*, 147 FERC ¶ 61,128 (2014), *order on reh'g and compliance*, 150 FERC ¶ 61,038, *order on reh'g and compliance*, 151 FERC ¶ 61,250 (2015).

<sup>19</sup> PJM identifies reliability transmission needs and economic constraints that result from the incorporation of public policy requirements into its sensitivity analyses, and allocates the costs of the solutions to such transmission needs in accordance with the type of benefits they provide. *See PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 441. *See also* PJM Tariff, OATT Schedule 12, Section (b)(v) Economic Projects, 12.0.0 (assigning cost responsibility for Economic Projects).

<sup>20</sup> *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,005, at PP 1, 5 (2017). TMEPs are a category of interregional transmission projects in MISO and PJM that are intended to address historical congestion along the PJM-MISO seam that MISO's or PJM's regional transmission planning process or their joint interregional transmission coordination process would not otherwise address. To qualify as a TMEP, a transmission project must (1) be evaluated as part of a Coordinated System Plan or joint study process under the PJM-MISO Joint Operating Agreement and be demonstrated to have an expectation for substantial relief of identified historical market efficiency congestion issues, (2) have an estimated in-service date by the third summer peak season from the year in which the project is approved, (3) have an estimated installed cost (in study year dollars) of less than \$20 million, (4) have a four-year payback period in terms of expected future congestion relief (i.e., the cost of the project cannot exceed the expected congestion savings over its first four years in operation), and (5) be recommended by MISO and PJM as a TMEP and approved by their Board of Directors. *See* PJM-MISO JOA, § 9.4.4.1.5.4.

Notwithstanding Sections (b)(i), (b)(ii), (b)(iv), (b)(v) and (b)(vi) of this Schedule 12, cost responsibility for the costs of a Required Transmission Enhancement that is included in the Regional Transmission Expansion Plan because it is a Targeted Market Efficiency Project (“TMEP”) identified in the Coordinated System Plan periodically developed pursuant to the Joint Operating Agreement Between the Midcontinent Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C. (“PJM-MISO JOA”) and assigned to PJM pursuant to PJM-MISO JOA, Section 9.4.4.2.5, *shall be assigned among Zones and Merchant Transmission Facilities in accordance with this Section (b)(xvii)* (emphasis added).<sup>21</sup>

Schedule 12, Section (b)(xvii) further provides, in part:

Cost responsibility shall be assigned based on each Zone’s and Merchant Transmission Facility’s pro rata share of the sum of the net Transmission Congestion Charges paid by Market Buyers only of the Zones and Merchant Transmission Facilities in which Market Buyers experienced net Transmission Congestion Charges.<sup>22</sup>

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<sup>21</sup> Section (b) of Schedule 12 of the PJM Tariff provides for the designation of customers subject to Transmission Enhancement Charges. Section (b)(i) provides for the assignment of cost responsibility for Regional Facilities and Necessary Lower Voltage Facilities. Section (b)(ii) provides for the assignment of cost responsibility for Lower Voltage Facilities. Section (b)(iv) provides for the assignment of cost responsibility for spare parts, replacement equipment and circuit breakers. Section (b)(v) provides for the assignment of cost responsibility for Economic Projects. Section (b)(vi) provides for the assignment of cost responsibility for Required Transmission Enhancement costing less than \$5 million.

<sup>22</sup> Market Buyer is defined as a Member that has met reasonable creditworthiness standards established by the Office of the Interconnection and that is otherwise able to make purchases in the PJM Interchange Energy Market. *See* PJM Operating Agreement, M-N, OA Definitions M - N, 9.0.0. Transmission Congestion Charges are defined as a charge attributable to the increased cost of energy delivered at a given load bus when the transmission system serving that load bus is operating under constrained conditions, or as necessary to provide energy for third-party transmission losses which shall be calculated and allocated as specified in Operating Agreement, Schedule 1, Section 5.1 and the parallel provisions of PJM Tariff, Attachment K-Appendix, Section 5.1.

