

168 FERC ¶ 61,172
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Public Service Electric and Gas Company v. Docket No. EL18-143-001
Consolidated Edison Company of New York, Inc.

ORDER DENYING REHEARING

(Issued September 19, 2019)

1. On September 6, 2018, the Commission issued an order dismissing Public Service Electric and Gas Company's (PSE&G) complaint (Complaint) against Consolidated Edison Company of New York, Inc. (Con Edison).¹ In the Complaint Order, the Commission found that it does not have exclusive jurisdiction to make a determination on PSE&G's contention that Con Edison violated Section 4.1.2 of the New York Independent System Operator, Inc.'s (NYISO) Open Access Transmission Tariff (OATT) for failing to cooperate with PSE&G to remove dielectric fluid and transmission cables from the B Line and the C Line (together B-C Lines), which are transmission lines that the parties co-own.² The Commission also determined that the B-C Line Agreements between PSE&G and Con Edison terminate on December 31, 2020.³ PSE&G filed a timely request for rehearing of the Complaint Order's determination of the B-C Line Agreements' termination date. This order denies rehearing.

I. Background

2. As explained in the Complaint Order, the B-C Lines are 345 kV transmission lines that traverse the Hudson River to interconnect NYISO and PJM Interconnection, L.L.C. (PJM).⁴ The B-C Lines were constructed in 1972 and 1980, respectively, to facilitate a

¹ *Pub. Serv. Elec. & Gas Co. v. Consol. Edison Co. of N.Y., Inc.*, 164 FERC ¶ 61,171 (2018) (Complaint Order).

² *Id.* PP 36, 38.

³ *Id.* P 37.

⁴ *Id.* P 2.

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former transmission service arrangement between PSE&G and Con Edison.⁵ PSE&G and Con Edison's rights and obligations concerning transmission service, construction, and maintenance of the B-C Lines are set forth in multiple agreements, discussed below.⁶

3. On October 3, 2016, the New Jersey Department of Environmental Protection informed PSE&G that underwater portions of the B-C Lines may be leaking dielectric fluid.⁷ Shortly thereafter, the U.S. Coast Guard (Coast Guard) issued an order, pursuant to the Oil Pollution Act of 1990, stating that at least one of the lines was discharging dielectric fluid "into navigable waters of the United States," and that it "determined that this discharge presents an imminent and substantial threat to the public health or welfare of the United States, or the environment of the United States and that the discharge is of a harmful quantity."⁸

4. In response to the environmental findings, PSE&G and Con Edison initiated an investigation, but subsequently delayed it because more than 1 million pounds of debris prevented access to the B-C Lines. According to PSE&G, the source of the debris was 168- and 150-foot portions of a marina pier that had collapsed in 2008 and 2009, respectively, onto the B-C lines.⁹ Subsequently, PSE&G filed a petition against the owner of the pier, Newport Associates Development Company (Newport), in the U.S. District Court of New Jersey, claiming that Newport was negligent and seeking an injunction requiring Newport to remove the debris.¹⁰ Newport ultimately removed the debris pursuant to an order from both the Coast Guard and the U.S. Army Corps of

⁵ The former transmission service arrangement between PSE&G and Con Edison terminated on April 30, 2017. *See N.Y. Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,033, at P 22 (2017).

⁶ *See infra* PP 13-19.

⁷ Complaint Order, 164 FERC ¶ 61,171 at P 3 (citing Complaint at 2). The underwater portion of each line consists of a steel pipe, which houses the transmission line. The pipes contain dielectric fluid to regulate the temperature of the transmission line within the steel pipe.

⁸ *Id.* P 3 (citing Complaint at 13).

⁹ *Id.* P 4 (citing Complaint at 2-3).

¹⁰ *Id.* (citing Con Edison June 6, 2018 Answer at Ex. CE-4; *Pub. Serv. Elec. & Gas Co. v. Newport*, Case No. 16-cv-08445, Counterclaim at P 14 (D.N.J., filed Feb. 9, 2018)).

