

170 FERC ¶ 61,296
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 No. ER18-579-002

ORDER DENYING REHEARING

(Issued March 31, 2020)

1. On March 5, 2018, the Commission issued an order accepting, pursuant to section 205 of the Federal Power Act (FPA),¹ PJM Interconnection, L.L.C.'s (PJM) revisions to Schedule 12-Appendix and Schedule 12-Appendix A of the PJM Open Access Transmission Tariff (OATT or Tariff) to provide updated annual cost responsibility assignments for Regional Facilities and Necessary Lower Voltage Facilities, and Lower Voltage Facilities included in the PJM Regional Transmission Expansion Plan (RTEP).² PJM Transmission Owners³ and Dominion Energy Services, Inc. (Dominion) filed timely rehearing requests of that decision. In this order, we deny PJM Transmission Owners' rehearing request and find Dominion's rehearing request to be moot.

I. Background

A. PJM Tariff

2. PJM files cost responsibility assignments for transmission projects that are selected in the PJM RTEP for purposes of cost allocation in accordance with Schedule 12 in the Tariff. Types of reliability projects selected in the RTEP for purposes of cost allocation include Regional Facilities,⁴ Necessary Lower Voltage

¹ 16 U.S.C. § 824d (2018).

² *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,197 (2018) (March 2018 Order).

³ PJM Transmission Owners include: American Electric Power Service Corporation, The Dayton Power and Light Company, Dominion Energy Services, Inc., Exelon Corporation, FirstEnergy Service Company, PPL Electric Utilities Corporation, and Public Service Electric and Gas Company.

⁴ Regional Facilities are defined as Required Transmission Enhancements included in the Regional Transmission Expansion Plan that are transmission facilities

Facilities,⁵ and Lower Voltage Facilities.⁶ The Commission accepted the regional cost allocation method as part of PJM's Order No. 1000 compliance proceedings,⁷ and under this cost allocation method, one half of the costs of Regional Facilities or Necessary Lower Voltage Facilities are allocated on a load-ratio share basis and the other half of the costs are allocated based on the solution-based distribution factor (DFAX) method.⁸

3. For the portion of cost responsibility assignments included in Schedule 12 for Regional Facilities and Necessary Lower Voltage Facilities allocated on a load-ratio share basis, Schedule 12 of the Tariff provides that cost responsibility will be allocated

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 § (b)(i)(D). PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 14.0.0, § 12(b)(i) (Regional Facilities and Necessary Lower Voltage Facilities).

⁵ 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, Schedule 12, OATT Schedule 12, 14.0.0, § 12(b)(i) (Regional Facilities and Necessary Lower Voltage Facilities).

⁶ 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, Schedule 12, OATT Schedule 12, 14.0.0, § 12(b)(ii) (Lower Voltage Facilities).

⁷ See *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (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). 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, and *order on reh'g and compliance*, 151 FERC ¶ 61,250 (2015).

⁸ All of the costs of Lower Voltage Facilities are allocated using the solution-based DFAX method. Cost responsibility assignments pursuant to the Order No. 1000-compliant cost allocation method are included in Schedule 12-Appendix A of the Tariff. Cost responsibility assignments for RTEP projects approved prior to the Commission's acceptance of the PJM Transmission Owners' Order No. 1000-compliant cost allocation method are included in Schedule 12-Appendix of the Tariff.

annually using the applicable zonal loads at the time of each zone's annual peak load from the 12-month period ending October 31 of the calendar year preceding the calendar year for which the annual cost responsibility assignment is determined, consistent with section 34.1 of the Tariff.⁹

4. For the portion of cost responsibility assignments made pursuant to the solution-based DFAX method, Schedule 12 of the Tariff provides PJM shall make a preliminary cost responsibility assignment for each Required Transmission Enhancement at the time such transmission facility is included in the RTEP. Further, beginning with the calendar year in which a transmission facility is scheduled to enter service, and thereafter annually at the beginning of each calendar year, PJM shall update the preliminary cost responsibility assignment for each transmission facility using the values and inputs used in the base case of the most recent RTEP approved by the PJM Board of Managers (PJM Board) prior to the date of the update.¹⁰

B. December 29, 2017 Filing

5. On December 29, 2017, as supplemented on January 3, 2018, PJM filed the Schedule 12-Appendix and Schedule 12-Appendix A tariff revisions to reflect updated load-ratio share cost allocations for Regional Facilities and Necessary Lower Voltage Facilities that are based on each zone's annual peak load from the 12-month period ending October 31, 2017 (December 29 Filing).

