

170 FERC ¶ 61,124
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket Nos. ER17-950-000
ER17-950-001
ER17-950-002
ER17-950-003

ORDER ACCEPTING TARIFF REVISIONS AND DENYING REQUEST FOR
REHEARING AND CLARIFICATION

(Issued February 20, 2020)

1. On February 8, 2017, PJM Interconnection, L.L.C. (PJM), pursuant to section 205 of the Federal Power Act (FPA),¹ submitted revisions to Schedule 12-Appendix and Schedule 12-Appendix A of the PJM Open Access Transmission Tariff (Tariff) to revise cost responsibility assignments for transmission enhancements and expansions included in the PJM Regional Transmission Expansion Plan (RTEP) due to termination of the Consolidated Edison Company of New York, Inc. (Con Edison) transmission service agreements (TSA) entered between PJM and Con Edison (February 8, 2017 Filing).²
2. On April 25, 2017, pursuant to the authority delegated by the Commission's February 3, 2017 Order Delegating Further Authority to Staff in Absence of Quorum,³ the proposed Tariff revisions were accepted for filing, suspended for a nominal period, to become effective May 1, 2017, as requested, subject to refund and further Commission order.⁴ In this further order, we accept the proposed revisions, effective May 1, 2017, as requested.

¹ 16 U.S.C. § 824d (2018). PJM submitted errata on February 13, 2017 and April 26, 2017.

² The revisions to Schedule 12-Appendix and Schedule 12-Appendix A are included in the appendix of this order.

³ *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 (2017).

⁴ *PJM Interconnection, L.L.C.*, 159 FERC ¶ 62,082 (2017); (April 25, 2017 Order) *see PJM Interconnection, L.L.C.*, 159 FERC ¶ 62,310 (2017) (delegated letter order on errata, June 20, 2017).

3. New York Power Authority (NYPA) and Linden VFT, LLC (Linden) filed a request for clarification, or in the alternative, rehearing of the April 25, 2017 Order. As discussed below, we deny the requests for rehearing and clarification.

I. Background

4. On September 16, 2010, the Commission approved a settlement agreement (Settlement Agreement) establishing joint operating agreement (JOA) operating protocols between New York Independent System Operator, Inc. and PJM, and implementing long-term firm point-to-point TSAs entered between PJM and Con Edison.⁵ Pursuant to the terms of the Settlement Agreement, service under the TSAs could be rolled over pursuant to Section 2.2 of the PJM Tariff.⁶

5. Under the Settlement Agreement, Con Edison agreed to be assigned cost responsibility for Required Transmission Enhancements included in the PJM RTEP,⁷ and to pay associated Transmission Enhancement Charges during the term of its roll-over service, which included the term of the Con Edison TSAs, as well as any subsequent roll-over of such service. The Settlement Agreement further provided that with respect to the transmission service under the Con Edison TSAs, Con Edison would have no liability for Transmission Enhancements Charges prior to the commencement of, or after the termination of, such terms of service. The Settlement Agreement terms and conditions were incorporated by reference in Schedule 12, Section (b)(xi) of the PJM Tariff.⁸ In addition, as quoted below, Schedule 12, Section (b)(xi)(B) of the PJM Tariff explicitly provides that all cost responsibility assignments for Required Transmission Enhancements pursuant to Schedule 12 shall be adjusted at the commencement and

⁵ *PJM Interconnection, L.L.C.*, 132 FERC, ¶ 61,221 (2010), *order on reh'g*, 135 FERC ¶ 61,018 (2011), *aff'd sub nom. NRG Power Mktg., LLC v. FERC*, 718 F.3d 947 (D.C. Cir. 2013).

⁶ Settlement Agreement §§ 6-7.

⁷ Required Transmission Enhancements are defined as “enhancements and expansions of the Transmission System that (1) a [RTEP] developed pursuant to Operating Agreement, Schedule 6 or (2) any joint planning or coordination agreement between PJM and another region or transmission planning authority set forth in Tariff, Schedule 12-Appendix B (“Appendix B Agreement”) designates one or more of the Transmission Owner(s) to construct and own or finance.” PJM Tariff, Definitions - R - S, 18.2.0. Transmission Enhancement Charges are established to recover the revenue requirement with respect to a Required Transmission Enhancement. *See* PJM Tariff, Schedule 12, § (a)(i).