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Engineers. Subsequently, Newport filed a counterclaim against PSE&G, alleging, among other things, that PSE&G is in breach of the agreement establishing an easement.¹¹

5. After Newport removed the debris, PSE&G and Con Edison resumed their investigation, which revealed that the B Line was leaking dielectric fluid at a rate of approximately one gallon per day.¹² PSE&G and Con Edison de-energized the B Line to facilitate its repair, and according to Con Edison, the C Line also was de-energized to facilitate the investigation.¹³ The B Line was repaired in August 2017, and both utilities found no active leaks.¹⁴

6. On June 15, 2018, Con Edison filed a cross-claim against PSE&G in the U.S. District Court of New Jersey alleging, among other things, that PSE&G is in breach of the B Line Agreement because it “refuses to allow dielectric fluid to be reintroduced into the lines and to allow the lines to be re-energized.”¹⁵ Moreover, it argued that PSE&G is in breach of the C Line Agreement “by failing to maintain the C Line and by attempting, through its own acts and omissions, to unilaterally remove the C Line from service.”¹⁶ The case in the U.S. District Court of New Jersey remains pending.

7. On May 3, 2018, PSE&G filed the Complaint contending that Con Edison is in violation of NYISO’s OATT because Con Edison will not cooperate with PSE&G to remove the dielectric fluid and the transmission cables from the B-C Lines.

8. PSE&G and Con Edison filed multiple answers to the Complaint and answers to answers.¹⁷ Pertinent to PSE&G’s request for rehearing now before the Commission, Con Edison argued that under two agreements, the B Line Agreement and the C Line Agreement, executed in 1975 and 1978, respectively, neither PSE&G nor Con Edison can retire the B-C Lines on a unilateral basis; thus, PSE&G is obligated to return the lines to

¹¹ *Id.*

¹² *Id.* P 5.

¹³ *Id.* (citing Con Edison June 6, 2018 Answer at 27).

¹⁴ *Id.* (citing Complaint at 3; Con Edison June 6, 2018 Answer at 2).

¹⁵ *Id.* P 6 (quoting Con Edison June 20, 2018 Supplemental Answer at 37).

¹⁶ *Id.* (quoting Con Edison June 20, 2018 Supplemental Answer at 41).

¹⁷ Con Edison June 6, 2018 Answer; Con Edison June 20, 2018 Supplemental Answer; PSE&G June 26, 2018 Answer at 9-11; Con Edison July 12, 2018 Answer; PSE&G Aug. 13, 2018 Answer; Con Edison Aug. 29, 2018 Answer.

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service.¹⁸ Con Edison explained that under Item IV-A of the C Line Agreement, both the B-C Line Agreements are effective until the earlier of the end of 2020 or 30 years from the commercial service date of the Step II facilities.¹⁹ Con Edison and PSE&G did not build the Step II facilities; therefore, Con Edison argued that the only possible termination date for the agreements is at the end of 2020.²⁰

9. In response, PSE&G asserted that Con Edison's reliance on the B-C Line Agreements is misplaced because the agreements terminated in 2012.²¹ PSE&G argued that Con Edison's reliance on the language that the agreements will terminate at the earlier of 2020 or 30 years from the commercial service date of Step II facilities is untenable, given that Con Edison did not build the Step II facilities, in breach of the agreement.²²

10. Finally, Con Edison clarified that the B-C Line Agreements provide separate termination dates for transmission service and for other provisions in the agreements; thus, PSE&G's alleged 2012 termination date only applies to the transmission service provisions of the agreements.²³

11. In the Complaint Order, the Commission determined that it does not have exclusive jurisdiction over the dispute raised by PSE&G in its Complaint and accordingly declined to assert jurisdiction pursuant to *Arkansas Louisiana Gas Co. v. Hall*.²⁴ The Commission also determined, as a preliminary matter, that the interconnection portions of

¹⁸ Con Edison June 6, 2018 Answer at 9-10.

¹⁹ Con Edison July 12, 2018 Answer at 6; Con Edison June 6, 2018 Answer at Ex. CE-2, C Line Agreement & Ex. CE-1, 1978 Amendment to the B Line Agreement, Item 6 (specifying that the B Line Agreement is coterminous with Item IV-A of the C Line Agreement).

²⁰ Con Edison July 12, 2018 Answer at 5-6.

²¹ PSE&G June 26, 2018 Answer at 9-11.

²² PSE&G Aug. 13, 2018 Answer at 3.