6. In the December 29 Filing, PJM stated that the cost responsibility assignments to merchant transmission facilities¹¹ are based on the methodology that the Commission set

⁹ PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 14.0.0, § 12(b)(i)(A)(1). *See also* PJM Transmittal at 6.

¹⁰ PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 14.0.0, § 12(b)(iii)(H).

¹¹ 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 on Attachment T to the Tariff, 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.

forth in Opinion No. 503.¹² Specifically, PJM determined the cost responsibility assignments to Neptune Regional Transmission System, LLC, Linden VFT, LLC (Linden) and Hudson Transmission Partners, LLC (Hudson) based on their respective peak load in the 12-month period ending October 31, 2017, up to the amount of Firm Transmission Withdrawal Rights set forth in their respective interconnection service agreements. In the December 29 Filing, PJM stated that pursuant to the Commission's orders issued December 15, 2017,¹³ which granted Hudson and Linden the right to convert their Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights, PJM was no longer required to provide firm service to Hudson and Linden (together, the Merchant Transmission Facilities) and RTEP costs would no longer be allocable to Hudson and Linden. Thus, in the December 29 Filing, PJM revised the cost responsibility assignments for the Merchant Transmission Facilities "to zero to reflect the conversion of their rights commencing January 1, 2018."¹⁴

C. March 2018 Order

7. On March 5, 2018, the Commission accepted the December 29 Filing. The Commission found it was reasonable for PJM to reduce the Merchant Transmission Facilities' load-ratio share cost responsibility assignments and solution-based DFAX cost responsibility assignments to zero, effective January 1, 2018.¹⁵

8. The Commission based its determination on the language in Schedule 12 which requires PJM to "base the collection of Transmission Enhancements from a Merchant Transmission Facility on the actual Firm Transmission Withdrawal Rights that have been awarded to the Merchant Transmission Facility."¹⁶ Based on this provision, the Commission determined that PJM can allocate costs to Merchant Transmission Facilities

¹² *PJM Interconnection, L.L.C.*, Opinion No. 503, 129 FERC ¶ 61,161 (2009) (Opinion No. 503), *reh'g denied*, Opinion No. 503-A, 139 FERC ¶ 61,243 (2012).

¹³ *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,262, at P 50 (2017) (Hudson Order); *Linden VFT, LLC v. Pub. Serv. Gas & Elec. Co.*, 161 FERC ¶ 61,264, at P 32 (2017) (Linden Order), (together, ISA Orders). Consistent with the ISA Orders, PJM filed compliance filings of amended interconnection service agreements to convert the Firm Transmission Withdrawal Rights of Hudson and Linden to Non-Firm Transmission Withdrawal Rights. *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,200 (2018); *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,201 (2018).

¹⁴ PJM Transmittal at 7.

¹⁵ March 2018 Order, 162 FERC ¶ 61,197 at P 25.

¹⁶ *Id.* P 27.

only when those facilities hold Firm Transmission Withdrawal Rights.¹⁷ Thus, the Commission concluded because the Merchant Transmission Facilities' Firm Transmission Withdrawal Rights were zero due to their relinquishment prior to January 1, 2018, it was reasonable to relieve the Merchant Transmission Facilities of their cost responsibility assignments.¹⁸

1. Load-Ratio Share Cost Allocation

9. As to load-ratio share cost allocation, the Commission found unpersuasive PJM Transmission Owners' argument in their protest that because the Merchant Transmission Facilities still retained Firm Transmission Withdrawal Rights as of October 31, 2017, RTEP cost responsibility assignments should be allocated to the Merchant Transmission Facilities for 2018.¹⁹ The Commission explained that Schedule 12 provides for an annual cost responsibility allocation to be made using "actual" Firm Transmission Withdrawal Rights.²⁰ Thus, the yearly period ending on October 31 cited by PJM Transmission

¹⁷ *Id.*

¹⁸ *Id.* P 28.

¹⁹ *Id.* P 31.

