169 FERC ¶ 61,208
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New York Independent System Operator, Inc. Docket No. ER17-905-002
PJM Interconnection, L.L.C.

ORDER DENYING REHEARING

(Issued December 19, 2019)

1. On January 31, 2017, pursuant to section 205 of the Federal Power Act (FPA),[1] the New York Independent System Operator, Inc. (NYISO) and PJM Interconnection, L.L.C. (PJM) (together, the RTOs) submitted proposed revisions to the Joint Operating Agreement (JOA) between NYISO and PJM that is set forth in Attachment CC to NYISO's Open Access Transmission Tariff (OATT). In addition, NYISO submitted proposed revisions to its Market Administration and Control Area Services Tariff (Services Tariff).

2. The revisions address interchange scheduling and the implementation of Market-to-Market (M2M) coordination at the ABC Interface and JK Interface on the border of Southeastern New York and Northern New Jersey, and govern the operation of the facilities at these interfaces upon termination of the firm transmission service agreements (TSAs) that implemented a wheeling arrangement that included specific operating protocols for these facilities. The RTOs sought an effective date for the proposed tariff revisions of May 1, 2017.

3. On March 31, 2017, pursuant to the authority delegated by the Commission's February 3, 2017 Order Delegating Further Authority to Staff in Absence of Quorum,[2] the proposed OATT and Services Tariff revisions were accepted for filing, suspended for

[1] 16 U.S.C. § 824d (2018).

[2] *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 (2017).

a nominal period, to become effective May 1, 2017, as requested, subject to refund and further Commission order.[3]

4. In an order dated October 6, 2017, the Commission: (1) accepted the revisions to the NYISO OATT and Services Agreement, effective May 1, 2017, as requested; (2) denied requests for rehearing of the March 2017 Order filed by Public Service Electric and Gas Company (PSEG) and the New Jersey Board of Public Utilities (NJ BPU); and (3) denied a request for clarification, or in the alternative, rehearing of the March 2017 Order filed by Linden VFT, LLC (Linden).[4]

5. On November 6, 2017, PSEG and NJ BPU timely requested rehearing of the October 2017 Order.

6. As discussed below, we deny the requests for rehearing of the October 2017 Order.

I. Background

7. At the time of the RTOs' filing, the JOA for M2M coordination of the ABC and JK Interfaces included specific operating protocols that were established pursuant to a settlement agreement (Settlement Agreement). The Settlement Agreement included the TSAs that continued a wheeling arrangement enabling Consolidated Edison Company of New York, Inc. (ConEd) to transfer 1,000 MW of power over the JK Interface into northern New Jersey for delivery back to ConEd over the ABC Interface to New York City.[5] On April 28, 2016, ConEd informed PJM that it was not exercising the rollover provisions of the TSAs pursuant to Sections 2.2 and 2.3 of the PJM Open Access Transmission Tariff (PJM Tariff) and, therefore, the TSAs would terminate on April 30, 2017, by their terms. With the termination of the TSAs, the wheeling arrangement ended and the protocols included in the Settlement Agreement governing the operation of the ABC and JK Interfaces became obsolete.

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[3] *See N.Y. Indep. Sys. Operator, Inc.*, 158 FERC ¶ 62,270 (2017) (March 2017 Order).

[4] *N.Y. Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,033 (2017) (October 2017 Order).

[5] *See PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,221 (2010) (approving the Settlement Agreement continuing the wheeling arrangement, and the related service agreements and operating protocols).

II. RTOs' Filing

8. The wheeling arrangement allowed the RTOs to implement interchange between the two RTOs by reviewing offers and scheduling transactions over the PJM-NY AC Proxy Bus. As a result of ending the wheeling arrangement, the RTOs proposed to combine the ABC and JK Interfaces with the 5018 line and the Western ties into an aggregate PJM-NY AC Proxy Bus. According to the RTOs, combining the interfaces and redefining the proxy bus would allow the RTOs to leverage existing interchange scheduling constructs in both regions that can be implemented in a timeframe that accommodated the required May 1, 2017 effective date. The RTOs also stated that doing so would support use of the existing Phase Angle Regulators (PARs)[6] located on the ABC and JK Interfaces. For purposes of pricing calculations at the PJM-NY AC Proxy Bus, the RTOs proposed to reflect the impacts of imports and exports on the NYISO and PJM transmission systems, weighted by specific power flow distribution percentages applied to the interchange in the market models.[7]