## II. PJM Tariff Filing

8. On January 5, 2018, as amended on January 9, 2018, PJM submitted the PJM Tariff Filing to amend Schedule 12-Appendix A of its Tariff to incorporate cost responsibility assignments for 45 new transmission projects. These projects included the TMEPs between PJM and MISO under the PJM-MISO JOA. PJM did not allocate any of the costs of the TMEPs to the Merchant Transmission Facilities owned by Linden or Hudson. The PJM Transmission Owners protested that PJM did not allocate any costs for the TMEPs to Linden and Hudson.

9. In support of the PJM Tariff Filing,<sup>23</sup> PJM stated that Schedule 12, Section (b)(x)(B)(2) directs it to base the collection of Transmission Enhancement Charges associated with Required Transmission Enhancements from a Merchant Transmission Facility based “on the actual Firm Transmission Withdrawal Rights that have been awarded to the Merchant Transmission Facility[,]” as specified in the Merchant Transmission Facility’s Interconnection Service Agreement.<sup>24</sup> PJM contended that because Linden’s and Hudson’s respective Interconnection Service Agreements no longer awarded them Firm Transmission Withdrawal Rights, Section (b)(x)(B)(2) of PJM’s Tariff no longer applied to Linden and Hudson.<sup>25</sup>

## III. July 2018 Order

10. In the July 2018 Order, the Commission accepted the proposed Tariff revisions, with the exception of the proposed cost responsibility assignments for TMEPs b2971,

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<sup>23</sup> On April 3, 2018, Commission staff issued a deficiency letter advising PJM that the PJM Tariff Filing is deficient and that additional information is required to process the filing.

<sup>24</sup> PJM Deficiency Letter Response at 3.

<sup>25</sup> On December 15, 2017, the Commission accepted Linden’s and Hudson’s request to convert their Firm Transmission Withdrawal Rights to non-Firm Transmission Withdrawal Rights. See *Linden VFT, LLC v. Public Service Electric and Gas Company*, 161 FERC ¶ 61,264 (2017) (Linden Order); *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,262 (2017) (Hudson Order) (together, December 15, 2017 Orders). See also, *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,201 (2018) (accepting proposed revisions to Linden’s Interconnection Service Agreement, effective December 31, 2017); *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,200 (2018) (accepting proposed revisions to Hudson’s Interconnection Service Agreement, effective December 31, 2017).

b2973, b2974, and b2975, which it rejected as unjust and unreasonable and unduly discriminatory.<sup>26</sup>

11. In rejecting the proposed assignment of cost responsibility for TMEPs b2971, b2973, b2974, and b2975, the Commission found that, although Schedule 12, Section (b)(xvii) is ambiguous, the most reasonable interpretation of this provision is that it allocates costs based on whether transmission congestion charges are incurred in Merchant Transmission Facility zones, not on whether the Merchant Transmission Facility holds Firm Transmission Withdrawal Rights.<sup>27</sup> Schedule 12, Section (b)(xvii) provides that “cost responsibility” for TMEPs “shall be assigned among Zones and Merchant Transmission Facilities in accordance with this Section (b)(xvii).”<sup>28</sup> The Commission further found that Schedule 12, Section (b)(xvii) then determines that cost responsibility “shall be assigned based on each Zone’s and Merchant Transmission Facility’s pro rata share of the sum of the net Transmission Congestion Charges paid by Market Buyers only of the Zones and Merchant Transmission Facilities in which Market Buyers experienced net Transmission Congestion Charges.”<sup>29</sup> The Commission found that Transmission Congestion Charges are incurred in the Zones and by Merchant Transmission Facilities in which Market Buyers experienced net Transmission Congestion Charges.<sup>30</sup>

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<sup>26</sup> The Commission accepted the proposed cost responsibility assignments for project b2972, a TMEP for which Linden and Hudson were not allocated costs because Linden and Hudson were not shown to experience congestion benefits from this project in the TMEP Study. Accordingly, the Commission found that PJM had correctly allocated the costs of project b2972. July 2018 Order, 164 FERC ¶ 61,002 at PP 29, 43.

<sup>27</sup> *Id.* P 38.

