

171 FERC ¶ 61,161  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER18-2102-002

ORDER DISMISSING REHEARING

(Issued May 27, 2020)

1. On May 31, 2018, the Commission approved a contested settlement (Settlement) regarding PJM Interconnection, L.L.C.'s (PJM) assignment of cost responsibility for transmission facilities that operate at or above 500 kilovolt (kV) that were allocated pursuant to the cost allocation method accepted in Opinion No. 494.<sup>1</sup> On July 30, 2018, PJM submitted compliance filings to revise its Open Access Transmission Tariff (PJM Tariff) to implement the provisions of the Settlement.<sup>2</sup> Linden VFT, LLC (Linden) sought clarification, or in the alternative, rehearing of the Settlement Order,<sup>3</sup> and protested the PJM compliance filings.<sup>4</sup>

---

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

<sup>2</sup> *PJM Interconnection, L.L.C.*, compliance filing, Docket No. ER18-2102-000 (filed July 30, 2018); *PJM Interconnection, L.L.C.*, compliance filing, Docket No. ER18-2102-001 (filed July 30, 2018). PJM explained the separate compliance filings were due to e-Tariff limitations. *Id.* at 2 n.7.

<sup>3</sup> Linden, Request for Clarification, or in the Alternative, Rehearing, Docket No. EL05-121-013 (filed Jul. 8, 2018) (Request for Clarification).

<sup>4</sup> Linden Protest (filed August 20, 2018) (Protest). Hudson Transmission Partners, LLC and New York Power Authority joined the Request for Clarification but not the Protest of the compliance filings or the current request for rehearing at issue in this order.

2. On December 19, 2019, the Commission denied rehearing and clarification of the Settlement Order, and accepted PJM's compliance filings.<sup>5</sup>

3. On January 21, 2020, Linden filed a timely rehearing request of the Commission's decision to accept the compliance filings. As discussed below, we dismiss the request for rehearing.

## **I. Background**

4. The factual background and procedural history are discussed in detail in the December 2019 Order, and will not be repeated here.<sup>6</sup>

5. In response to remand from the U.S. Court of Appeals for the Seventh Circuit,<sup>7</sup> on December 18, 2014, in Docket No. EL05-121-009, the Commission established hearing and settlement judge procedures to determine the appropriate cost allocation for new transmission facilities approved by the PJM Board of Directors (PJM Board) prior to February 1, 2013 that were planned to operate at or above 500 kV and whose costs were previously allocated in accordance with the 100 percent load-ratio share method accepted in Opinion No. 494.<sup>8</sup>

6. On June 15, 2016, in Docket No. EL05-121-009, the Settling Parties<sup>9</sup> submitted an offer of settlement. The Settlement specified the terms that would be incorporated into a new Schedule 12-C added to the PJM Tariff to be effective as of January 1, 2016. The Settlement defined Covered Transmission Enhancements as those "Required Transmission Enhancements that the PJM Board approved prior to February 1, 2013 and that are planned to operate at or above 500 kV."<sup>10</sup> The Covered Transmission Enhancements included any

---

<sup>5</sup> *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,238 (2019) (December 2019 Order).

<sup>6</sup> *See id.* PP 3-12.

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

<sup>8</sup> *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,233 (2014).

<sup>9</sup> The Settling Parties are listed in Appendix A of the December 2019 Order.

<sup>10</sup> Settlement, Section 2.2(a).

Necessary Lower Voltage Facilities (as defined in the PJM Tariff) associated with those Required Transmission Enhancements.<sup>11</sup>

7. The Settlement contained different methods for recovery of costs incurred for Covered Transmission Enhancements for the periods before and after January 1, 2016. From January 1, 2016 onward (going-forward period), and continuing until all charges authorized by the Commission with respect to each Covered Transmission Enhancement are fully recovered, the Settlement provided that PJM shall collect a “Current Recovery Charge” from Responsible Customers for each Covered Transmission Enhancement.<sup>12</sup> To address the period prior to January 1, 2016 (historical period), in which the costs of the Covered Transmission Enhancements were recovered under the method approved in Opinion No. 494, the Settlement also provided for “Transmission Enhancement Charge Adjustments” to the billings for the Covered Transmission Enhancements through a schedule of credits and payments from Responsible Customers.<sup>13</sup>

8. On May 31, 2018, the Commission approved the Settlement as just and reasonable under the second *Trailblazer* approach.<sup>14</sup>

9. In both its Request for Clarification of the Settlement Order and its Protest to the compliance filings, Linden requested that the Commission clarify that it is not subject to any of the Current Recovery Charges or Transmission Enhancement Charge Adjustments provided for by the Settlement. Linden contended that Schedule 12-C is focused on the

---

<sup>11</sup> Necessary Lower Voltage Facilities are defined as Required Transmission Enhancements included in the Regional Transmission Expansion Plan that are lower voltage facilities that must be constructed or reinforced to support new Regional Facilities. PJM, Intra-PJM Tariffs, OATT, Schedule 12 § (b)(i), 14.0.0. The Covered Transmission Enhancements are listed in Appendix A to Schedule 12-C of the PJM Tariff.