9. The RTOs noted that the proposed interchange percentages were the result of studies conducted by both RTOs involving several scenario analyses. Notably, the studies identified reliability issues in Northern New Jersey as well as delivery limitations when exporting from PJM to NYISO on the JK Interfaces and when exporting from NYISO to PJM on the ABC Interface. As a result, the RTOs conducted further studies to identify operating procedures that would preserve historical Total Transfer Capability.[8] The studies focused on summer peak cases, natural system flows with zero interchange scheduled between PJM and NYISO, and flows with all interface PARs held at neutral tap.[9]

10. The RTOs concluded that a natural system flow occurs from NYISO to PJM over the JK Interface and from PJM to NYISO over the ABC Interface. Given this, the RTOs proposed to include a natural system flow offset, referred to as an Operational Base Flow

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[6] A PAR is an electrical device that is used to help control power flows.

[7] RTOs, Joint Filing, Docket No. ER17-905-000, at 3-7 (filed Jan. 31, 2017) (RTOs Joint Filing).

[8] The JOA defines Total Transfer Capability as "the amount of electric power that can be moved or transferred reliably from one area to another area of the interconnected Transmission Systems by way of all transmission lines (or paths) between those areas under specified system conditions." *See* RTOs, Joint Filing, Docket No. ER17-905-000, Attachment I, § 35.2, Abbreviations (filed Jan. 31, 2017).

[9] RTOs, Joint Filing at 7-8.

(OBF), of 400 MW into PJM over the JK Interface and 400 MW into New York on the ABC Interface when scheduling interchange and when determining target flows. According to the RTOs, the 400 MW OBF was needed to resolve the short-term reliability issues in Northern New Jersey and to maintain historical Total Transfer Capability. Without an OBF, the RTOs argued that the Total Transfer Capability between the two areas would have to be reduced. The RTOs determined that the proposed OBF also supported operational flexibility and allowed the RTOs to utilize higher transfer limits on the JK Interface and ABC Interface to maintain reliability in Northern New Jersey.[10]

11. The OBF applies over the JK Interface from NYISO to PJM and over the ABC Interface from PJM to NYISO in conjunction with the interchange distribution percentages. The RTOs proposed to develop an M2M PAR target value for the ABC PARs and JK PARs by combining the applicable static percentage of scheduled interchange, the applicable OBF value, and the applicable percentage of Rockland Electric Company (Rockland) load. The RTOs stated that they did not propose to modify Rockland load.[11]

12. The RTOs' proposal allowed the RTOs to mutually agree to review the OBF MW value at least annually to determine if modification of the OBF MW value, or the distribution of the OBF MWs across the PARs, is appropriate. The RTOs committed to post any modifications to the OBF MW value or the OBF distribution across the PARs on their respective websites and to discuss through their respective stakeholder processes. Further, the RTOs expected to reduce the initial OBF value to zero within five years, once the Bergen-Linden Corridor Project is completed. The RTOs stated that the NYISO planning models representing the bulk power system from May 1, 2017 through May 31, 2021 will incorporate the initial 400 MW OBF, and PJM planning models would assume no OBF for future cases.[12]

13. In addition, the RTOs proposed to include provisions in the JOA that would permit either RTO to establish a temporary OBF in order to address a short-term reliability issue. The proposed JOA revisions stated that, once an RTO requests a temporary OBF, the OBF value must be set at a level that both RTOs agree they can reliably support. The RTO that establishes the OBF must: (1) explain the reliability need to the other RTO; (2) describe how the OBF addresses the identified reliability need; and (3) identify the

[10] *Id.* at 8-9.

[11] *Id.* at 8, 10.