<sup>28</sup> July 2018 Order, 164 FERC ¶ 61,002 at P 12 (citing PJM Tariff, OATT Schedule 12, Section (b)(xvii) Required Transmission Enhancements Constructed as Targeted Market Efficiency Projects Under the Midcontinent Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C. Coordinated System Plan, 12.0.0) (emphasis added).

<sup>29</sup> *Id.* (citing PJM Tariff, OATT Schedule 12, Section (b)(xvii) Required Transmission Enhancements Constructed as Targeted Market Efficiency Projects Under the Midcontinent Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C. Coordinated System Plan, 12.0.0).

<sup>30</sup> *Id.* P 31.



12. The Commission, therefore, reasoned that assignment of cost responsibility for TMEPs is made independently based on the terms of Schedule 12, Section (b)(xvii) without regard to Firm Transmission Withdrawal Rights. The Commission concluded that customers of Merchant Transmission Facilities without Firm Transmission Withdrawal Rights still receive benefits from TMEPs in the form of lower congestion costs, and the most reasonable interpretation of the PJM Tariff is to allocate within PJM its share of the costs of TMEPs to those Zones and Merchant Transmission Facilities in PJM that are shown to have experienced net positive congestion over the two historical years, as determined by a TMEP study conducted by MISO and PJM.<sup>31</sup>

13. To reflect the Commission's interpretation of the Tariff, and to ensure that the Tariff language would be clear in the future, the Commission instituted a proceeding pursuant to FPA section 206 in Docket No. EL18-173-000, and directed the PJM Transmission Owners either to clarify the language of Schedule 12 as specified, or to show cause as to why Schedule 12 should not be revised.<sup>32</sup>

#### **IV. July 2018 Order Rehearing Requests**

14. On rehearing of the July 2018 Order, Linden contended that the Commission erred by finding that Merchant Transmission Facilities that have Firm or Non-Firm Transmission Withdrawal Rights are subject to cost allocations for TMEPs. Linden argued that Section (b)(x)(B)(2) of Schedule 12 expressly limits all cost allocations to Merchant Transmission Facilities based on their actual Firm Transmission Withdrawal Rights and claimed that the Commission erred by holding that this provision applies only to the cost allocation for Reliability Projects.

15. Linden also contended that Section (b)(x)(B)(2) of Schedule 12 relates to the collection of Transmission Enhancement Charges associated with Required Transmission Enhancements from a Merchant Transmission Facility and expressly provides that Transmission Enhancement Charges to a Merchant Transmission Facility are "not to exceed the Firm Transmission Withdrawal Rights specified in the applicable Interconnection Service Agreement." Linden argued that TMEPs are a subset of Required Transmission Enhancements and, therefore, the costs of TMEPs are simply one category of Transmission Enhancement Charges.

16. Linden further contended that, given the plain language of the provisions in Schedule 12, no extrinsic evidence of the PJM Transmission Owners' intent is necessary. Linden argues that even if it was appropriate to examine the PJM Transmission Owners' intent in drafting the language contained in Section (b)(xvii) of Schedule 12, the PJM

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<sup>31</sup> *Id.* P 41.

<sup>32</sup> *Id.* P 48.

Transmission Owners' filing in Docket No. ER17-1406-000 that the Commission relied on does not support the Commission's conclusions. Because there is no ambiguity, Linden maintained that the Commission further erred by establishing an FPA section 206 proceeding to clarify the Tariff consistent with the Commission's interpretation and sought rehearing of the decision to establish that proceeding. In any event, Linden maintained that such revised Tariff provision should only be implemented on a prospective basis.

17. Linden also argued that the Commission's directive for PJM to refile the cost responsibility assignments for these TMEPs in accordance with the Commission's interpretation in the July 2018 Order effectively modified the PJM Tariff Filing to transform it into an entirely new rate of the Commission's own making, contrary to the decision of the U.S. Court of Appeals for the D.C. Circuit in *NRG*.<sup>33</sup>

#### **V. June 2019 Order**

18. As relevant here, in the June 2019 Order, the Commission denied Linden's request for rehearing of the July 2018 Order.