²³ Con Edison July 12, 2018 Answer at 6 (citing Con Edison June 6, 2018 Answer at Ex. CE-1, B-Line Agreement, § 4.4, Power Transfers & Ex. CE-2, C-Line Agreement, Item III-C, Other Provisions).

²⁴ Complaint Order, 164 FERC ¶ 61,171 at P 36 (citing *Ark. La. Gas Co. v. Hall*, 7 FERC ¶ 61,175, at 61,322, *order on reh'g*, 8 FERC ¶ 61,031 (1979) (*Arkla*)).

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the B-C Line Agreements are effective until December 31, 2020.²⁵ The Complaint Order stated that under Section IV-A of the C Line Agreement,²⁶ both the B-C Line Agreements will “terminate at the end of a period of thirty years commencing from the commercial service date of the Step II facilities or at the end of 2020, whichever occurs first.”²⁷ Both parties agree that the Step II facilities were never built; accordingly, the Commission determined that the agreements terminate on December 31, 2020.

12. On rehearing, PSE&G argues that: (1) the B-C Line Agreements terminated in May 2012²⁸ and (2) the Complaint Order fails to adequately distinguish prior precedent stating that the agreements terminated in 2012.²⁹ If the Commission determines that the B-C Line Agreements expire on December 31, 2020, PSE&G asks for rehearing and clarification of which provisions in the B-C Line Agreements remain in effect until December 31, 2020.³⁰

B-C Line Agreements

13. As noted above, this proceeding concerns two transmission service agreements entered into between PSE&G and Con Edison in the 1970s: the B Line Agreement, executed in 1975, for the transmission of 400 MW; and the C Line Agreement, executed in 1978, for the transmission of 600 MW.

14. In the late 1960s, Con Edison was planning to build a transmission line from Sprain Brook in Westchester County, New York (east of the Hudson River and north of New York City) to New York City, New York, to provide additional transmission capacity connecting its generation sources north of New York City to its native load in

²⁵ *Id.* P 37.

²⁶ *Id.* (citing Con Edison July 12, 2018 Answer at 6 (citing Con Edison June 6, 2018 Answer at Ex. CE-1, 1978 Amendment, Item 6)).

²⁷ *Id.* (citing Con Edison July 12, 2018 Answer at 6 (quoting Con Edison June 6, 2018 Answer at Ex. CE-2, C Line Agreement, Item IV-A)).

²⁸ PSE&G Request for Rehearing at 5-10.

²⁹ *Id.* at 10-15.

³⁰ *Id.* at 15-16.

New York City.³¹ As an alternative, PSE&G suggested that Con Edison and PSE&G jointly address the supply problems of both northern New Jersey and New York City by entering into an energy exchange arrangement whereby Con Edison's upstate generation sources would be used to supply PSE&G's native load customers in northern New Jersey and PSE&G's generators would be used to supply Con Edison's native load customers in New York City.³² PSE&G and Con Edison executed the B Line Agreement and the C Line Agreement, which provided for the transmission of 1,000 MW of energy, set forth terms and conditions for constructing and operating the interconnection facilities, and allocated related costs.

15. The B Line Agreement provides for the construction, operation, and cost responsibilities associated with two interconnections between PSE&G's facilities in New Jersey and Con Edison's facilities in New York.³³ Under this agreement, Con Edison agreed to supply PSE&G with 400 MW of power from the Ramapo Substation for use in northern New Jersey, and PSE&G agreed to return the same amount of power to Con Edison at its Farragut and/or Goethals substations.³⁴

16. The C Line Agreement provides for the construction, operation, and cost responsibilities for a second Hudson-Farragut Interconnection and a new interconnection between the Ramapo Substation in New York and the Waldwick Interconnection at South Mahwah in New Jersey.³⁵ This agreement specified that "PSE&G would transfer a maximum of 600 MW to Con Edison when there were no major generating and/or transmission facility outages in the northern zone of the PSE&G system."³⁶

17. The B-C Line Agreements contain both interconnection and transmission service provisions, each with their own termination dates. PSE&G and Con Edison entered into a 1978 Amendment that amended the B Line Agreement so that the termination date for the interconnection portion of both the B Line and C Line Agreements would be governed by Item IV-A of the C Line Agreement, which provides for termination "at the

³¹ *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,221 at P 2 (citing Joint Report of AC and DC Transmission Plans for Delivering Power to New York City in the 1980-1985 Period, Docket No. EL02-23, Ex. No. CE-8), *reh'g denied*, 135 FERC ¶ 61,018 (2011)).