[12] *Id.* at 9, 11.

expected long-term solution to address the reliability need. The RTOs reviewed the proposed initial 400 MW OBF using these three criteria.[13]

14. The RTOs stated that the OBF is not a firm transmission service on either the NYISO transmission system or the PJM transmission system and that NYISO and its market participants would not be subjected to PJM Regional Transmission Expansion Plan (RTEP) cost allocations as a result of implementation of an OBF. Specifically, the RTOs explained that the proposed JOA revisions provided that the OBF would not result in charges from one RTO to the other RTO, or from one RTO to the other RTO's market participants, except for the settlements described in the Real-Time Energy Market Coordination and Settlements provisions set forth in Sections 7 and 8 of Schedule D to the JOA. The RTOs noted that, absent the proposed revisions, they would have no tariff authority to implement economic interchange over the ABC Interface and JK Interface or to utilize M2M PAR coordination at these interfaces. Without the wheeling arrangement, the ABC and JK Interfaces would need to be utilized for economic interchange to avoid reducing the exchange of power between the congested Southeastern New York and Northern New Jersey areas. In addition, the RTOs stated that these interfaces would need to be used to avoid additional power being forced over the Western ties and increasing congestion on already congested transmission facilities.[14]

III. October 2017 Order

15. The Commission found that the proposed JOA revisions represent a just and reasonable solution to address the expiration of the wheeling arrangement, and therefore accepted the RTOs' proposal, effective May 1, 2017.[15] The Commission stated that the proposed JOA revisions will manage congestion and enable efficient economic interchange between the Northern New Jersey and Southeastern New York areas through the implementation of interface pricing based on an aggregate PJM-NY AC Proxy Bus and M2M coordination at the ABC and JK Interfaces. The Commission also described the JOA revisions as addressing short-term reliability issues in Northern New Jersey. Without the proposed revisions, the Commission stated that historical congestion issues would be exacerbated and reliability concerns would force the RTOs to significantly reduce the economic transfer capability between the RTOs. The Commission stated its

[13] *Id.* at 9.

[14] *Id.* at 8, 15.

[15] October 2017 Order, 161 FERC ¶ 61,033 at P 22.

expectations that the RTOs would abide by their commitment to review the OBF MW value at least annually to determine if modification is appropriate.[16]

A. Reliability Need for OBF and OBF as Daily Requirement

16. As relevant here, the Commission stated that when the RTOs conducted scenario analyses involving the flow of power between the regions, they identified reliability issues in Northern New Jersey and delivery limitations when importing and exporting power on the JK and ABC Interfaces. The Commission recognized the 400 MW OBF as a crucial aspect of the RTOs' proposal to resolve short-term reliability issues, to maintain historical interface transfer limits, and to enable efficient economic interchange between the relatively congested Northern New Jersey and Southeastern New York areas. Because the OBF was necessary to support the RTOs' goals of effectuating aggregate interchange schedules across the PJM-NY AC Proxy Bus, and managing regional congestion, the Commission found that the OBF mechanism was just and reasonable.[17]

17. The Commission disagreed with PSEG's assertion that the RTOs inappropriately based the proposed OBF on extreme system conditions and extremely high levels of non-firm deliveries to NYISO from PJM. The Commission found instead that the RTOs appropriately considered historical flows during 2016 summer peak conditions and sufficiently supported their decision to use a net interchange value of 2,500 MW as a historic transfer limit that could occur. The Commission found that the RTOs demonstrated the need for the proposed OBF through the use of actual historical flows and a reasonable net interchange value.[18]

18. The Commission also disagreed with PSEG's arguments that the filing is unjust and unreasonable since PJM could have instead used the North American Electric Reliability Corporation (NERC) transmission loading relief procedures to address real-time reliability impacts on its system, without the OBF. The Commission stated that these procedures represent a less economically efficient outcome compared to the RTOs' proposal to implement economic interchange over the ABC Interface and JK Interface and also utilize M2M PAR coordination at these interfaces. The Commission found no

[16] *Id*.

[17] *Id.* P 29.