²⁰ Regarding the load-ratio share of RTEP cost responsibility assignments, Schedule 12, § (b)(i)(A) states:

(A) Cost responsibility for Regional Facilities and Necessary Lower Voltage Facilities shall be allocated among Responsible Customers as defined in this Schedule 12 as follows:

(1) Fifty percent (50%) shall be assigned annually on a load-ratio share basis as follows:

(a) With respect to each Zone, using, consistent with section 34.1 of the Tariff, the applicable zonal loads at the time of such Zone's annual peak load from the 12-month period ending October 31 preceding the calendar year for which the annual cost responsibility allocation is determined; and

(b) With respect to Merchant Transmission Facilities: (1) for the calendar year following the year in which it initiates operation, the actually awarded Firm Transmission Withdrawal Rights associated with its existing Merchant Transmission Facility; and (2) for all subsequent calendar years, the annual peak load of the Merchant Transmission Facility (not to exceed its actual Firm Transmission Withdrawal Rights) from the 12-month period

Owners was not relevant to the cost responsibility assignments for Merchant Transmission Facilities, because they no longer held Firm Transmission Withdrawal Rights at the time the annual cost responsibility allocation was established at the beginning of the calendar year (i.e., January 1, 2018).²¹

10. The Commission also noted that the yearly period ending October 31 for determination of annual peak load had no bearing on the cost responsibility assignment to the Merchant Transmission Facilities in this proceeding. The Tariff provides that the allocation to the Merchant Transmission Facilities will be determined based on:

the annual peak load of the Merchant Transmission Facility (not to exceed its actual Firm Transmission Withdrawal Rights) from the 12-month period ending October 31 of the calendar year preceding the calendar year for which the annual cost responsibility allocation is determined.²²

11. The Commission stated that the phrase including the parenthetical indicates that the year ending October 31 applies to determine the Merchants Facilities' annual peak load, but does not address the Merchant Transmission Facilities' Firm Transmission Withdrawal Rights amount. Instead, the Commission found that Firm Transmission Withdrawal Rights are determined based on the Merchant Transmission Facilities' "actual" Firm Transmission Withdrawal Rights, which for 2018, were zero.²³

2. Solution-Based DFAX Cost Allocation

12. As to solution-based DFAX cost allocation, the relevant section of Schedule 12 provides:

With respect to a Merchant Transmission Facility, zonal peak load shall mean (i) the existing Firm Transmission Withdrawal Rights of the Merchant Transmission Facility

ending October 31 of the calendar year preceding the calendar year for which the annual cost responsibility allocation is determined.

²¹ March 2018 Order, 162 FERC ¶ 61,197 at P 31.

²² PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 14.0.0, § 12(b)(i)(A)(1)(b).

²³ March 2018 Order, 162 FERC ¶ 61,197 at P 32.

being evaluated, if the Merchant Transmission Facility is in service.²⁴

Beginning with the calendar year in which a Required Transmission Enhancement is scheduled to enter service, and thereafter annually at the beginning of each calendar year, the Transmission Provider shall update the preliminary cost responsibility determination for each Required Transmission Enhancement using the values and inputs used in the base case of the most recent Regional Transmission Expansion Plan approved by the PJM Board prior to the date of the update. All values and inputs used in the calculation of the distribution factor in a determination of cost responsibility shall be the same values and inputs as used in the base case of the most recent Regional Transmission Expansion Plan approved by the PJM Board prior to the determination of cost responsibility.²⁵

13. In the March 2018 Order, the Commission stated that Schedule 12 does not specify when the PJM Board will receive the base case scenario for the upcoming RTEP, but according to PJM's Manuals, that can occur as early as February.²⁶ Accordingly, in the absence of specific guidance provided by the Tariff, the Commission found PJM reasonably interpreted the Tariff provisions as requiring the use of "existing" Firm Transmission Withdrawal Rights "at the beginning of each calendar year" to refer to the actual Firm Transmission Withdrawal Rights held by the Merchant Transmission Facilities at the beginning of calendar year 2018 (which is zero for the Merchant Transmission Facilities).²⁷ The Commission stated that, contrary to PJM Transmission Owners' arguments in their protest, nothing in the provision requires a date by which the Merchant Transmission Facilities' Firm Transmission Withdrawal Rights are determined

²⁴ PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 14.0.0, § 12(b)(iii)(A)(3) (emphasis added).

²⁵ PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 14.0.0, § 12(b)(iii)(H)(2) (emphasis added).

²⁶ PJM Manual 14B ("Currently, the planning cycle will refer to an 18-month overlapping cycle beginning in September of the prior calendar year and extending to the February of the following calendar year. A new cycle will begin every September, which will overlap the previous cycle.").