19. In the June 2019 Order, the Commission affirmed its determination in the July 2018 Order that Section (b)(x)(B)(2) of Schedule 12 of PJM's Tariff is most reasonably interpreted to apply to the allocation of the costs of Reliability Projects. The Commission stated that Schedule 12, Section (b)(x)(B)(2) was included in the Tariff as part of the Settlement in Opinion No. 503, which involved only Reliability Projects.<sup>34</sup>

20. The Commission rejected Linden's interpretation of Opinion No. 503 as requiring that Firm Transmission Withdrawal Rights, as specified in Section (b)(x)(B)(2) of Schedule 12, must be used as the basis for allocation of all transmission costs to Merchant Transmission Facilities. The Commission stated that using Firm Transmission Withdrawal Rights to allocate the cost of Reliability Projects is reasonable but stated that the basis for cost allocation under the TMEP provision is the net congestion incurred in

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<sup>33</sup> Linden Rehearing Request at 13 (citing *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017) (*NRG*)).

<sup>34</sup> June 2019 Order, 167 FERC ¶ 61,233 at P 28 (citing July 2018 Order, 164 FERC ¶ 61,002 at P 33-38) (describing the history of Opinion No. 503)). The Commission noted that Opinion No. 503 also addressed certain economic projects related to reliability issues, such as cost responsibility for modifications of previously scheduled Reliability Projects and accelerations of the in-service date of a Reliability Project. *PJM Interconnection, L.L.C.*, Opinion No. 503, 129 FERC ¶ 61,161, at P 133 (2009).

PJM zones, not the need to ensure reliability. The Commission stated that using Firm Transmission Withdrawal Rights as the basis for allocating TMEP cost is inconsistent with the structure of the TMEP cost allocation mechanism. The Commission reasoned that since Schedule 12, Section (b)(xvii) is the specific provision dealing with the allocation within PJM of its share of the costs of TMEPs, it should govern over a more general provision.<sup>35</sup> Consistent with its finding in the July 2018 Order, the Commission described its interpretation of the TMEP Tariff provision as consistent with the treatment of the allocation of other costs which are based on expected economic benefits, rather than reliability benefits.<sup>36</sup>

21. The Commission found that it appropriately relied on extrinsic evidence because the TMEP Tariff provision was ambiguous. Looking to the intent of the parties in proposing the provision, the Commission cited the PJM Transmission Owners' transmittal letter in Docket No. ER17-1406-000 as making clear that the intent of the TMEP provision was to assign costs to Merchant Transmission Facilities based on the net congestion relieved by the project.<sup>37</sup> The Commission affirmed its conclusion in the July 2018 Order that the omission of Schedule 12, Section (b)(x)(B)(2) is an oversight that should not govern the interpretation of the TMEP Tariff provision and concluded that the costs of TMEP projects are appropriately assigned to Merchant Transmission Facilities.<sup>38</sup>

22. The Commission found that the July 2018 Order's rejection of the PJM cost responsibility assignments and the requirement to submit a compliance filing is not inconsistent with *NRG*.<sup>39</sup> The Commission described the July 2018 Order as not unilaterally seeking to impose a new Tariff provision "methodologically distinct" from that proposed by PJM and as doing nothing more than interpreting PJM's cost assignment filing based on the existing Tariff provision on file. Because the Commission had found that PJM had acted inconsistently with its Tariff and rejected the cost responsibility assignments for these projects, and because PJM's Tariff enumerates how the costs for these projects are required to be assigned, the Commission stated that it therefore required a compliance filing to assign such costs consistent with the Tariff on file. The

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<sup>35</sup> June 2019 Order, 167 FERC ¶ 61,233 at P 30.

<sup>36</sup> *Id.* P 31.

<sup>37</sup> *Id.* P 32.

<sup>38</sup> *Id.* P 33.

<sup>39</sup> *Id.* P 34.