[18] *Id.* P 30.

basis for rejecting the RTOs' proposal to rely on planned flows and market pricing instead of transmission loading relief procedures.[19]

19. The Commission further found that the RTOs justified the proposed OBF as a daily requirement. The Commission stated that if the OBF is not set as a daily requirement, market participants would find it difficult to predict precisely when the OBF will take effect. The Commission also found that a static OBF would help align day-ahead and real-time schedules, system conditions, and prices and would therefore, limit uplift costs.[20]

B. Cost Allocation

20. As relevant here, the Commission found that the JOA need not assign cost responsibility to ConEd for PJM RTEP projects, including the Bergen-Linden Corridor Project. The Commission stated that prior to the termination of the TSAs, cost responsibility for PJM RTEP projects, such as the Bergen-Linden Corridor Project, which addresses short-circuit reliability issues on the PSEG transmission system, was allocated to ConEd because it had firm transmission service pursuant to the TSAs. Those TSAs resulted from a settlement that required ConEd to bear cost responsibility assigned pursuant to Schedule 12 of the PJM Tariff for transmission facilities included in the PJM RTEP during the term of ConEd's service.[21] The Commission stated that the settlement providing for the wheeling arrangement specifically states that RTEP cost assignments are eliminated with the termination of the TSAs.[22] According to the Commission, ConEd terminated the TSAs under its terms, and under the proposed operating protocol, ConEd would not receive firm transmission service on either the NYISO transmission system or on the PJM transmission system.[23]

21. The Commission rejected protesters' allegations that the proposed OBF represents firm transmission service or continues a portion of the wheeling arrangement. The

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[19] *Id.* P 31.

[20] *Id.* P 37.

[21] PJM Tariff, Schedule 12 (Transmission Enhancement Charges).

[22] October 2017 Order, 161 FERC ¶ 61,033 at P 50 & n.39 (citing *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,221 (approving the Settlement Agreement continuing the wheeling arrangement, and the related Service Agreements and Operating Protocols). *See* Section (b)(xi) of Schedule 12 of the PJM Tariff.

[23] October 2017 Order, 161 FERC ¶ 61,033 at P 50.

Commission described the operating procedures that were put in place for the wheeling arrangement as stemming from the firm transmission service that was at the heart of the 2008 TSAs. The Commission found that the proposed OBF is an operational protocol that was developed by the RTOs due to reliability needs identified in Northern New Jersey. The Commission stated that the proposed OBF will not entitle ConEd to firm transmission service or rollover rights for any set period of time and therefore, NYISO and PJM cannot treat these flows as firm transmission for the purposes of planning and capacity market obligations.[24]

IV. Discussion

A. Procedural Matters

22. On November 21, 2017, ConEd filed a motion for leave to answer and answer to PSEG's and the NJ BPU's requests for rehearing. On December 1, 2017, PJM and NYISO filed motions for leave to answer and answers to PSEG's and the NJ BPU's requests for rehearing.

23. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2019), prohibits answers to requests for rehearing. Accordingly, we dismiss ConEd's, PJM's, and NYISO's answers to PSEG's and NJ BPU's requests for rehearing.

B. Substantive Matters

1. Cost Allocation

a. Rehearing Requests

24. PSEG argues that the Commission erred in approving revisions to the JOA that PSEG describes as prohibiting allocating costs to the New York beneficiaries of the OBF. Conceding, as the Commission found, that the OBF is an operational protocol, PSEG argues that the OBF is also included in NYISO's Tariff and establishes a transmission of electric energy. PSEG claims that the Commission had no support for accepting the OBF as an operational protocol that precludes allocating costs to parties that benefit from that protocol. PSEG points out that the Commission has acknowledged that the prior wheeling arrangement also included operating procedures, which resulted in RTEP cost allocation to ConEd.[25]

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[24] *Id.* P 51.

[25] PSEG, Request for Rehearing at 7-8.

25. PSEG acknowledges that the OBF does not appear to meet the definition of firm point-to-point transmission service, transmission service, or similar terms under the PJM or NYISO Tariffs. But PSEG maintains that the OBF "establishes a flow of power across northern New Jersey for delivery in New York City," and argues that the Commission fails to explain "why a flow of power governed by a filed tariff need not include a just and reasonable cost allocation."[26] PSEG contends that despite the lack of a transmission service agreement, there is a flow of power into New York City that benefits ConEd. PSEG explains that Commission precedent regarding loop flow does not require service agreements or requests for service as prerequisites for the Commission's authority over compensation for power flows that benefit neighboring systems.[27] PSEG argues that ConEd's and NYISO's use imposes costs on PSEG and PJM customers and that PJM has acknowledged that the OBF accounts for loop flow across the JK and ABC interfaces.[28]