²⁷ March 2018 Order, 162 FERC ¶ 61,197 at P 34 (citing PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 11.0.0, §§ 12(b)(iii)(H)(2), 12(b)(x)(B)(2)).

for purposes of annual updates to solution-based DFAX RTEP cost responsibility assignments. The Commission found that because the actual Firm Transmission Withdrawal Rights held by the Merchant Transmission Facilities equal zero, the distribution factor from the most recent base case scenario would result in no RTEP cost responsibility assignments to the Merchant Transmission Facilities in 2018.²⁸

3. Brambleton Project

14. With regard to Dominion's protest taking issue with cost responsibility assignment for the Loudoun-Brambleton 500 kV line and Loudoun-Brambleton 230 kV line, project b2372 (Brambleton Project), the Commission stated "PJM has not updated the cost responsibility assignment for this project in this proceeding. Dominion's protest is thus beyond the scope of this proceeding and is rejected."²⁹

D. Rehearing Requests

15. On April 4, 2018, PJM Transmission Owners requested rehearing of the March 2018 Order arguing that the Commission erred by: (1) interpreting Schedule 12 to permit the immediate elimination of the Merchant Transmission Facilities' RTEP cost responsibility for load-ratio share and solution-based DFAX cost responsibility assignments; (2) interpreting Schedule 12 in a manner inconsistent with Opinion No. 503; (3) interpreting Schedule 12 in a manner inconsistent with well-settled canons of construction; (4) mischaracterizing PJM's December 29 Filing as support for the March 2018 Order; and (5) modifying Schedule 12 without making the requisite findings under FPA section 206.³⁰

16. On April 4, 2018, Dominion requested rehearing of the March 2018 Order arguing that the Commission erred in finding its protest was beyond the scope of the proceeding.

II. Discussion

A. Merchant Transmission Facilities

17. On rehearing, PJM Transmission Owners do not contest that Merchant Transmission Facilities without Firm Transmission Withdrawal Rights receive zero cost allocation. Rather, they take issue with the Commission's acceptance of PJM's FPA section 205 filing eliminating such assignments for calendar year 2018. They maintain that some of the inputs to the cost allocation determination, such as peak load and DFAX

²⁸ *Id.*

²⁹ *Id.* P 35.

³⁰ 16 U.S.C. § 824e (2018).

percentages, were determined prior to the December 2017 relinquishment of the Merchant Transmission Facilities' Firm Transmission Withdrawal Rights. Therefore, PJM Transmission Owners argue that the Merchant Transmission Facilities remain obligated for cost allocation for calendar year 2018.

18. As discussed in detail below, we are unpersuaded by PJM Transmission Owners' arguments and deny rehearing. Schedule 12 does not describe how to allocate costs when parties reduce or relinquish their Firm Transmission Withdrawal Rights. Therefore, in the March 2018 Order, the Commission interpreted the entirety of Schedule 12 to determine when such a reduction or relinquishment takes effect. We affirm that under the Tariff and consistent with prior orders, the Merchant Transmission Facilities remain responsible for cost allocations through 2017, the year in which they relinquished their rights, but are not responsible for cost allocations for 2018.

19. As an initial matter, PJM's annual cost responsibility allocation is established at the beginning of the calendar year.³¹ Under the Tariff, only Merchant Transmission Facilities with Firm Transmission Withdrawal Rights will be assigned a cost allocation at that time. Schedule 12, section 12(b)(x)(B)(2) provides that the "Transmission Provider shall base the collection of Transmission Enhancement Charges associated with Required Transmission Enhancements from a Merchant Transmission Facility on the actual Firm Transmission Withdrawal Rights that have been awarded to the Merchant Transmission Facility."³² As the Commission has explained, PJM has to plan upgrades only to serve Merchant Transmission Facilities with Firm Transmission Withdrawal Rights and therefore only Merchant Transmission Facilities with such rights receive a cost allocation.³³ Thus, if a Merchant Transmission Facility does not have Firm Transmission Withdrawal Rights for the upcoming year, then there will be no cost allocation to that facility.

20. Ignoring key provisions of Schedule 12, on rehearing, PJM Transmission Owners focus on when various inputs to the cost allocation calculation are determined, such as

³¹ PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 14.0.0, § 12(b)(i)(A)(1); PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 14.0.0, § 12(b)(iii)(H).

³² PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 14.0.0, § 12(b)(x)(B)(2). See *PJM Interconnection, L.L.C.*, Opinion No. 503, 129 FERC ¶ 61,161 at PP 1, 14, 21. In Opinion No. 503, the Commission stated, "This proceeding relates to PJM's proposal to allocate certain Regional Transmission Expansion Plan (RTEP) upgrade costs to Merchant Transmission Facilities with Firm Transmission Withdrawal Rights." *Id.* P 1.