³² *Id.*

³³ *Id.* P 4.

³⁴ *Id.*

³⁵ *Id.* P 6.

³⁶ *Id.*

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end of a period of thirty years commencing from the commercial service date of the Step II facilities or at the end of 2020, whichever occurs first.”³⁷ The transmission portions of the agreements provide a separate termination date. The B Line Agreement states that the parties will transfer 400 MW of power until April 30, 1992.³⁸ And the C Line Agreement states that the parties will transfer 600 MW of power until 30 years from the commencement date of commercial operation of the Step I facilities (i.e., May 2012), unless extended upon implementation of the Step II facilities, in which case the parties’ obligation to transfer power terminates as provided in Item IV-A.³⁹

18. Because the B-C Line Agreements were executed during a time when PSE&G and Con Edison had operational control of their respective transmission facilities, the Commission required that PSE&G, Con Edison, NYISO,⁴⁰ and PJM⁴¹ develop operating protocols that would satisfy PSE&G’s transmission service obligations to Con Edison under NYISO’s and PJM’s OATTs in compliance with Order Nos. 888 and 2000.⁴² In 2005, the Commission accepted NYISO, PJM, and PSE&G’s jointly submitted revised operating protocols governing PSE&G’s transmission service provided to Con Edison, as

³⁷ *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,221 at P 5; *see also* Complaint Order, 164 FERC ¶ 61,171 at P 37.

³⁸ *See* Con Edison June 6, 2018 Answer at Ex. CE-1, B Line Agreement, § 4.4.

³⁹ *See id.* at Ex. CE-2, C Line Agreement, Item III-C.

⁴⁰ NYISO operates Con Edison’s transmission system.

⁴¹ PJM operates PSE&G’s transmission system.

⁴² *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,221 at P 7. *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 77 FERC ¶ 61,080), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002); *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999) (cross-referenced at 89 FERC ¶ 61,285), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross-referenced at 90 FERC ¶ 61,201), *aff’d sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

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an attachment to the NYISO OATT and as a rate schedule to the PJM OATT.⁴³ Those protocols, like the transmission service provisions of the B-C Line Agreements, had a termination date in May 2012.⁴⁴

19. In 2008, PJM filed two executed Transmission Service Agreements (TSAs) between PJM and Con Edison, and a revised operating protocol between PJM and NYISO, to be effective upon the May 2012 termination of the transmission service provisions of the B-C Line Agreements and the operating protocols approved in 2005.⁴⁵ In that filing, PJM noted that the transmission service under the B-C Line Agreements would terminate in 2012, so the TSAs replacing transmission service under the B-C Line Agreements would take effect at that time, and would remain in effect provided that Con Edison exercised certain rollover rights.⁴⁶ The Commission approved the 2008 TSAs and the revised operating protocols, to be effective May 1, 2012. On April 28, 2016, Con Edison informed PJM that it was not exercising its rollover rights; therefore, the TSAs terminated by their terms on April 30, 2017.⁴⁷ To reflect the change in service, NYISO and PJM filed revisions to the NYISO-PJM Joint Operating Agreement, which the Commission accepted.⁴⁸

II. Procedural Matters

20. On October 24, 2018, Con Edison filed a motion for leave to answer and answer to PSE&G's request for rehearing. Rule 713(d) of the Commission's Rules of Practice and Procedure prohibits an answer to a request for rehearing.⁴⁹ Accordingly, we deny Con Edison's motion to file an answer and reject its answer.

⁴³ *Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Elec. & Gas Co.*, 111 FERC ¶ 61,228 (2005).

⁴⁴ *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,221 at P 9.

⁴⁵ *See PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,184, at PP 1, 4 (2008).

⁴⁶ *Id.* PP 3-4.

⁴⁷ *N.Y. Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,033, at P 7 (2017).

⁴⁸ *Id.* P 22.

⁴⁹ 18 C.F.R. § 385.713(d) (2019).