26. Even assuming the accuracy of studies PJM and NYISO relied on to show that the OBF is needed for reliability (which PSEG disputes), PSEG states that New York is the intended beneficiary of the OBF and should bear the OBF's costs commensurate with those benefits. PSEG states that the reliability benefits the RTOs intended the OBF to resolve include: (1) delivery limitations from PJM to NYISO and vice versa; (2) historical Total Transfer Capability between the regions that would have to be reduced without the OBF; and (3) minimizing congestion across both NYISO and PJM through use of PARs at the ABC and JK interfaces.[29] PSEG contends that PJM in the stakeholder process stated its expectation that addressing the termination of the wheeling arrangement in a way that duplicated its delivery of power into New York City would also continue allocating the same costs.[30]

27. PSEG and NJ BPU argue that the Commission erred in finding that, with the termination of the TSAs, the 2009 settlement provided for ConEd's agreement to pay RTEP costs to likewise terminate. PSEG and NJ BPU maintain that Schedule 12 of PJM's Tariff requires that RTEP cost responsibility be adjusted upon the commencement or termination of the ConEd TSAs, but that does not mean that an agreement existed after

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[26] *Id.* at 8-9.

[27] *Id.* at 9 (citing *N. Ind. Pub. Serv. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,006 (2006); *Am. Elec. Power Serv. Corp.*, 93 FERC ¶ 61,151 (2000); *Am. Elec. Power Serv. Corp.*, 49 FERC ¶ 61,377 (1989) (*AEP*)).

[28] *Id.* at 9.

[29] *Id.* at 9-10.

[30] *Id.* at 11.

the TSAs' termination to impose costs solely upon New Jersey customers for transmission of electricity from New Jersey to New York.[31] PSEG asserts that the Commission failed to explain how it is just and reasonable, or consistent with cost causation principles, to allocate no costs to ConEd in light of the benefits ConEd will receive under the OBF.[32]

b. Commission Determination

28. We deny rehearing. PSEG and NJ BPU are incorrect that the Commission erred in approving JOA revisions that fail to allocate RTEP costs to the New York beneficiaries of the OBF, or unlawfully "prohibit"[33] such an allocation. PSEG concedes that the JOA is an operational protocol and that it does not appear to meet the definition of firm point-to-point transmission service, transmission service, or similar terms under the PJM or NYISO Tariffs.[34] The OBF is an operational protocol that expressly does not provide firm transmission service[35] and does not allocate costs to an entity like ConEd. This materially distinguishes the JOA from the now-terminated TSAs to which ConEd was a party and under which ConEd was allocated costs due to its firm transmission service on both the NYISO and PJM systems.[36] PSEG and NJ BPU do not disagree that the OBF is intended to address regional reliability needs across both PJM and NYISO. PSEG and NJ BPU also do not disagree that ConEd is not a party to the JOA, that ConEd now lacks firm transmission service and rollover rights for the purposes of planning and capacity

[31] *Id.* at 11-12; NJ BPU Request for Rehearing at 5-6.

[32] PSEG, Request for Rehearing at 12-14 (citing *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 476-77 (7th Cir. 2009); *FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 354-56 (D.C. Cir. 2014)).

[33] PSEG, Request for Rehearing at 6.

[34] *See* PSEG, Request for Rehearing at 8-9.

[35] *See* RTOs, Joint Filing, Attachment I, § 35.2, Abbreviations ("The OBF is not a firm transmission service on either the NYISO transmission system or on the PJM transmission system. . . . [T]he NYISO and its Market Participants shall not be subjected to PJM Regional Transmission Expansion Plan ('RTEP') cost allocations as a result of the OBF.").