³³ *Id.* PP 21-26.

peak load and DFAX percentages.³⁴ But these cost inputs are relevant only to the cost responsibility assignments for the upcoming year if the Merchant Transmission Facilities hold Firm Transmission Withdrawal Rights for the upcoming year. In this case, the Merchant Transmission Facilities relinquished their Firm Transmission Withdrawal Rights prior to the beginning of the upcoming calendar year (i.e., January 1, 2018 for the filing at issue here), and therefore receive no cost allocation for that year. PJM Transmission Owners advance no argument on rehearing to explain why Merchant Transmission Facilities must be responsible for cost allocation assignments for a year in which they hold no Firm Transmission Withdrawal Rights.

21. We discuss below specific tariff provisions and arguments raised by the PJM Transmission Owners in their rehearing request.

1. Load-Ratio Share Cost Allocation

22. PJM Transmission Owners first claim that the Commission erred in permitting the immediate elimination of Merchant Transmission Facilities' RTEP cost responsibility for load-ratio share cost responsibility assignments. They focus on the following language in Schedule 12:

[T]he annual peak load of the Merchant Transmission Facility (not to exceed its actual Firm Transmission Withdrawal Rights) from the 12-month-period ending October 31 of the calendar year preceding the calendar year for which the annual cost responsibility allocation is determined.³⁵

PJM Transmission Owners claim that the Commission erred in its finding that, under the provision, if a Merchant Transmission Facility no longer held Firm Transmission Withdrawal Rights at the time PJM established its annual cost responsibility assignment (i.e., January 1, 2018), PJM could eliminate its cost allocations as of that date. They state that this interpretation is inconsistent with Schedule 12's clear specification of the time when a Merchant Transmission Facility's "actual" Firm Transmission Withdrawal Rights are determined. Specifically, PJM Transmission Owners claim that Schedule 12 unambiguously directs PJM to use the Merchant Transmission Facility's peak load, capped by its "actual" Firm Transmission Withdrawal Rights, from the year ending the previous October 31 to adjust its load-ratio share-based cost allocations.³⁶ PJM

³⁴ PJM Transmission Owners Rehearing Request at 8-15.

³⁵ PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 14.0.0, § (b)(i)(A)(1)(b).

³⁶ PJM Transmission Owners Rehearing Request at 4, 8-10.

Transmission Owners also argue that the Commission's interpretation is contrary to well established principles of interpretation, such as *noscitur a sociis*,³⁷ and the plain language of the provision.³⁸

23. We deny rehearing. As set forth in the March 2018 Order, Schedule 12 requires PJM to “base its collection of Transmission Enhancement Charges associated with Required Transmission Enhancements from a Merchant Transmission Facility on the actual Firm Transmission Withdrawal Rights that have been awarded to the Merchant Transmission Facility.”³⁹ Thus, in the March 2018 Order, the Commission interpreted this provision of Schedule 12 to provide that RTEP cost responsibility assignments, whether allocated through load-ratio share or solution-based DFAX, as well as updates to those cost responsibility assignments, be based on actual Firm Transmission Withdrawal Rights that exist at the time PJM makes the assignment of cost responsibility for the upcoming year, not on the determination of peak load used as an input to that calculation. As noted above, the Commission specifically found that “[t]he yearly period ending on October 31 cited by PJM Transmission Owners is not relevant to the cost responsibility assignments for Merchant Transmission Facilities, because they no longer hold Firm Transmission Withdrawal Rights at the time the annual cost responsibility allocation is established at the beginning of the calendar year (i.e., January, 1, 2018 for this filing).”⁴⁰

24. We affirm that this was a reasonable interpretation of the Tariff. We disagree with PJM Transmission Owners that the Commission erred by mentioning the parenthetical phrase “actual Firm Transmission Withdrawal Rights” in Schedule 12, section (b)(i)(A)(1)(b) of the Tariff. While Schedule 12, section (b)(i)(A)(1)(b) of the Tariff identifies the relevant annual peak load for purposes of determining cost responsibility for Merchant Transmission Facilities, the parenthetical in that section limits that cost responsibility based on “actual Firm Transmission Withdrawal Rights.” More important, and consistent with that parenthetical limitation, whether PJM allocates costs to a Merchant Transmission Facility *at all* is based on Schedule 12, section (b)(x)(B)(2), which states that PJM should base the collection of Transmission Enhancement Charges associated with Required Transmission Enhancements from a

³⁷ The principle of construction known as *noscitur a sociis* (“it is known from its associates”) provides that the meaning of an unclear word or phrase should be determined by the words immediately surrounding it. *Noscitur a sociis*, *Black's Law Dictionary* (11th ed. 2019).

³⁸ PJM Transmission Owners Rehearing Request at 10-12.

³⁹ PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 14.0.0, § 12(b)(x)(B)(2) (emphasis added).

