

169 FERC ¶ 61,116
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Linden VFT, LLC v. PJM Interconnection, L.L.C.	Docket Nos. EL15-67-004
PJM Interconnection, L.L.C.	ER15-2562-003
PJM Interconnection, L.L.C.	ER17-950-004
Linden VFT, LLC v. PJM Interconnection, L.L.C.	EL17-68-001
PJM Interconnection, L.L.C.	EL17-84-002
Linden VFT, LLC v. Public Service Electric and Gas Company and PJM Interconnection, L.L.C.	EL17-90-002
New York Power Authority v. PJM Interconnection, L.L.C. and PJM Transmission Owners in their Collective Capacity	EL17-94-001
PJM Interconnection, L.L.C.	ER18-579-003
PJM Interconnection, L.L.C.	ER18-680-001
New Jersey Board of Public Utilities v. PJM Interconnection, L.L.C., New York Independent System Operator, Inc., Consolidated Edison Company of New York, Inc., Linden VFT, LLC, Hudson Transmission Partners, LLC and New York Power Authority	EL18-54-001

ORDER DISMISSING REQUESTS FOR REHEARING AND MOTION TO
CONSOLIDATE

(Issued November 21, 2019)

1. In this order, we: (1) dismiss as moot New Jersey State Agencies'¹ and PJM Transmission Owners'² respective requests for rehearing of the Commission's July 19, 2018 order establishing settlement judge procedures for each of the above-captioned dockets³ (except Docket No. EL18-54-001); and (2) dismiss as moot New Jersey Board's request to consolidate its pending request for rehearing of the Commission's May 2018 order⁴ in Docket No. EL18-54-001 with the July 2018 Order.

Background

2. On April 22, 2016, in Docket No. EL15-67, et al., the Commission denied a complaint submitted by Linden VFT, LLC (Linden) under section 206 of the Federal

¹ New Jersey Board of Public Utilities (New Jersey Board) and the New Jersey Division of Rate Counsel.

² American Electric Power Service Corporation, Dayton Power and Light Company; Dominion Energy Services, Inc., on behalf of Virginia Electric and Power Company; Duke Energy Corporation affiliates, Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., and Duke Energy Indiana, Inc.; Duquesne Light Company; Exelon Corporation, First Energy Service Company on behalf of its affiliates American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Monongahela Power Company, West Penn Power Company, The Potomac Edison Company, TransAllegheny Interstate Line Company, and Mid-Atlantic Interstate Transmission, LLC, as successor to Pennsylvania Electric Company and Metropolitan Edison Company; PPL Electric Utilities Corporation; and Public Service Electric and Gas Company ("PSEG").

³ *Linden VFT, LLC v. PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,034 (2018) (July 2018 Order).

⁴ *N.J. Board of Pub. Utils. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,139 (2018) (May 2018 Order).

Power Act (FPA)⁵ (Linden Complaint).⁶ The Linden Complaint challenged the assignment of cost responsibility for certain projects (Complaint Projects)⁷ pursuant to the regional cost allocation method accepted as part of the PJM Interconnection, L.L.C. (PJM) Order No. 1000 compliance filings.⁸ Consolidated Edison Company of New York, Inc. (Con Edison),⁹ Linden,¹⁰ Hudson Transmission Partners, LLC

⁵ 16 U.S.C. § 824e (2018).

⁶ *See Linden VFT, LLC v. PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,089 (2016) (Linden Complaint Order).

⁷ The Complaint Projects are the Bergen-Linden Corridor Project, the Edison Rebuild Project, and the Sewaren Project.

⁸ *See Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011) (Order No. 1000), *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) (*S.C. Pub. Serv. Auth. v. FERC*). *See also PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013), *order on reh'g and compliance*, 147 FERC ¶ 61,128 (2014), *order on reh'g and compliance*, 150 FERC ¶ 61,038, *order on reh'g and compliance*, 151 FERC ¶ 61,250 (2015).

⁹ Cost responsibility was assigned to Con Edison pursuant to the transmission service agreement implementing a wheeling arrangement that enabled Con Edison to wheel 1,000 MW of power from Con Edison in New York Independent System Operator, Inc. (NYISO) through PSEG's facilities within PJM in northern New Jersey for delivery back to Con Edison in NYISO, and through which Con Edison is assigned cost responsibility for PJM Regional Transmission Expansion Plan (RTEP) charges. *See PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,221 (2010) (approving the Settlement Agreement continuing the wheeling arrangement (Settlement Agreement), and the related Service Agreements and Operating Protocols).

¹⁰ Linden owns and operates a merchant transmission facility that connects the PJM and NYISO transmission systems. At the time of the Linden Complaint, Linden held 330 MW of Firm Transmission Withdrawal Rights from PJM into NYISO. The Commission approved Linden's request to convert its Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights to become effective December 15, 2017. *See PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,201 (2018) (Linden Conversion Order).

(Hudson),¹¹ and the New York Power Authority (NYPA)¹² have requested rehearing of the Linden Complaint Order.

3. In the May 2018 Order, the Commission denied New Jersey Board's complaint against PJM, NYISO, Con Edison, Linden, Hudson, and NYPA. New Jersey Board contended that, with the termination of the transmission service agreements serving the Con Edison wheeling arrangement and Linden's and Hudson's conversion of their Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights, the PJM and NYISO Joint Operating Agreement (JOA) and Schedule 12 of the PJM Open Access Transmission Tariff do not properly allocate the costs of certain RTEP projects to Merchant Transmission Facilities and to customers using transmission lines that connect PJM to NYISO.¹³ New Jersey Board has requested rehearing of the May 2018 Order.