⁸ *See* Settlement Agreement, Attachment C.

termination of service under the Con Edison TSAs to account for the assignments under subsection (b)(xi)(A) of Schedule 12 of the PJM Tariff.

6. On April 22, 2016, the Commission denied a complaint submitted by Linden under section 206 of the FPA⁹ alleging the assignment of costs pursuant to the solution-based distribution factor (DFAX) method¹⁰ provisions of the regional cost allocation method included in the PJM Tariff produces unjust and unreasonable rates.¹¹

7. On April 28, 2016, Con Edison notified PJM that it would not be exercising roll-over rights to the TSAs and would terminate transmission service effective April 30, 2017.¹² The February 8, 2017 Filing reallocates cost responsibility that was assigned to Con Edison following termination of the Con Edison TSAs.

8. Before acting on the February 8, 2017 Filing, the Commission established settlement judge procedures to permit the parties to consider settlement of the proceeding.¹³ On July 19, 2019, the Settlement Judge declared an impasse and recommended that settlement judge procedures be terminated.¹⁴ On July 22, 2019, the Chief Administrative Law Judge terminated settlement judge procedures, thereby returning the matter to the Commission for disposition.

⁹ 16 U.S.C. § 824e (2018).

¹⁰ “The Solution-Based DFAX method evaluates the projected relative use on the new Reliability Project by the load in each zone and withdrawals by merchant transmission facilities, and through this power flow analysis, identifies projected benefits for individual entities in relation to power flows.” *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 416 (2013).

¹¹ Linden specifically objected to the portion of cost responsibility that was assigned pursuant to the solution-based DFAX method for certain transmission projects approved through the PJM RTEP process, including the Bergen-Linden Corridor Project. *See Linden VFT, LLC v. PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,089 (2016) (Linden Complaint Order), *order on reh’g*, 170 FERC ¶ 61,122 (2020) (Linden Complaint Rehearing Order).

¹² Separately, on April 28, 2017 in Docket No. EL17-68-000, Linden filed a complaint with respect to the revised cost allocations for the Bergen-Linden Corridor Project resulting from termination of the Con Edison TSAs.

¹³ *Linden VFT, LLC v. PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,034 (2018).

¹⁴ *Linden VFT, LLC v. PJM Interconnection, L.L.C.*, 168 FERC ¶ 63,005 (2019).

II. PJM Tariff and Settlement Agreement Provisions

9. PJM files cost responsibility assignments for transmission projects that the PJM Board of Managers (PJM Board) approves as part of PJM's RTEP in accordance with Schedule 12 of PJM's Tariff and Schedule 6 of the Amended and Restated Operating Agreement of PJM (Operating Agreement).¹⁵ Schedule 12 of the Tariff establishes Transmission Enhancement Charges and allows that "[o]ne or more of the Transmission Owners may be designated to construct and own and/or finance Required Transmission Enhancements by (1) the [PJM RTEP] periodically developed pursuant to Operating Agreement, Schedule 6 or (2) any joint planning or coordination agreement between PJM and another region or transmission planning authority set forth in Tariff, Schedule 12-Appendix B."¹⁶

¹⁵ In accordance with the Tariff and the Operating Agreement, PJM "shall file with FERC a report identifying the expansion or enhancement, its estimated cost, the entity or entities that will be responsible for constructing and owning or financing the project, and the market participants designated under Section 1.5.6(l) above to bear responsibility for the costs of the project." PJM, Intra-PJM Tariffs, OA Schedule 6 Sec 1.5, OA Schedule 6 Sec 1.5 Procedure for Development of the Regi, 23.0.0, § 1.5). "Within 30 days of the approval of each Regional Transmission Expansion Plan or an addition to such plan by the PJM Board pursuant to Section 1.6 of Schedule 6 of the PJM Operating Agreement, the Transmission Provider shall designate in the Schedule 12-Appendix A and in a report filed with the FERC the customers using Point-to-Point Transmission Service and/or Network Integration Transmission Service and Merchant Transmission Facility owners that will be subject to each such Transmission Enhancement Charge ('Responsible Customers') based on the cost responsibility assignments determined pursuant to this Schedule 12." PJM, Intra-PJM Tariffs, OA Schedule 6 Sec 1.6, OA Schedule 6 Sec 1.6 Approval of the Final Regional Trans, 3.0.0, § 1.6(b); PJM Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 12.0.0, § (b)(viii).