⁴⁰ March 2018 Order, 162 FERC ¶ 61,197 at P 31.

Merchant Transmission Facility on the actual Firm Transmission Withdrawal Rights that have been awarded to the Merchant Transmission Facility. Thus, in order to be assigned cost responsibility, Merchant Transmission Facilities must have Firm Transmission Withdrawal Rights for the upcoming year, and in this case, as of January 1, 2018, they had none.⁴¹ We therefore disagree with PJM Transmission Owners that the Commission ignored the plain language of the Tariff or other canons of construction; the Commission adopted a reasonable interpretation of the entirety of Schedule 12. Under that interpretation, we affirm that RTEP cost allocation should be based on the “actual” Firm Transmission Withdrawal Rights held by Merchant Transmission Facilities, and in this case as of January 1, 2018, that amount was zero.

2. Solution-Based DFAX Cost Allocation

25. PJM Transmission Owners claim that the Commission also erred in permitting the immediate elimination of Merchant Transmission Facilities’ RTEP cost responsibility for solution-based DFAX cost responsibility assignments.⁴² PJM Transmission Owners state that section (b)(iii)(H)(2) of Schedule 12 provides that PJM must update solution-based DFAX allocations based on the same values and inputs used in the base case of the most recent RTEP approved by the PJM Board prior to the determination of cost responsibility. PJM Transmission Owners assert that on its face, this provision applies to all values and inputs used in the calculation, and there is no basis to exclude Merchant Transmission Facilities’ peak loads and Firm Transmission Withdrawal Rights levels from the “values and inputs” used to calculate the distribution factors that form the basis of the solution-based DFAX method.

26. Schedule 12, section (b)(iii)(H)(2) provides:

All values and inputs used in the calculation of the distribution factor in a determination of cost responsibility shall be the same values and inputs as used in the base case of the most recent Regional Transmission Expansion Plan approved by the PJM Board prior to the determination of cost responsibility.

This provision refers, as discussed above, to the determination of another input to the calculation of cost responsibility, but does not govern whether Merchant Transmission

⁴¹ As noted above, the Commission found that the cost responsibility for an upcoming year is based on the Firm Transmission Withdrawal Rights for the upcoming year, not for the past year. For example, suppose for 2018, the measured peak load was 500 MW, but the Firm Transmission Withdrawal Rights were 0 MW. Under the Tariff, the cost responsibility for the Merchant Transmission Facility for 2018 would be capped at 0 MW.

⁴² PJM Transmission Owners Rehearing Request at 2, 12-15.

Facilities will receive cost allocation for the upcoming year. PJM makes that determination based on Merchant Transmission Facilities' actual Firm Transmission Rights for the upcoming year. Moreover, as the Commission explained in the March 2018 Order, Schedule 12 does not specify when the PJM Board will receive the base case scenario for the upcoming RTEP, nor does it specify that this date determines cost allocations for the upcoming year. Given this ambiguity, we find it reasonable to interpret the entirety of Schedule 12 as requiring the use of "existing" Firm Transmission Withdrawal Rights "at the beginning of each calendar year" to refer to the actual Firm Transmission Withdrawal Rights held by the Merchant Transmission Facilities at the beginning of calendar year 2018 (which is zero for the Merchant Transmission Facilities).⁴³ The Commission explained that the Tariff's reference to the use of values and inputs in the base case refers to the determination of the "distribution factor," not to the determination of either zonal peak load or cost allocation.⁴⁴ We affirm that finding here.

27. While PJM Transmission Owners claim there is no basis to exclude Merchant Transmission Facilities' peak loads and Firm Transmission Withdrawal Rights levels from the "values and inputs" used to calculate the distribution factors, they provide no support for this proposition other than to say the plain language finds otherwise. We do not find this argument persuasive. Both the calculation and dates for the determination of peak load responsibility and solution-based DFAX values are inputs into the calculation of cost responsibility, but neither determines whether and how much responsibility is allocated to Merchant Transmission Facilities. Those determinations are made based on the Merchant Transmission Facilities' Firm Transmission Withdrawal Rights for the upcoming year.⁴⁵

28. Similarly, we find no merit to the argument that the Commission's March 2018 Order is internally inconsistent because the Commission cannot approve "the reduction of Merchant Facilities' distribution factors based on the declines in their [Firm Transmission Withdrawal Right] holdings" while at the same time excluding "those same [Firm Transmission Withdrawal Rights] holdings from the 'values and inputs' that, under Schedule 12, must be taken from the most recent RTEP base case."⁴⁶ PJM Transmission Owners' argument conflates the provision specifying the values and inputs used in the calculation of the distribution factor for the determination of the cost responsibility with the provision specifying how cost responsibility assignments are allocated, which are

⁴³ March 2018 Order, 162 FERC ¶ 61,197 at P 34.