[36] *See* October 2017 Order, 161 FERC ¶ 61,033 at PP 50-51; *see also* RTOs, Joint Filing at 2-6 (describing wheeling arrangement and OBF).

market obligations, and that PSEG, rather than ConEd, receives significant short circuit benefits from the OBF.[37]

29. We find unpersuasive PSEG's comparison of this proceeding to other proceedings in which the Commission has accepted cost allocation for loop flow impacts on neighboring systems. We agree in part with PSEG that Commission precedent does not require "service agreements or requests for service [as] . . . prerequisite[s] for the Commission's authority over compensation for power flows that provide benefits to neighboring systems" and that PJM has acknowledged that the OBF accounts for loop flow across the JK and ABC interfaces.[38] But PSEG does not explain how the cases it cites *require* cost allocation for operational protocols like the OBF.

30. The Commission has held that "compensation for loop flows can be ordered if an entity demonstrates that they are a burden on its system" and that "examples evidencing such a burden that the loop flow jeopardizes the reliability of the entity's system or diminishes the entity's ability to utilize its system in the most economical manner."[39] PSEG's argument, however, does not support how the OBF—which is an operational protocol to support reliability, to address reliability issues in Northern New Jersey, and to reduce congestion, and which grants no firm transmission or rollover rights to ConEd—causes ConEd or NYISO to be a burden on the PJM system. Moreover, even if we agreed with PSEG that Commission precedent favors cost allocation for loop flows, we agree with ConEd that the OBF, unlike loop flow, is not "inadvertent" or "unauthorized."[40] Rather, the OBF represents an intentional and authorized operational protocol by the RTOs to address power flows between their systems.

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[37] *See* NYISO-PJM, Joint Answer, Docket No. ER17-905-000, at 10-17 (Mar. 10, 2017) (RTOs Joint Answer).

[38] PSEG, Request for Rehearing at 9.

[39] *N. Ind. Pub. Serv. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,006, at P 11 (2006) (citations omitted).

[40] *See* ConEd, Answer, Docket No. ER17-905-000, at 9 (Mar. 8, 2017) (citing *AEP*, 49 FERC ¶ 61,377 at 62,381; *Midwest Indep. Transmission Sys. Operator, Inc.*, 156 FERC ¶ 61,202, at P 67 (2016)).

2. Whether ConEd Will Receive Benefits from the OBF

a. Rehearing Requests

31. PSEG acknowledges that the OBF is not a firm service with rollover rights and does not continue the wheeling arrangement. PSEG asserts, however, that the OBF is similar to the wheeling arrangement and governs power flows from northern New Jersey into New York City, thereby benefitting ConEd. PSEG represents that the OBF's distribution of flows across the JK and ABC Interfaces favor flows on the B and C lines rather than the A line, which is consistent with ConEd's preferences under the wheeling arrangement, and that ConEd has acknowledged a nine-to-ten percent reduction of flows into New York City over this line (about 100 MW) would create a $100 million impact over 18 months. PSEG therefore reasons that the OBF would benefit ConEd by $100 million.[41]

32. NJ BPU similarly argues that the OBF's similarity to the wheeling arrangement means that it is unjust and reasonable for ConEd and New York ratepayers to be exempt from cost allocation. NJ BPU describes the OBF and wheeling arrangement as similar because "[t]hey establish rules and regulations for interchange scheduling, market coordination, and the operation of PARs to control power flows between NYISO and PJM."[42] NJ BPU argues that the Commission elevated form over substance in stating that the OBF is different from the wheeling arrangement because it does not entitle ConEd to firm service or rollover rights and is an operational protocol to address reliability needs in Northern New Jersey.[43] NJ BPU describes the OBF as entailing the operation of jurisdictional transmission facilities that transmit power across Northern New Jersey into New York City. Given this similarity to the wheeling arrangement, NJ BPU states that the discontinuation of ConEd's rollover rights is not a rational basis for exempting ConEd from cost allocation.[44] NJ BPU argues that the Commission ignored ConEd's acknowledgement that the change in power flows through the OBF would benefit ConEd without any cost responsibility.[45]

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[41] PSEG, Request for Rehearing at 15-17 & nn.48, 52.

[42] NJ BPU, Request for Rehearing at 7-8.

[43] *Id.* at 8-9.

[44] *Id.* at 9.