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III. Discussion

A. The Complaint Order Properly Determined that the B-C Line Agreements Terminate On December 31, 2020

21. On rehearing, PSE&G argues that the Complaint Order improperly concluded that the term of the B-C Line Agreements is controlled by Item IV-A of the C Line Agreement,⁵⁰ which provides that both agreements “terminate at the end of a period of thirty years commencing from the commercial service date of the Step II facilities or at the end of 2020, whichever occurs first.”⁵¹ PSE&G disagrees with the Complaint Order’s reasoning that because the Step II facilities were never built, the agreements terminate on December 31, 2020.⁵²

22. We affirm the Complaint Order’s determination that the relevant provisions of the B-C Line Agreements are effective until December 31, 2020.⁵³ As stated above, Item IV-A of the C Line Agreement states that both agreements “will terminate at the end of a period of thirty years from the commercial service date of the Step II facilities or at the end of the year 2020, whichever occurs first.”⁵⁴ The phrase “whichever comes first” implies that the two termination dates are alternatives, independent of one another.⁵⁵ As stated in the Complaint Order, “[b]oth parties agree that the Step II facilities were never built; accordingly, the agreements terminate on December 31, 2020.”⁵⁶

⁵⁰ PSE&G Request for Rehearing at 5.

⁵¹ Complaint Order, 164 FERC ¶ 61,171 at P 37 (quoting Con Edison July 12, 2018 Answer at 6 (quoting Con Edison June 6, 2018 Answer at Ex. CE-2, C Line Agreement, Item IV-A)).

⁵² PSE&G Request for Rehearing at 5-6.

⁵³ Complaint Order, 164 FERC ¶ 61,171 at P 37 (citing *Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Elec. & Gas Co.*, 99 FERC ¶ 63,028, at P 14 (2002) (noting that the B-C Line Agreements terminate in 2020); *Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Elec. & Gas Co.*, 101 FERC ¶ 61,282, at P 3 (2002) (same)).

⁵⁴ See Con Edison June 6, 2018 Answer at Ex. CE-2, C Line Agreement, Item IV-A); see also *id.* at Ex. CE-1, 1978 Amendment to the B Line Agreement, Item 6 (specifying that the B Line Agreement is coterminous with Item IV-A of the C Line Agreement).

⁵⁵ Complaint Order, 164 FERC ¶ 61,171 at P 37.

⁵⁶ *Id.*

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23. PSE&G contends that Item IV-A cannot be the basis for determining the termination date of the agreements because Con Edison failed to satisfy the premise of that provision, i.e., that Con Edison would meet its contractual obligation to construct the Step II facilities. According to PSE&G, this failure, at minimum, creates an ambiguity as to whether Item IV-A of the C Line Agreement even applies to the termination term.⁵⁷ PSE&G states that the 2020 termination date was meant to be a maximum term assuming that Con Edison would construct the Step II facilities. According to PSE&G, the Commission erred by rewarding Con Edison's failure to construct the Step II facilities by providing a longer contract term and imposing additional obligations on PSE&G.⁵⁸ We disagree. PSE&G points to no provision that obligates Con Edison to construct the Step II facilities, which are not described or defined in the B-C Line Agreements, or makes construction of those facilities a condition precedent to termination on December 31, 2020. Instead, the use of the disjunctive "or" to separate the two alternative termination dates rebuts PSE&G's assertion that Con Edison was required to construct the Step II facilities in order for the December 31, 2020 termination date to apply.

24. PSE&G asserts that, rather than relying on terms in the C Line Agreement pertaining to the unconstructed Step II facilities, the Commission should rely on the other terms in the C Line Agreement pertaining to the constructed Step I facilities.⁵⁹ Thus, PSE&G contends that the Commission should look to the "four corners of the contract" and rule that the B-C Line Agreements terminated 30 years from the in-service date of the Step I facilities, i.e., May 2012.⁶⁰ Alternately, PSE&G contends that if the Commission denies rehearing, the Commission should allow extrinsic evidence to demonstrate the parties' intent.⁶¹

25. We reject PSE&G's argument. There is nothing within the four corners of the contract to substantiate PSE&G's argument. Construction of the Step I facilities is irrelevant to interpreting Item IV-A.⁶² The C Line Agreement does not cite the in-service date of the Step I facilities as relevant to termination of the contract term, and we cannot

⁵⁷ PSE&G Request for Rehearing at 6-7.

⁵⁸ *Id.* at 6.