⁴⁴ *Id.*

⁴⁵ *See supra* P 24.

⁴⁶ PJM Transmission Owners Rehearing Request at 5, 14.

based on the actual Firm Transmission Withdrawal Rights. In other words, PJM Transmission Owners' argument would improperly substitute the separate provision of Schedule 12 for the *calculation* of the distribution factor in Schedule 12, section (b)(iii)(H)(2), for the provision governing *allocation* based on actual Firm Transmission Withdrawal Rights in Schedule 12, section (b)(x)(B)(2).

3. Opinion No. 503

29. We also disagree with PJM Transmission Owners that the Commission erroneously interpreted Schedule 12 in a manner that is inconsistent with Opinion No. 503.⁴⁷ Specifically, PJM Transmission Owners argue that the Commission's interpretation of Schedule 12 results in Merchant Transmission Facilities being treated differently than transmission zones. PJM Transmission Owners claim that while Merchant Transmission Facilities are permitted to avoid RTEP cost responsibility as of January 1, transmission zones will retain RTEP cost responsibility for at least another year after their zonal loads change. In this way, PJM Transmission Owners claim that the March 2018 Order is inconsistent with Opinion No. 503, which found that transmission zones and Merchant Transmission Facilities must be treated comparably.

30. We are unpersuaded by this argument. We agree with PJM Transmission Owners that in Opinion No. 503, the Commission found just and reasonable PJM's proposal to allocate to Merchant Transmission Facilities the costs of RTEP projects on a comparable basis as costs are allocated to transmission zones in PJM.⁴⁸ We disagree, however, that the Commission's finding in the March 2018 Order is inconsistent with Opinion No. 503, and, on rehearing, PJM Transmission Owners do not point to any example in which there has been incomparable treatment between transmission zones and Merchant Transmission Facilities. The currently effective Tariff provides for annual updates beginning with the calendar year for both Merchant Transmission Facilities and other transmission zones.⁴⁹ PJM Transmission Owners have not demonstrated that the Commission applied annual update rules for Merchant Transmission Facilities distinct and separate from the rules applicable to transmission zones. Thus, we find no inconsistency in how the costs are allocated to Merchant Transmission Facilities as compared to other zones in PJM.

⁴⁷ *Id.* at 15-18.

⁴⁸ *PJM Interconnection, L.L.C.*, Opinion No. 503, 129 FERC ¶ 61,161 at P 25.

⁴⁹ PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 14.0.0, § 12(b)(i)(A)(1); PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 14.0.0, § 12(b)(iii)(H).

4. Other Contentions

31. We also see no merit to PJM Transmission Owners' claim that the Commission "has created an incentive for Merchant Transmission Facilities to manipulate the cost allocation process by reducing their [Firm Transmission Withdrawal Rights] whenever they are seeking to avoid the costs of necessary upgrades, particularly where their [Firm Transmission Withdrawal Rights] represent a significant portion of a solution-based DFAX cost allocation."⁵⁰ The Merchant Transmission Facilities have exercised their option to convert their Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights, and while here this means that cost responsibility assignments are eliminated under Schedule 12 of the PJM Tariff, PJM Transmission Owners have not demonstrated that the conversion of the Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights leading to this change is an improper manipulation of the cost allocation process. As explained above, we find the Commission's interpretation of Schedule 12, that RTEP cost responsibility assignments allocated through the solution-based DFAX method be based on actual Firm Transmission Withdrawal Rights that exist at the time PJM makes the assignment of cost responsibility for the upcoming year, to be reasonable. Accordingly, we deny PJM Transmission Owners' rehearing on this point.

32. PJM Transmission Owners argue next that the Commission's interpretation of Schedule 12 would eviscerate the annual update provisions specified in sections (b)(i)(A) and (b)(iii)(H)(2) of Schedule 12. Under these provisions, PJM Transmission Owners reiterate that PJM must update Merchant Transmission Facilities' RTEP cost allocations annually based on information from the preceding year. As we set forth above, we interpret these provisions differently than the PJM Transmission Owners. Thus, we are not failing to give them meaning as argued by PJM Transmission Owners, but rather reasonably interpret Schedule 12 in its entirety and find that, as of January 1, 2018, Merchant Transmission Facilities' Firm Transmission Withdrawal Rights are zero.