¹⁶ PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 12.0.0, § (a)(1). Required Transmission Enhancements are defined as "enhancements and expansions of the Transmission System that (1) a [RTEP] developed pursuant to Operating Agreement, Schedule 6 or (2) any joint planning or coordination agreement between PJM and another region or transmission planning authority set forth in Tariff, Schedule 12-Appendix B ('Appendix B Agreement') designates one or more of the Transmission Owner(s) to construct and own or finance." PJM, Intra-PJM Tariffs, OATT Definitions – R - S, OATT Definitions – R - S, 18.2.0. Transmission Enhancement Charges are established to recover the revenue requirement with respect to a Required Transmission Enhancement. PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 12.0.0, § (a)(i).

10. In developing the RTEP, PJM identifies transmission projects to address different criteria,¹⁷ including PJM planning procedures, North American Electric Reliability Corporation (NERC) Reliability Standards, Regional Entity reliability principles and standards,¹⁸ and individual transmission owner Form No. 715 local planning criteria. Types of Reliability Projects¹⁹ identified in the RTEP include Regional Facilities,²⁰ Necessary Lower Voltage Facilities,²¹ and Lower Voltage Facilities.²² PJM assigns the

¹⁷ PJM identifies reliability transmission needs and economic constraints that result from the incorporation of public policy requirements into its sensitivity analyses and allocates the costs of the solutions to such transmission needs in accordance with the type of benefits that they provide. *See PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 441; PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 12.0.0, § (b)(v) (Economic Projects) (assigning cost responsibility for Economic Projects that are either accelerations or modifications of Reliability Projects, or new enhancements or expansions that relieve one or more economic constraints); PJM, Intra-PJM Tariffs, OA Schedule 6 Sec 1.5, OA Schedule 6 Sec 1.5 Procedure for Development of the Regi, 23.0.0, § 1.5.7(b)(iii).

¹⁸ As established by ReliabilityFirst Corporation, Southeastern Electric Reliability Council, and other applicable Regional Entities. *See PJM, Intra-PJM Tariffs, OA Schedule 6 Sec 1.2, OA Schedule 6 Sec 1.2 Conformity with NERC and Other Applic, 2.0.0, §§ 1.2(b) and 1.2(d) (Conformity with NERC and Other Applicable Reliability Criteria) (2.0.0).*

¹⁹ Reliability Projects are Required Transmission Enhancements that are included in the RTEP to address one or more reliability violations or to address operational adequacy and performance issues. PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 12.0.0, § (b)(i)(A)(2)(a).

²⁰ Regional Facilities are defined as Required Transmission Enhancements included in the RTEP that are transmission facilities that: (a) are AC facilities that operate at or above 500 kV; (b) are double-circuit AC facilities that operate at or above 345 kV; (c) are AC or DC shunt reactive resources connected to a facility from (a) or (b); or (d) are DC facilities that meet the necessary criteria as described in section (b)(i)(D). PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 12.0.0, § (b)(i) (Regional Facilities and Necessary Lower Voltage Facilities).

²¹ Necessary Lower Voltage Facilities are defined as Required Transmission Enhancements included in the RTEP that are lower voltage facilities that must be constructed or reinforced to support new Regional Facilities. PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 12.0.0, § (b)(i) (Regional Facilities and Necessary Lower Voltage Facilities).

²² Lower Voltage Facilities are defined as Required Transmission Enhancements that: (a) are not Regional Facilities; and (b) are not “Necessary Lower Voltage Facilities.”

costs of reliability projects that are selected in the RTEP for purposes of cost allocation pursuant to the cost allocation method that the Commission accepted in compliance with Order No. 1000.²³ Specifically, in the case of Regional Facilities and Necessary Lower Voltage Facilities that address a reliability need, costs are allocated pursuant to a hybrid cost allocation method in which 50 percent of the costs of those facilities are allocated on a load-ratio share basis and the other 50 percent are allocated to the transmission owner zones based on the solution-based DFAX method. Pursuant to the cost allocation method that the Commission accepted in PJM's compliance with Order No. 1000, all of the costs of Lower Voltage Facilities are allocated using the solution-based DFAX method.