⁵⁹ PSE&G Request for Rehearing at 2, 9 (citing C Line Agreement, Item II-F (stating that the duration of the C Line Agreement should be "the 30-year in-service period of the PS Step I Facilities"); C Line Agreement, Item II-B (stating that the parties agreed on a 30-year term to recover capital costs of constructed facilities)).

⁶⁰ *Id.*

⁶¹ *Id.* at 2, 10.

⁶² Complaint Order, 164 FERC ¶ 61,171 at P 37.

simply substitute “Step I” where the contract expressly states “Step II.” Accordingly, we need not look beyond the four corners of the contract.⁶³ As stated above, the B-C Line Agreements are valid either 30 years from the in-service date of the Step II facilities or until December 31, 2020.

B. The Complaint Order Distinguished Prior Precedent Discussing the 2012 Termination Date

26. PSE&G argues that the Complaint Order departed from earlier Commission precedent that found the B-C Line Agreements terminated in 2012.⁶⁴ PSE&G explains that in 2010, the Commission accepted a contested settlement (2010 Settlement) that provides that the B Line Agreement and the C Line Agreement and “the currently-effective operating protocol, which was approved in [an earlier] proceeding will terminate in 2012.”⁶⁵

27. Further, PSE&G finds error in the Complaint Order’s reasoning that the agreements’ 2012 termination date referred to transmission service provisions and the 2020 termination date referred to interconnection provisions.⁶⁶ PSE&G asserts that the Complaint Order incorrectly relied on a 2002 order in which the Presiding Judge held that the 2020 termination date applied only to transmission service provisions.⁶⁷ PSE&G argues that in 2010, the Commission described the B Line Agreement and the C Line Agreement as covering construction, operation, and cost responsibilities for the B-C Lines, a description that includes both transmission service and interconnection provisions.⁶⁸

28. We affirm the Complaint Order’s finding that PSE&G’s reliance on prior Commission Orders addressing the termination date for the B-C Line Agreements is misplaced.⁶⁹ PSE&G relies on orders relating specifically to the termination of the B-C

⁶³ See *Boston Edison Co. v. FERC*, 856 F.2d 361, 366-367 (1st Cir. 1988).

⁶⁴ PSE&G Request for Rehearing at 10, 12-14.

⁶⁵ *Id.* at 12 (quoting *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,221 at P 9).

⁶⁶ *Id.* at 11-12.

⁶⁷ *Id.* at 11; see Complaint Order, 164 FERC ¶ 61,171 at P 37 (citing *Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Elec. & Gas Co.*, 99 FERC ¶ 63,028 at P 14).

⁶⁸ PSE&G Request for Rehearing at 13 (citing *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,221 at PP 4, 6).

⁶⁹ Complaint Order, 164 FERC ¶ 61,171 at P 37.

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Line Agreements' transmission service provisions and operating protocol.⁷⁰ As explained above, we affirm that the B-C Line Agreements contain both interconnection and transmission service provisions, each with their own termination dates.⁷¹ The B Line Agreement states that the parties will transfer 400 MW of power until April 30, 1992⁷² with the remainder of the agreement effective for an initial period of 40 years from the date of the contract (i.e., May 22, 2015).⁷³ The C Line Agreement states that the parties will transfer 600 MW of power until 30 years from the commencement date of commercial operation of the Step I facilities (i.e., May 2012), unless extended upon implementation of the Step II facilities, in which case the parties' obligation to transfer

⁷⁰ PSE&G Request for Rehearing at 10 & n.23 (citing *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,184 at P 3 (stating that TSAs and currently-effective operating protocol will terminate in 2012), *order on settlement*, 130 FERC ¶ 61,126, at P 3 (2010) (same), *order approving settlement*, 132 FERC ¶ 61,221 at P 9 (same), *order denying rehearing*, 135 FERC ¶ 61,018 at P 4 (same)). As noted in the Complaint Order, Commission precedent has also referenced the December 31, 2020 termination date. *See* Complaint Order, 164 FERC ¶ 61,171 at P 37 n.71 (citing *Consol. Edison Co. of N.Y. v. Pub. Serv. Elec. & Gas Co.*, 99 FERC ¶ 63,028 at P 14 (noting that the Interconnection Agreements terminate in 2020); *Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Elec. & Gas Co.*, 101 FERC ¶ 61,282 at P 4). In the Complaint Order, as here, the Commission's determination of the December 31, 2020 termination date rests on the text of the agreements, not on background information from prior Commission decisions addressing other matters.