Commission stated that, in accordance with *NRG*, it initiated a section 206 proceeding when it sought to modify the Tariff so as to clarify the provision.<sup>40</sup>

## **VI. Linden's Request for Rehearing of the June 2019 Order**

23. On rehearing of the June 2019 Order, Linden contends that the Commission erred by reaffirming its finding in the July 2018 Order that Merchant Transmission Facilities that have Firm or Non-Firm Transmission Withdrawal Rights are subject to cost allocations for TMEPs. Linden argues that Section (b)(x)(B)(2) of Schedule 12 expressly limits all cost allocations to Merchant Transmission Facilities based on their actual Firm Transmission Withdrawal Rights and contends that the Commission erred by reaffirming its holding in the July 2018 Order that this provision applies only to the cost allocation for Reliability Projects.<sup>41</sup>

24. Linden contends that Section (b)(x)(B)(2) of Schedule 12 relates to the collection of Transmission Enhancement Charges associated with Required Transmission Enhancements from a Merchant Transmission Facility and expressly provides that Transmission Enhancement Charges to a Merchant Transmission Facility are “not to exceed the Firm Transmission Withdrawal Rights specified in the applicable Interconnection Service Agreement.”<sup>42</sup> Linden argues that TMEPs are a subset of Required Transmission Enhancements and, therefore, the costs of TMEPs are simply one category of Transmission Enhancement Charges.<sup>43</sup>

25. Linden argues that the Commission erred in its Tariff analysis because Section (b)(x)(B)(2) and Section (b)(xvii) do not conflict. According to Linden, Section (b)(xvii) focuses on TMEP cost allocation and Section (b)(x)(B)(2) focuses on RTEP costs for Merchant Transmission Facilities (of which TMEPs are a component).<sup>44</sup>

26. Linden further contends that, given the plain language of the provisions in Schedule 12, the Commission need not and should not rely on extrinsic evidence of the PJM Transmission Owners' intent. Linden argues that even if it was appropriate to

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

<sup>41</sup> Linden July 2019 Request for Rehearing at 2.

<sup>42</sup> *Id.* at 5.

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

<sup>44</sup> *Id.* at 5-9.

examine the PJM Transmission Owners' intent in drafting the language contained in Section (b)(xvii) of Schedule 12, the PJM Transmission Owners' filing in Docket No. ER17-1406-000 that the Commission relied on does not support the Commission's conclusions.<sup>45</sup>

27. Linden argues that the Commission's acceptance of PJM's compliance filing conflicts with Opinion No. 503, which applies to Merchant Transmission Facilities with Firm Transmission Withdrawal Rights and is not limited to RTEP projects relating to reliability. Linden maintains that the Commission failed to address its earlier argument that the December 15, 2017 Orders converting Linden's Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights also constitute Commission precedent that RTEP costs could no longer be allocated to Merchant Transmission Facilities once they converted their Transmission Withdrawal Rights from Firm to Non-Firm Transmission Withdrawal Rights. Linden contends that it had no notice that the Commission would impose costs on it once it lacked Firm Transmission Withdrawal Rights and, because Linden does not benefit from TMEPs, assigning cost allocation to Linden for TMEPs conflicts with the Commission's cost-causation principles.<sup>46</sup>

28. Linden maintains that the Commission further erred by requiring an amendment to PJM Tariff Filing with an effective date of April 5, 2018. Linden describes the Commission as imposing an entirely different rate design than contemplated by PJM, contrary to section 205 of the FPA and *NRG*, which Linden alleges converts a proposed rate, which would not allocate costs to Linden, into a retroactive rate, which would allocate costs to Linden.<sup>47</sup>

## **VII. Determination**

29. We dismiss the request for rehearing of the June 2019 Order.

30. Section 313(a) of the Federal Power Act provides that a party aggrieved by an order issued by the Commission "may apply for a rehearing within thirty days after the issuance of such order."<sup>48</sup> An aggrieved party is entitled to one opportunity to ask the

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<sup>45</sup> *Id.* at 3, 9-11.

<sup>46</sup> Linden July 2019 Request for Rehearing at 3-4, 11-13 & nn.8, 26-27 (citing Linden Order, 161 FERC ¶ 61,264 at P 32; Hudson Order, 161 FERC ¶ 61,262 at P 50; *PJM Interconnection, L.L.C.*, Opinion No. 503, 129 FERC ¶ 61,161 at P 80).

<sup>47</sup> Linden July 2019 Request for Rehearing at 13-15.