11. As relevant to the termination of the Con Edison TSAs, Settlement Agreement paragraph 21 provides:

(b) at the termination of service under the [Con Edison] TSAs or further rolled over service as a result of exercising the roll over rights in section 2.2 of the PJM Tariff, all cost responsibility assignments shall be adjusted to take account of the elimination of the cost responsibility assignments to [Con Edison].

12. Settlement Agreement paragraph 23, in pertinent part provides:

(b) In making the adjustments described in paragraphs 21 (a) and 21(b) above for Lower Voltage Facilities as defined in Schedule 12 of the PJM Tariff and below 500 kV economic upgrades, the distribution factor analyses originally made with respect to facilities already listed in Schedule 12 Appendix shall be revised to include [Con Edison], but no other revisions to the original analyses shall be made.

13. Schedule 12 Section (b)(xi) of the PJM Tariff similarly provides:

PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 12.0.0, § (b)(ii) (Lower Voltage Facilities).

²³ See *Transmission Planning and Cost Allocation by Transmission Owning and Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014); see also *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013), *order on reh'g and compliance*, 147 FERC ¶ 61,128 (2014), *order on reh'g and compliance*, 150 FERC ¶ 61,038, *order on reh'g and compliance*, 151 FERC ¶ 61,250 (2015).

Consolidated Edison Company of New York. (A) Cost responsibility assignments to [Con Edison] ... shall be in accordance with the terms and conditions of the settlement approved by the FERC in Docket No. ER08-858-000. (B) All cost responsibility assignments for Required Transmission Enhancements pursuant to this Schedule 12 shall be adjusted at the commencement and termination of service under the [Con Edison] Service Agreements to take account of the assignments under subsection (xi)(A) of this section.²⁴

III. February 8, 2017 Filing

14. In its February 8, 2017 Filing, PJM reallocated cost responsibility for all RTEP projects that were assigned to Con Edison, and included both Schedule 12-Appendix and Schedule 12-Appendix A as a result of the termination of the Con Edison TSAs. As discussed below, the protests are limited to the reallocation of costs for the Bergen-Linden Corridor Project,²⁵ included in Schedule 12-Appendix A.

15. PJM states that the hybrid cost allocation method was not contemplated at the time of the Settlement Agreement, and the Settlement Agreement did not specifically provide for revisions for Regional Facilities and Necessary Lower Voltage Facilities.²⁶ PJM states that it relies on paragraph 23(b) of the Settlement Agreement to revise the portion of each Regional Facility and Necessary Lower Voltage Facility assigned pursuant to the solution-based DFAX method.²⁷ For the 50 percent of cost responsibility assigned pursuant to the solution-based DFAX method, PJM states that it revised the cost allocation based on the solution-based DFAX method analysis that was in place at the time such allocations were approved by the PJM Board and included in Schedule 12-

²⁴ PJM Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 12.0.0, § (b)(xi).

²⁵ Assignment of cost responsibility for the Bergen-Linden Corridor Project was originally filed in Docket No. ER14-972-000. In Docket No. ER15-2562-000, PJM filed revisions to the tariff sheets due to reconfiguration of the Bergen-Linden Corridor Project. The Bergen-Linden Corridor Project, as revised in Docket No. ER15-2562-000, includes 19 subprojects. Eight subprojects are Regional Facilities or Necessary Lower Voltage Facilities, and costs are assigned pursuant to PJM's hybrid cost allocation method, and the costs of the remaining 11 subprojects that are Lower Voltage Facilities are assigned in accordance with the solution-based DFAX method. *See PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,091 (2016) (accepting revisions to the Tariff sheets due to reconfiguration of the Bergen-Linden Corridor Project).

²⁶ PJM Transmittal at 9.

²⁷ *Id.*

Appendix A.²⁸ PJM also states that it relies on paragraph 23(b) of the Settlement Agreement to propose revisions to the cost responsibility assignments for these Lower Voltage Facilities using the methodology that was originally in place when they were first accepted by the Commission in Schedule 12-Appendix A.