⁷¹ *Supra* PP 18-19; *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,221 at P 6 (finding that the term of the agreement was for 30 years from the date of commercial operations, or the end of 2020, whichever occurred first); *Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Electric & Gas Co.*, Opinion No. 476, 108 FERC ¶ 61,120, at PP 12, 44 (2004) ("[W]e think the primary concern of [Con Edison], is not with past curtailments of contract power deliveries but with avoiding future curtailments until the contracts expire in 2020."), *order on reh'g*, 119 FERC ¶ 61,071 (2007); *Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Elec. & Gas Co.*, 105 FERC ¶ 61,343, at P 2 (2003) ("[T]he parties modified the 1975 contract to, among other things, extend its term to coincide with that of the 1978 contract, i.e., the end of the year 2020 ..."); *Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Elec. & Gas Co.*, 101 FERC ¶ 61,282 at P 4 (same); *Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Elec. & Gas Co.*, 99 FERC ¶ 61,033, at P 14 (2002) (same).

⁷² *See* Con Edison June 6, 2018 Answer at Ex. CE-1, B Line Agreement, § 4.4.

⁷³ *See id.* at Ex. CE-1, B Line Agreement, § 6.3 & Ex. CE-1, 1978 Amendment to the B Line Agreement, Item 6.

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power terminates as provided in Item IV-A.⁷⁴ The remainder of the C Line Agreement is effective 30 years from the in-service date of the Step II facilities or December 31, 2020.⁷⁵ The 2010 Settlement between PSE&G and Con Edison replaced only the transmission service provisions of the B-C Line Agreements,⁷⁶ whereas, the interconnection portions of the agreements remain in effect. If the parties intended for the transmission service and interconnection provisions of the B-C Line Agreements to be coterminous, the agreements would not have provided two termination dates: one referring to transmission and the other referring to the remainder of the agreement. Additionally, the 2010 Settlement would have addressed the termination dates for both transmission and interconnection provisions. Accordingly, we deny PSE&G's request for rehearing.

C. PSE&G's Contractual Arguments Are Not Properly Raised and Outside the Scope of this Proceeding

29. On rehearing, PSE&G claims that if the B-C Line Agreements remain in effect until December 31, 2020, Con Edison is responsible for a significant level of charges identified in the agreements.⁷⁷ PSE&G also asks the Commission to clarify which provisions of the B-C Line Agreements remain in effect, should the Commission determine that the agreements do not terminate until December 30, 2020.⁷⁸ Specifically, PSE&G seeks rehearing and clarification that the following terms are effective: (1) Con Edison's agreement to pay annual charges of \$500,000 due under the 1978 amendment to the 1975 agreement for each succeeding year to the end of the term as defined in Item IV-A of C Line Agreement;⁷⁹ (2) Con Edison's agreement to pay monthly operation and maintenance expenses for the C Line as adjusted annually during the period of the agreement;⁸⁰ and (3) Con Edison's agreement for additional payments to PSE&G for the use of certain existing facilities on the PSE&G system that will continue beyond the 30-year period commencing with the commercial operation of the Step I facilities until the

⁷⁴ See *id.* at Ex. CE-2, C Line Agreement, Item III-C.

⁷⁵ See *id.* at Ex. CE-2, C Line Agreement, Item IV-A.

⁷⁶ See *supra* P 19; *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,184 at PP 1-4.

⁷⁷ PSE&G Request for Rehearing at 8-9.

⁷⁸ *Id.* at 15.

⁷⁹ *Id.* at 8, 15.

⁸⁰ *Id.*

(continued ...)

termination date of the C Line Agreement.⁸¹ PSE&G asserts that if these provisions remain in effect, Con Edison owes PSE&G approximately \$60 million in arrears.⁸²

30. As a rule, we reject new arguments introduced at the rehearing or clarification stage,⁸³ unless we find that the argument could not have been previously presented (e.g., claims based on information that only recently became available or concerns prompted by a change in material circumstances).⁸⁴ We do so because our regulations preclude other parties from responding to a request for rehearing⁸⁵ and “such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision.”⁸⁶

31. PSE&G provides no justification for asking for rehearing or clarification of this issue, after failing to adequately raise it in the Complaint or answers filed in the Complaint proceeding. Although PSE&G made brief references to Con Edison’s obligation to pay PSE&G for the use of certain facilities if the B-C Line Agreements remain in effect,⁸⁷ it made no attempt to sufficiently explain or justify its argument.⁸⁸

⁸¹ *Id.* at 8, 15-16.