<sup>48</sup> 16 U.S.C. § 825l(a) (2012); *see also* 18 C.F.R. § 385.713 (2018).

Commission to reconsider a decision. Arguments that are not made then cannot be made later unless the second order changes the outcome, not merely the reasoning of the original order.<sup>49</sup> The Commission has explained that the successive rehearing of an order on rehearing lies only when the order on rehearing modifies the original order's result in a manner that gives rise to a wholly new objection.<sup>50</sup> If it were otherwise, the Commission would be faced with countless successive requests for rehearing as parties raised argument after argument, in search of a winner.<sup>51</sup>

31. As previously discussed, the June 2019 Order denied Linden's request for rehearing of the July 2018 Order, and accepted the PJM Compliance Filing. Linden protested the PJM Compliance Filing, incorporating its arguments raised on rehearing of the July 2018 Order. The Commission fully addressed those arguments in the June 2019 Order.<sup>52</sup> The Commission specifically found that the July 2018 Order did not impose a "methodologically distinct" new PJM Tariff provision.<sup>53</sup>

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<sup>49</sup> See *Smith Lake Improvement and Stakeholders Ass'n v. FERC*, 809 F.3d 55, 402 (D.C. Cir. 2015) (citing *Allegheny Power v. FERC*, 437 F.3d 1215, 1222 (D.C. Cir. 2006)); see, e.g., *Fla. Power Corp.*, 66 FERC ¶ 61,200, at 61,452-53 (1994) (holding that attempts in a second request for rehearing to sharpen arguments that could have been raised earlier are an impermissible "second bite at the apple") (citing *Tenn. Gas Pipeline Co. v. FERC*, 871 F.2d 1099, 1111-12 (D.C. Cir. 1989)).

<sup>50</sup> See, e.g., *Union Elec. Co. d/b/a Ameren UE*, 114 FERC ¶ 61,230, at 61,745-46 (2006); *Duke Power*, 114 FERC ¶ 61,148, at P 2 (2006); *Gustavus Elec. Co.*, 111 FERC ¶ 61,424, at P 3 (2005); *Symbiotic, L.L.C.*, 99 FERC ¶ 61,064, at 61,300 (2002); and *PacifiCorp*, 99 FERC ¶ 61,015, at 61,052 (2002). See also *S. Natural Gas Co. v. FERC*, 877 F.2d 1066, 1073 (D.C. Cir. 1989) (citing *Tenn. Gas Pipeline v. FERC*, 871 F.2d at 1109-10).

<sup>51</sup> *Sw. Pub. Serv. Co.*, 65 FERC ¶ 61,088, at 61,533 (1993) (citing *Town of Norwood, Mass. v. FERC*, 906 F.2d 772, 774-75 (D.C. Cir. 1990); *S. Natural Gas Co.*, 877 F.2d at 1072-73).

<sup>52</sup> June 2019 Order, 167 FERC ¶ 61,233 at PP 25-34.

<sup>53</sup> *Id.* P 34.

32. On rehearing of the June 2019 Order, Linden does not argue that that the PJM Compliance Filing was inconsistent with the directives of the July 2018 Order.<sup>54</sup> Instead, Linden's request for rehearing of the June 2019 Order raises arguments previously presented in its request for rehearing of the July 2018 Order, that the Commission considered and denied.<sup>55</sup> Because the June 2019 Order does not modify the July 2018 Order's result in a manner that gives rise to a wholly new objection, and Linden provides no reasonable ground for its successive rehearing request, Linden's request for rehearing of the June 2019 Order is dismissed.

The Commission orders:

Linden's request for rehearing of the June 2019 Order is hereby dismissed, as discussed in the body of this order.

By the Commission. Commissioner McNamee is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>54</sup> See *Cal. Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,293, at P 8 (2009) (request for rehearing of an earlier order accepting a compliance filing "is limited in scope to the issue of whether the Commission erred when it accepted" the compliance filing).

<sup>55</sup> To the extent that Linden's request for rehearing of the June 2019 Order reargues issues originally presented in its request for rehearing of the July 2018 Order, Linden rehearing request is late-filed.