<sup>12</sup> Settlement, Section 2.2(c).

<sup>13</sup> The Transmission Enhancement Charge Adjustments are negotiated amounts that approximate the charges if the currently effective PJM Tariff applied to the historical period. Specifically, effective as of January 1, 2016 and continuing through December 31, 2025, in addition to the Current Recovery Charge, the Settlement provided that PJM shall collect from or credit to Responsible Customers the Transmission Enhancement Charge Adjustments set forth in Appendix C to Schedule 12-C for each Zone and each Merchant Transmission Facility. Settlement, Section 2.2(d).

<sup>14</sup> Settlement Order, 163 FERC ¶ 61,168 at P 38 (citing *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345, at 62,342-45 (1998), *order on reh'g*, 87 FERC ¶ 61,110, *reh'g denied*, 88 FERC ¶ 61,168 (1999)).

actual “collection” of such charges. Linden contended that, because it held no Firm Transmission Withdrawal Rights as of the date of the Settlement Order, and as of the date that PJM began collecting the Current Recovery Charges and Transmission Enhancement Charge Adjustments, it is not a Responsible Customer under Schedule 12 of the PJM Tariff.<sup>15</sup>

10. In the December 2019 Order, the Commission found that Linden was responsible for both the Current Recovery Charges and Transmission Enhancement Charge Adjustments.<sup>16</sup> With respect to the Current Recovery Charge, the Commission stated that, under the Settlement, “PJM shall collect a Current Recovery Charge from Responsible Customers for each Covered Transmission Enhancement, effective January 1, 2016, and continuing until all charges authorized by the Commission with respect to each Covered Transmission Enhancement are fully recovered.”<sup>17</sup> The Commission noted that Linden converted its Firm Transmission Withdrawal Rights effective as of January 1, 2018. Therefore, during the period prior to January 1, 2018, Linden was a Responsible Customer, subject to Transmission Enhancement Charges.

11. The Commission found that Linden was also responsible for the Transmission Enhancement Charge Adjustments.<sup>18</sup> The Commission noted that, under the Settlement, the collection of Transmission Enhancement Charge Adjustments applied when Merchant Transmission Facilities,<sup>19</sup> such as Linden, were no longer Responsible Customers.<sup>20</sup>

12. The Commission analyzed section 4(c)(i)(2) of Schedule 12-C, which states, in pertinent part:

If all Responsible Customers in a Zone or Merchant Transmission Facility are no longer subject to Transmission Enhancement Charges under the PJM Tariff *during the period in which Transmission Enhancement Charge Adjustments are collected*, then, during the portion of that period that such

---

<sup>15</sup> Protest at 2-7.

<sup>16</sup> December 2019 Order, 169 FERC ¶ 61,238 at PP 29-38.

<sup>17</sup> *Id.* P 29 (citing Settlement, Section 2.2(c)).

<sup>18</sup> *Id.* PP 32-38.

<sup>19</sup> As defined by the PJM Tariff. *See* PJM, Intra-PJM Tariffs, OATT, L- M - N, OATT Definitions, 22.0.0.

<sup>20</sup> December 2019 Order, 169 FERC ¶ 61,238 at P 32.

Responsible Customers are not subject to Transmission Enhancement Charges, the payments from or credits to such Responsible Customers shall cease and PJM shall adjust the Transmission Enhancement Charge Adjustments payable by and credited to other remaining Responsible Customers on a pro rata basis...<sup>21</sup>

13. The Commission was unpersuaded by Linden's position which essentially argued that the phrase "are collected" in this provision meant "are actually collected."<sup>22</sup> Instead, the Commission found that the meaning of the phrase "are collected" in section 4(c)(i)(2) was ambiguous when read in context of the surrounding text in section 4(c) and other sections of Schedule 12-C. After careful consideration of those sections and the Settlement, the Commission found that, under the most reasonable interpretation of the Settlement and Schedule 12-C as a whole, section 4(c)(i)(2) refers to the entire January 1, 2016 to December 31, 2025 adjustment period, not just the period that PJM actually collected Transmission Enhancement Charge Adjustments.<sup>23</sup> The Commission also noted that based on various provisions of the Settlement,<sup>24</sup> the Responsible Parties' liability for adjustments triggered as of January 1, 2016, and this liability "accumulated" regardless of when PJM actually billed for the adjustments, which depended on the effective or implementation date of the Settlement as a whole.<sup>25</sup>