[45] *Id.* at 9-10.

b. Commission Determination

33. As we explain above, we find that the OBF is an operational protocol and is materially distinct from the now-terminated TSAs with respect to the benefits provided to ConEd, and in particular the OBF's lack of firm transmission service and rollover rights. As NYISO and PJM state, the OBF was designed to address short-term reliability issues on PSEG's system, not ConEd's system, and "PJM technical studies show there will be only minor changes in the short circuit levels on the [ConEd] system with or without the 400 MW OBF."[46] Moreover, while ConEd has stated that it benefitted from flows under firm transmission service over a particular line, given the expiration of the TSAs it is not apparent that ConEd would continue to benefit to the same extent or in the same way under the OBF as it did under the now-expired wheeling arrangement that provided firm transmission service or rollover rights. We therefore do not agree with PSEG that ConEd receives $100 million of benefits caused by the OBF itself; therefore, we have no basis to find that ConEd should be allocated costs from those purported benefits.

3. Whether the OBF is Needed to Address Reliability Issues

a. Rehearing Request

34. PSEG asserts that the Commission erred in relying on PJM's and NYISO's scenario analyses that showed the OBF is needed to address reliability issues. PSEG asserts that the Commission did not consider that these analyses were flawed because they combine an analysis of congestion during summer peak conditions with a level of interchange between PJM and NYISO (2,500 MWs) that would never occur during the summer. PSEG states that the Commission ignored that the transfer level during the 2016 summer peak when both PJM and NYISO systems need internal resources never exceeded 1600 MWs and averaged around 600 MWs. PSEG describes the RTOs as conceding that the studies show no reliability problems for a transfer level of 900 to 1,100 MWs.[47]

35. PSEG also contends that the Commission failed to explain its position that NERC transmission loading relief procedures are less economically efficient than the OBF for addressing reliability problems. Although PJM and NYISO asserted that transmission loading relief procedures could increase costs and distort price signals, PSEG states that they provided no studies or analysis that compare the efficiency of these procedures with the OBF and the potential "impacts on customers in PJM associated with generation

[46] RTOs, Joint Answer at 14.

[47] PSEG, Request for Rehearing at 18-19.

dispatch needed to support the Wheel."[48] PSEG states that the Commission did not justify the OBF as a daily requirement and that the RTOs have conceded that using the OBF (as opposed to not using it) would yield inefficient market outcomes in the PJM and NYISO energy and congestion markets.[49] PSEG asserts that the Commission lacked support in claiming that market participants would face more uncertainty with a "static" or daily OBF, as compared to 130 other transmission switching procedures identified by PJM.[50]

b. Commission Determination

36. We disagree with PSEG's contention that the Commission improperly relied on PJM's studies demonstrating the reliability need for the OBF. As the RTOs stated, "[t]he goal of studying the various scenarios was to preserve the *transfer limit* that could occur to ensure that the new protocol was achievable without impacting reliability. The use of the 2500 MW net interchange value was appropriate and represented the historic transfer limit that could occur."[51] PSEG does not address NYISO's and PJM's explanation that there were hours between 2014 and 2016 during which the net interchange between PJM and NYISO exceeded 2500 MW.[52] It was therefore reasonable for the Commission to rely on PJM's studies for demonstrating actual historical flows and a reasonable net interchange value.[53]

37. We continue to find unpersuasive PSEG's assertion that NYISO and PJM should have used existing NERC transmission loading relief procedures as an alternative to the OBF.[54] As the Commission explained in the October 2017 Order, the NERC procedures are a less economically efficient outcome compared to the RTOs' proposal to implement economic interchange over the ABC Interface and JK Interface and also utilize M2M

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[48] *Id.* at 19.

[49] *Id.* at 19-20 (citing RTOs, Joint Answer at 9).

[50] *Id.* at 20-21.

[51] RTOs, Joint Answer at 5.

[52] *See id.* at 5 & Attachment A.

[53] October 2017 Order, 161 FERC ¶ 61,033 at P 30.

[54] *Id.* P 31.