⁸² *Id.* at 8-9, 16.

⁸³ *Hudson Transmission Partners, LLC v. N.Y. Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,024, at P 31 (2008).

⁸⁴ Rule 713(c)(3) of the Commission’s Rules of Practice and Procedure states that any request for rehearing must “[s]et forth the matters relied upon by the party requesting rehearing, if rehearing is sought based on matters not available for consideration by the Commission at the time of the final decision or final order.” 18 C.F.R. § 385.713(c)(3) (2019).

⁸⁵ *Id.*

⁸⁶ *Tex. E. Transmission, LP*, 141 FERC ¶ 61,043, P at 19 (2012) (citing *Westar Energy, Inc.*, 134 FERC ¶ 61,176 (2011)), *appeal dismissed sub nom., NO Gas Pipeline v. FERC*, 756 F.3d 764 (D.C. Cir. 2014)).

⁸⁷ PSE&G Aug. 13, 2018 Answer at n.10; PSE&G June 26, 2018 Answer at n.27.

⁸⁸ *Constellation Energy Commodities Group, Inc. v. FERC*, 457 F.3d 14, 20 (D.C. Cir. 2006) (“Parties are required to present their arguments to the Commission in such a way that the Commission knows ‘specifically ... the ground on which rehearing [i]s being sought’”); *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,182, at P 30 (2012) (stating that rehearing arguments should be raised with specificity, present and fully explain all of the party’s arguments, and not merely serve as a placeholder for arguments on appeal); *PPL*

(continued ...)

Moreover, PSE&G made no reference to Con Edison's obligation to pay PSE&G annual charges or monthly operation and maintenance expenses prior to this rehearing request. Therefore, we need not consider this argument on rehearing.⁸⁹ Further, the Commission's finding in the Complaint Order that the December 31, 2020 termination date applies, does not justify PSE&G's delay in raising the issue with specificity or seeking clarification of specific contract provisions because none of those provisions pertain to its original Complaint—that Con Edison violated NYISO's OATT because Con Edison did not cooperate with PSE&G to remove the dielectric fluid and the transmission cables from the B-C Lines—an issue over which we declined to assert primary jurisdiction.⁹⁰ In other words, PSE&G may not, at this stage, expand the scope of its Complaint. Thus, we find this argument procedurally barred.

32. Moreover, even if PSE&G had adequately raised this argument prior to rehearing, we would still find PSE&G's attempt to expand the scope of the Complaint to include this claim to be inappropriate. This claim is entirely distinct from the central dispute in PSE&G's Complaint, which concerns only the narrow issue of whether Con Edison failed to cooperate with PSE&G to remove dielectric fluid and transmission cables from the B Line and the C Line. We need not resolve PSE&G's claim that Con Edison is responsible for other charges under the agreements in order to resolve the Complaint.⁹¹

The Commission orders:

(A) Public Service Electric and Gas Company's October 9, 2018 request for rehearing is denied.

EnergyPlus, LLC v. PJM Interconnection, L.L.C., 136 FERC ¶ 61,060, at P 39 (2011) (stating that mere assertions in pleadings and requests for rehearing are not sufficient to raise cognizable issues).

⁸⁹ *PaTu Wind Farm, LLC v. Portland General Electric Company, LLC*, 151 FERC ¶ 61,223, at P 42 (2015) ("Parties are not permitted to introduce new evidence for the first time on rehearing since such practice would allow an impermissible moving target, and would frustrate needed administrative finality.").

⁹⁰ Complaint Order, 164 FERC ¶ 61,171 at P 41.

⁹¹ See *Mobil Oil Expl. & Producing Se. Inc. v. United Distrib. Cos.*, 498 U.S. 211, 230 (1991) ("An agency enjoys broad discretion in determining how best to handle related, yet discrete, issues in terms of procedures").

(B) Consolidated Edison Company of New York's October 24, 2018 motion to answer is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.