IV. Notice and Interventions

16. Notice of the February 8, 2017 Filing was published in the *Federal Register*, 82 Fed. Reg. 10,766 (2017), with interventions and protests due on or before March 1, 2017.²⁹

17. Notices of intervention were filed by Delaware Public Service Commission, New Jersey Board of Public Utilities (New Jersey Board), and Illinois Commerce Commission. Timely motions to intervene were filed by Direct Energy Business Marketing, LLC; Old Dominion Electric Cooperative; Public Service Electric and Gas Company (PSEG); American Electric Power Service Company; Exelon Corporation; Hudson Transmission Partners, LLC (Hudson); Neptune Regional Transmission System, LLC; Con Edison; Linden; American Municipal Power Company, Inc.; PPL Electric Utilities Corporation; NYPA; New York Transmission Owners; North Carolina Electric Membership Corporation; FirstEnergy Service Corporation; Dominion Resources, Inc.; Duke Energy Corporation; and the New Jersey Division of Rate Counsel. A late-filed motion to intervene was filed by the City of New York.

18. Protests of the February 8, 2017 Filing were filed by the New Jersey Board, NYPA,³⁰ Hudson, and Linden. Answers were filed by the New York Transmission Owners, PJM Transmission Owners, Con Edison, and PSEG. Responses were filed by Linden and NYPA.³¹

V. Protests of the February 8, 2017 Filing and Responsive Pleadings

19. Linden states that it opposed the initial cost allocations for the Bergen-Linden Corridor Project, and that there is no justification for the allocation of additional costs

²⁸ *Id.* at 9-10.

²⁹ Notice of the February 13, 2017 errata was published in the *Federal Register*, 82 Fed. Reg. 11,216 (2017), with interventions and protests due on or before March 6, 2017, and notice of the April 26, 2017 errata was published in the *Federal Register*, 82 Fed. Reg. 21,227 (2017), with interventions and protests due on or before May 17, 2017.

³⁰ With its protest, NYPA included the affidavit of Scott Tetenman.

³¹ With its answer, Linden included the affidavit of John Marczewski.

pursuant to the solution-based DFAX method.³² Linden states that neither it nor Hudson receives any additional entitlement or right as a result of the termination of the TSAs, and PJM makes no attempt to identify any benefit that Linden or Hudson receives that could justify shifting almost all of the costs of the Bergen-Linden Corridor Project to them or any reason to insulate PSEG from bearing the costs of the project.³³ Linden further argues that no provision of the PJM Tariff allows a reallocation of the Con Edison-allocated Bergen-Linden Corridor Project costs to Linden and Hudson under these circumstances.³⁴ Linden acknowledges that while PJM is required under the Tariff to relieve Con Edison of its obligation to pay for the Bergen-Linden Corridor Project upon termination of the TSAs, PJM has no ability to rely on its Tariff to foist these obligations on Linden or Hudson.³⁵ Linden states that neither Hudson nor Linden is a party to the Settlement Agreement, and the law is clear that a settlement cannot be imposed upon non-parties.³⁶ Linden urges the Commission to direct PJM to use its default rule in this instance to allocate the costs of the Bergen-Linden Corridor Project to the local load zone.³⁷

20. Hudson focuses on PJM's proposed cost reallocation that results from the application of the flow-based, solution-based DFAX method that Hudson states produces an outcome that is not just and reasonable.³⁸ Hudson contends that the Commission should reject the proposed reallocations because PJM has failed to support that they are just and reasonable.³⁹ Specifically, Hudson contends that PJM has provided neither a quantification nor an estimate of the benefits.⁴⁰ Hudson further contends that termination of the Con Edison TSAs has produced no change in benefits to warrant the increased cost

³² Linden Protest at 22-23.

³³ *Id.* at 4.

³⁴ *Id.* at 16.

³⁵ *Id.* at 16-17.

³⁶ *Id.* at 14-15 (citing *PJM Interconnection, L.L.C.*, Opinion No. 543, 153 FERC ¶ 61,216, at P 18 n.34 (2015)).