4. Subsequently, in an order issued July 19, 2018, the Commission observed in Docket Nos. EL15-67, ER15-2563, ER17-950, EL17-68, EL17-84, EL17-90, EL17-94, ER18-579, and ER18-680 that circumstances regarding the cost responsibility assignments for the Complaint Projects in Docket No. EL15-67 had significantly changed. Accordingly, before acting on the rehearing requests or initial filings in any of these dockets, the Commission established settlement judge procedures to permit the parties to consider settlement of those proceedings.

Requests for Rehearing and Consolidation

5. On August 20, 2018, the New Jersey State Agencies and PJM Transmission Owners requested rehearing of the July 2018 Order establishing settlement judge procedures.

¹¹ Hudson operates a merchant transmission facility. At the time of the Linden Complaint, Hudson held 320 MW of Firm Transmission Withdrawal Rights from PJM into NYISO. The Commission approved Hudson's request to convert its Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights to become effective December 31, 2017. *See PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,200 (2018) (Hudson Conversion Order).

¹² NYPA makes transmission capacity purchases from Hudson pursuant to a long-term transmission capacity purchase agreement, and is contractually entitled to Hudson's Firm Transmission Withdrawal Rights and transmission capacity. *See NYPA Comments at 4*, Docket No. EL15-67-000.

¹³ *See* May 2018 Order, 163 FERC ¶ 61,139 at P 1.

6. New Jersey State Agencies argue that the Commission erred by failing to allow for parties to comment on the “changed circumstances” addressed in the July 2018 Order and failing to provide for a paper hearing on those issues. New Jersey State Agencies also argue that the Commission, in setting proceedings for hearing, failed to affirm that cost allocation should be based upon benefits each entity receives from the facilities and it is unclear whether the Commission intends to deviate from the solution-based distribution factor (DFAX) methodology.¹⁴

7. PJM Transmission Owners argue that the Commission in the July 2018 Order erred in suggesting that circumstances relevant to the Commission’s prior conclusion that the solution-based DFAX method justly and reasonably allocates the costs of the BLC Project have changed and in suggesting that the changed circumstances cited in the order make the solution-based DFAX method unjust and unreasonable as applied to the BLC Project.¹⁵

8. On September 4, 2018, Linden and Hudson filed responses to the requests for rehearing of the July 2018 Order.

9. On September 14, 2018, New Jersey State Agencies moved to consolidate New Jersey Board’s pending request for rehearing of the May 2018 Order with the proceedings for which the Commission established settlement judge procedures in the July 2018 Order.

10. On September 25, 2018, Linden and Con Edison filed an answer opposing New Jersey State Agencies’ request to consolidate. On September 26, 2018, NYPA filed an answer opposing New Jersey State Agencies’ request to consolidate. On September 28, 2018, NYISO filed an answer opposing New Jersey State Agencies’ request to consolidate. On October 1, 2018, PSEG filed an answer supporting New Jersey State Agencies’ request to consolidate.

Termination of Settlement Judge Procedures

11. On July 19, 2019, the Settlement Judge declared an impasse and recommended that settlement judge procedures be terminated.¹⁶ On July 22, 2019, the Chief

¹⁴ New Jersey State Agencies Request for Rehearing at 5-8 (citing, *e.g.*, *Del. Pub. Serv. Comm’n v. PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,035 (2018)).

¹⁵ PJM Transmission Owners Request for Rehearing at 9-13.

¹⁶ *Linden VFT, LLC v. PJM Interconnection, L.L.C.*, 168 FERC ¶ 63,005 (2019).

Administrative Law Judge terminated settlement judge procedures, thereby returning those dockets to the Commission for disposition.¹⁷

Determination

12. The requests for rehearing do not challenge the Commission's authority to establish settlement judge procedures. In establishing settlement judge procedures, the Commission did not address the merits of the issues in the underlying proceeding or make any final disposition. Moreover, as described above, the settlement judge procedures established by the July 2018 Order have been terminated, and the proceedings have been returned to the Commission for disposition. Accordingly, we dismiss as moot: (1) New Jersey State Agencies' and PJM Transmission Owners' requests for rehearing of the July 2018 Order establishing settlement judge procedures and (2) New Jersey State Agencies' request to consolidate the New Jersey Board's request for rehearing of the May 2018 Order with the proceedings for which the Commission established settlement judge procedures in the July 2018 Order.¹⁸

13. Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure,¹⁹ we reject Linden's and Hudson's answers to New Jersey State Agencies' and PJM Transmission Owners' requests for rehearing of the July 2018 Order. We also dismiss as moot Linden's, Con Edison's, NYPA's, NYISO's, and PSEG's answers to New Jersey State Agencies' request to consolidate.

The Commission orders:

(A) New Jersey State Agencies' and PJM Transmission Owners' requests for rehearing of the July 2018 Order are hereby dismissed as moot, as discussed in the body of this order.

¹⁷ Order of Chief Judge Terminating Settlement Judge Procedures, Docket Nos. EL15-67-003, ER15-2562-002, ER17-950-003, EL17-68-000, EL17-84-001, EL17-90-001, EL17-94-000, ER18-579-002, ER18-680-000 (July 22, 2019).

¹⁸ The Commission intends to act separately on rehearing of the Linden Complaint Order and other pending matters in these related dockets.

¹⁹ 18 C.F.R. § 385.713(d) (2019).

(B) New Jersey State Agencies' request to consolidate the New Jersey Board's request for rehearing of the May 2018 Order with the proceedings for which the Commission established settlement judge procedures in the July 2018 Order 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.