PAR coordination at these interfaces.[55] PSEG does not disagree that transmission loading relief procedures are out-of-market mechanisms, and that in PJM they are specifically emergency in nature and in NYISO are used when necessary for maintaining reliability in NYISO.[56]

38. While the OBF is an operational protocol that was developed by NYISO and PJM due to reliability needs identified in Northern New Jersey, neither NYISO nor PJM can treat these flows as firm transmission. The OBF's lack of firm transmission service and rollover rights distinguish the OBF from ConEd's rights under the now-expired wheeling arrangement because the RTOs may modify the OBF depending on system conditions, the OBF is expected to reduce to zero after five years, and ConEd may not exercise any option to renew the OBF.[57] Similarly, the OBF lacks the elements of the now-expired wheeling arrangement that the Commission earlier found constituted firm transmission service and rollover rights.[58] Accordingly, it was reasonable for the RTOs to develop a targeted solution to a specifically identified issue, rather than to rely on available procedures. In any event, while PSEG might prefer the NERC procedures, we note that even if such procedures were appropriate to solve the particular issues the RTOs sought to address here, the Commission's authority to review proposed rates under section 205

[55] *Id*.

[56] *See* RTOs Joint Answer at 6 (citing *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,167 (1999) (cross-referenced at 89 FERC ¶ 61,285) ("[Transmission Loading Relief] and congestion management are both used to unload an overloaded transmission interface, and these two practices must work together. We consider congestion management and [Transmission Loading Relief] are best used as sequential steps to unload a line, with congestion management used first to unload a line in a market-oriented manner, and [Transmission Loading Relief] used to unload a line in a fair manner when either congestion management is unavailable or an emergency condition requires immediate action."), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross-referenced at 90 FERC ¶ 61,201), *petitions for review dismissed sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)).

[57] *See* RTOs, Joint Filing at 9.

[58] *See PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,221, at PP 37-38, *order on reh'g*, 135 FERC ¶ 61,018 (2011), *denying pet. for review sub nom. NRG Power Mktg., LLC v. FERC*, 718 F.3d 947 (D.C. Cir. 2013).

does not extend to determining "whether a proposed rate schedule is more or less reasonable than alternative rate designs."[59]

39. Finally, we reject PSEG's challenge to the OBF as a "static" or daily requirement. PSEG claims that "the most the studies show is that the OBF is needed during limited times,"[60] but the Commission in the October 2017 Order explained that "market participants would find it difficult to precisely predict when the OBF" would be in effect if the OBF was not set as a static or daily requirement.[61] The Commission further explained that the benefits of a static OBF include "help[ing] align day-ahead and real-time schedules, system conditions, and prices and, therefore, limit[ing] uplift costs."[62] Designing the OBF as a daily requirement and not using transmission loading relief procedures was part of using market, rather than out-of-market, mechanisms to address reliability issues. Moreover, we are persuaded that PJM's invoking such procedures in lieu of the OBF would be unpredictable and more costly.[63]

The Commission orders:

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[59] *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984); *see also California Indep. Sys. Operator Corp*., 128 FERC ¶ 61,265, at P 21 (2009) ("the issue before the Commission is whether the CAISO's proposal is just and reasonable and not whether the proposal is more or less reasonable than other alternatives"); *see also OXY USA Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (finding that under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology "need not be the only reasonable methodology, or even the most accurate one").

[60] PSEG, Request for Rehearing at 19.

[61] October 2017 Order, 161 FERC ¶ 61,033 at P 37.

[62] *Id.*

[63] *See* RTOs, Joint Answer at 10 ("There are many circumstances in which using a static OBF provides valuable market certainty. If market participants do not know whether the OBF will be in effect for a market day it will result in a risk premium being included by market participants in their day-ahead offers, leading to higher total production costs. If the OBF is introduced only in real-time, on a difficult-to-predict basis, it would cause divergence between Day-Ahead and Real-Time Market outcomes, leading to higher uplift costs. Day-ahead and real-time schedules, system conditions, and prices should be aligned whenever possible, which requires a static OBF value."). The Commission may rely on "basic economic theory" when reasonably explained and applied. *See NextEra Energy Resources, LLC v. FERC*, 898 F.3d 14, 24 (D.C. Cir. 2018) (citing *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 531 (D.C. Cir. 2010); *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 65 (D.C. Cir. 2014)).

PSEG's and NJ BPU's requests for rehearing of the October 2017 Order are hereby denied, as described in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.