³⁷ *Id.* at 18 (citing PJM Response to Deficiency Letter, Docket No. ER14-1485-001 at 3 (filed Jul. 7, 2014)).

³⁸ Hudson Protest at 6.

³⁹ *Id.* at 23.

⁴⁰ *Id.* at 27-28.

allocations.⁴¹ Hudson maintains that the use of a solution-based DFAX method is inappropriate for a non-flow-based transmission facility.⁴²

21. NYPA specifically objects to PJM's reassignment of Con Edison's existing cost responsibility assignments to the remaining entities previously assigned cost responsibility for each subproject of the Bergen-Linden Corridor Project based on the most recent DFAX analyses performed without re-modeling system flows in the absence of the Con Edison TSAs.⁴³ NYPA contends that PJM does not cite to any provisions of its Tariff to support its simplistic *pro rata* reassignment of Con Edison's costs because such reassignment is not in fact supported by the Tariff but rather by the provisions of the Settlement Agreement to which Hudson and NYPA were not parties.⁴⁴ NYPA analogizes the reassignment based on termination of the Con Edison TSAs to the *de minimis* exemption provisions of Schedule 12.⁴⁵ NYPA contends that by exempting relatively larger users of a subproject from the application of a methodology that determines beneficiaries *entirely based on that use*, the *de minimis* exemption dangerously undercuts the very foundation and rationale of using the solution-based DFAX method to determine beneficiaries.⁴⁶ NYPA asserts that, instead of being a measure of relative use, the reassignment becomes a measure of who is left to pay after PJM has exempted all of the larger load zones.⁴⁷

22. The New Jersey Board contends that the reassignment of cost responsibility is not just and reasonable in light of proposed changes to the operating protocols for the JOA filed in Docket No. ER17-905-000 which result from termination of the Con Edison TSAs. Because the reassignment of cost responsibility is a result of termination of the Con Edison TSAs, the New Jersey Board contends that the reassignment of cost responsibility should be set for hearing and settlement judge procedures and considered

⁴¹ *Id.* at 28.

⁴² *Id.* at 29.

⁴³ NYPA Protest at 4.

⁴⁴ *Id.*

⁴⁵ *Id.* at 37.

⁴⁶ *Id.* (emphasis in original).

⁴⁷ *Id.*

along with matters implementing operating protocol revisions to the JOA in Docket No. ER17-905-000.⁴⁸

23. PSEG answers that Linden, Hudson, and NYPA do not raise any new issues, and that the protests are an attempt to reargue matters already decided in other proceedings in which the solution-based DFAX method was challenged.⁴⁹ PSEG contends that this proceeding involves the reallocation of costs previously assigned to Con Edison with the termination of the TSAs, not the underlying cost allocation methodology.⁵⁰

24. Con Edison and the New York Transmission Owners contend that, while the impetus for the revisions to the cost allocation and revisions to the JOA proceedings may have been a similar event (i.e., Con Edison's termination of its TSAs), the proceedings concern separate and distinct issues and therefore they oppose any consolidation or conflation.

25. The PJM Transmission Owners answer that the Commission has already found that the solution-based DFAX method is just and reasonable for the Bergen-Linden Corridor Project.⁵¹ The PJM Transmission Owners answer that termination is explicitly documented in Schedule 12, and Con Edison's termination of the TSAs is not a new development warranting reconsideration of the Commission's 2016 decision denying the Linden complaint proceeding in Docket No. EL15-67-000.⁵² The PJM Transmission Owners argue that reallocation of these costs to the remaining identified users of the projects on a *pro rata* basis was reasonable. The PJM Transmission Owners state that Schedule 12, Section (b)(xi) of the PJM Tariff incorporates by reference the terms of the Con Edison Settlement Agreement governing RTEP cost allocations to Con Edison, and this section does not specify the manner in which reallocations will be made, and does not require that PJM re-run the solution-based DFAX analysis to determine the revised cost allocations.⁵³ Moreover, the PJM Transmission Owners contend that Linden's assertion that RTEP costs cannot be reallocated to it because it was not a party to the Settlement Agreement ignores the fact that section (b)(xi)(B) expressly addresses

⁴⁸ New Jersey Board Comments at 7-8. *See N.Y. Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,033 (2017) (accepting proposed changes to the operating protocols for the JOA), *reh'g denied*, 169 FERC ¶ 61,208 (2019).