14. Accordingly, in the December 2019 Order, the Commission denied Linden's request for rehearing of the Settlement Order on these grounds, and also denied Linden's protest of the compliance filings on the same basis.<sup>26</sup>

---

<sup>21</sup> *Id.* (quoting PJM, Intra-PJM Tariffs, OATT, Schedule 12-C § 4(c)(i)(2), 0.0.0. (emphasis added by December 2019 Order)).

<sup>22</sup> *Id.* PP 33-34.

<sup>23</sup> *Id.* PP 34-38.

<sup>24</sup> *Id.* P 35 (citing sections 2.1, 2.2(d), and 2.3 of the Settlement and Schedule 12-C, sections 3 and 4(c)).

<sup>25</sup> *Id.* P 35.

<sup>26</sup> *Id.* P 71 ("As discussed above, we deny Linden's request for rehearing of the [Settlement] Order, which serves as the basis for its protest of the compliance filings. Linden's protest of the compliance filings raises no new issues. . . . Accordingly, we deny Linden's protest and accept the compliance filings.").

## II. Request for Rehearing

15. On rehearing, Linden reiterates that the Commission erred by accepting PJM's compliance filings with respect to the Transmission Enhancement Charge Adjustments and Current Recovery Charges. Linden continues to assert that these charges apply only to Merchant Transmission Facilities that have Firm Transmission Withdrawal Rights and Linden relinquished its Firm Transmission Withdrawal Rights on December 31, 2017, prior to the Commission's May 31, 2018 Settlement Order accepting PJM's reassignment of costs.<sup>27</sup> Linden again states that the plain language of Schedule 12-C of the PJM Tariff and the Settlement preclude the Transmission Enhancement Charge Adjustments and Current Recovery Charges from being assigned to Linden.<sup>28</sup> Therefore, Linden argues the Commission erred in accepting the compliance filings and should grant rehearing.

## III. Commission Determination

16. As discussed below, we dismiss Linden's rehearing request. In its rehearing request, Linden raises the same issues it previously raised in its Request for Clarification of the Settlement Order and in its Protest of the compliance filings. The Commission addressed those issues in the December 2019 Order as set forth above.

17. As the Commission has stated, "the purpose of a compliance filing is to make the modifications directed by the Commission, and the Commission reviews compliance filings to ascertain whether the modifications are appropriate."<sup>29</sup> A party may not use a rehearing of a compliance filing to supplement and relitigate the Commission's denial of

---

<sup>27</sup> Request for Rehearing at 2.

<sup>28</sup> *Id.* at 2-3.

<sup>29</sup> *Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,339, at P 37 (2008).

rehearing of the underlying order.<sup>30</sup> Such requests are beyond the scope of the compliance proceedings.<sup>31</sup>

18. Here, PJM has complied with the Commission's Settlement Order by submitting revised tariff records in accordance with the Settlement. Further, Linden's objections to implementation of the Transmission Enhancement Charge Adjustments and Current Recovery Charges have been adequately addressed in the December 2019 Order. Accordingly, we dismiss Linden's rehearing request.

The Commission orders:

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

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

---

<sup>30</sup> Linden's rehearing request of the portion of the December 2019 Order accepting PJM's compliance filings is in effect a late-filed attempt to improve upon its request for rehearing of the underlying order which was the order requiring Linden to pay the Transmission Enhancement Charge Adjustments and Current Recovery Charges. *See Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56 (D.C. Cir. 2015) (party could not seek judicial review based on a second rehearing request when it had failed to appeal denial of the first rehearing); *Williston Basin Interstate Pipeline Co. v. FERC*, 475 F.3d 330, 332 (D.C. Cir. 2006) (finding that a request styled as a request for reconsideration filed after the thirty-day rehearing period is not a rehearing that tolls the sixty day period to file an appeal of a Commission order); *Cal. Indep. Sys. Operator*, 125 FERC ¶ 61,339, at P 37 (citing *Acadia Power Partners, LLC*, 106 FERC ¶ 61,215 (2004)); *see also New Eng. Conf. of Pub. Util. Comm'rs, Inc.*, 135 FERC ¶ 61,140, at 61,786 (2011).

<sup>31</sup> *Acadia Power Partners, LLC*, 106 FERC ¶ 61,215 at P 10.