33. We also find unpersuasive PJM Transmission Owners' argument that the Commission mistakenly attributed to PJM its own interpretation of Schedule 12, as though PJM had advanced that interpretation for Commission approval. Specifically, PJM Transmission Owners claim that PJM based its December 29 Filing on its view that the ISA Orders overrode the existing provisions of Schedule 12, and thus required the reduction of the Merchant Transmission Facilities' allocation regardless of what the Tariff provisions otherwise require. Thus, PJM Transmission Owners assert that it was error for the Commission to state that "PJM reasonably interpreted the Tariff provisions as requiring the use of 'existing' Firm Transmission Withdrawal Rights 'at the beginning of each calendar year' to refer to the actual Firm Withdrawal Rights held by Merchant

⁵⁰ PJM Transmission Owners Rehearing Request at 17.

Transmission Facilities at the beginning of calendar year 2018.”⁵¹ We find no merit to this argument. First, the ISA Orders did not require PJM to deviate from its Tariff in making the allocations to Merchant Transmission Facilities.⁵² Second, regardless of the reference to the ISA Orders, PJM’s interpretation and the Commission’s interpretation are consistent: Merchant Transmission Facilities had no existing Firm Transmission Withdrawal Rights as of the date of the annual update. In the March 2018 Order, the Commission found that PJM’s December 29 Filing was reasonable and consistent with the requirements of its Tariff, and as discussed above, we affirm that finding here.

34. Finally, we disagree with PJM Transmission Owners that the Commission exceeded its legal authority by “modifying” Schedule 12 without making the requisite findings under FPA section 206.⁵³ PJM Transmission Owners claim that the Commission should have found that the existing Tariff was unjust and unreasonable before modifying the rate. The Commission did not modify Schedule 12. The Commission interpreted and applied the language of Schedule 12, including sections (b)(i)(A)(1)(b) and (b)(x)(B)(2), and concurred with PJM that relinquishment of Firm Transmission Withdrawal Rights in calendar year 2017 results in the elimination of cost responsibility for calendar year 2018.

B. Brambleton Project

35. Dominion requests rehearing of the Commission’s determination that Dominion’s protest of PJM’s cost responsibility assignment for the Brambleton Project is “beyond the scope of this proceeding and is rejected.”⁵⁴ Dominion notes that it is filing to preserve its rights because PJM’s cost allocation for the Brambleton Project to allocate 100% of the costs to the Dominion Zone was in error and should be corrected.

36. We find Dominion’s request for rehearing to be moot. In an answer to Dominion’s original protest, PJM noted that Dominion was correct; the Brambleton Project should be allocated as a Regional Facility needed for reliability consistent with Schedule 12, section (b)(i). PJM stated that it “will correct the allocations assigned to b2373 [to] reflect the following allocations: (i) 50% of project costs will be allocated

⁵¹ *Id.* at 19 (citing March 2018 Order, 162 FERC ¶ 61,197 at P 34).

⁵² *See* Hudson Order, 161 FERC ¶ 61,262 at P 41 (requiring PJM to “reflect the conversion of 320 MW Firm TWRs to a total of 0 MWs Firm TWRs and 673 MW Non-Firm TWRs, effective the date of this order,” but imposing no requirement for when to stop cost allocation).

⁵³ PJM Transmission Owners Rehearing Request at 20-21.

⁵⁴ Dominion Rehearing Request at 1 (citing March 2018 Order, 162 FERC ¶ 61,197 at P 35).

regionally using the load-ratio share allocation per the annual update; and (ii) 50% of project costs should be allocated using the solution-based distribution factor (DFAX), with 66.67% of the costs allocated to the Dominion Zone and 33.33% of the costs allocated to the APS Zone.”⁵⁵

37. On July 17, 2018, as supplemented July 18, 2018, in Docket No. ER18-2028, PJM filed to modify the cost allocation for the Brambleton project consistent with its answer and Dominion’s request. No comments or protests were filed. The Commission accepted PJM’s filing pursuant to delegated letter order on August 31, 2018.⁵⁶ Given that PJM updated the cost allocation for the Brambleton Project as it stated it would do and the Commission accepted that filing, we dismiss Dominion’s rehearing request as moot.

The Commission orders:

(A) PJM Transmission Owners’ rehearing request is hereby denied, as discussed in the body of this order.

(B) Dominion’s rehearing request is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵⁵ PJM February 27, 2018 Answer at 3.

⁵⁶ *PJM Interconnection, L.L.C.*, Docket No. ER18-2068-000, et al. (Aug. 31, 2018) (delegated letter order).