⁴⁹ PSEG Answer at 3.

⁵⁰ *Id.* at 4.

⁵¹ PJM Answer at 4.

⁵² *Id.* at 7.

⁵³ *Id.* at 9.

assignment of cost responsibility upon termination of the Con Edison TSAs, as provided for in the Settlement Agreement.⁵⁴ Accordingly, the PJM Transmission Owners contend that the Settlement Agreement is not limited to Settlement Agreement parties and governs cost allocations to all applicable Responsible Customers regardless of whether they were parties to the Settlement Agreement.⁵⁵

26. In its responsive pleadings, Linden and NYPA reiterates their concerns regarding the assignment of cost responsibility pursuant to the solution-based DFAX as applied to non-flow-based enhancements and expansions.

VI. Determination

A. Procedural Matters

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

28. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant the late-filed motion to intervene of the City of New York given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers as they have provided information that assisted us in our decision-making process.

B. Substantive Matters

30. We accept the reallocated cost responsibility assignments that PJM implemented following termination of the Con Edison TSAs, as reflected in the February 8, 2017 Filing, effective May 1, 2017.

31. Section 21 of the Settlement Agreement, and section 12(b)(xi) of Schedule 12 of the PJM Tariff require PJM to reallocate the costs previously allocated to Con Edison upon termination of its TSAs. Schedule 12, section 12(b)(xi) does not specify the reallocation method. As noted, PJM states that it relied on the statement in Settlement Agreement paragraph 23(b) that PJM should use "the distribution factor analyses originally made" for termination of the Con Edison TSAs. Paragraph 23(b) does not address cost allocations upon termination of the TSAs, but rather explains the cost

⁵⁴ *Id.*

⁵⁵ *Id.* at 10.

allocations for initial allocations to Con Edison upon commencement. While neither the Settlement Agreement nor the Tariff established the method to be used for cost allocation, PJM reallocated those costs based on the currently-effective cost allocation provisions in its Tariff.

32. Linden, Hudson, and NYPA specifically challenge the assignment of cost responsibility included in Schedule 12-Appendix A and assigned pursuant to the hybrid cost allocation method, and in particular they challenge the portion of costs assigned pursuant to the solution-based DFAX method. In the Linden Complaint Order, the Commission found that Linden failed to satisfy its burden under section 206 of the FPA to demonstrate that costs assigned pursuant to the solution-based DFAX method are unjust, unreasonable, unduly discriminatory, or preferential.⁵⁶ The Commission stated, in accepting the Tariff provisions assigning costs pursuant to the solution-based DFAX method in PJM's Order No. 1000 compliance filing, that the solution-based DFAX method is "a just and reasonable method of identifying projected benefits for individual entities, including withdrawals by merchant transmission facilities."⁵⁷

33. While neither the Settlement Agreement nor the Tariff established the method to be used for cost allocation, PJM is required to reallocate the costs previously assigned to Con Edison. We find that PJM's only option under its Tariff was to apply the currently-effective provisions of Schedule 12, and we find the use of PJM's currently-effective cost allocation method to be just and reasonable.⁵⁸

34. Linden contends that PJM should have applied a default allocation provision here. Under PJM's Tariff, no cost responsibility is assigned to a responsible zone unless the magnitude of the distribution factor is greater than or equal to one percent.⁵⁹ As support for its contention that costs should be reallocated to the PSEG zone, Linden points to PJM's application of the default provision where no zone exceeded the one percent

⁵⁶ Linden Complaint Order, 155 FERC ¶ 61,089 at P 54.

⁵⁷ *Id.*; Linden Complaint Rehearing Order, 170 FERC ¶ 61,122 at P 33.

⁵⁸ As previously noted, in Docket No. EL17-68-000, Linden filed a complaint with respect to the reallocated cost responsibility assignments for the Bergen-Linden Corridor Project resulting from termination of the Con Edison TSAs. *Linden VFT. LLC v. PJM Interconnection, L.L.C.*, 170 FERC ¶ 61,122 (2020) (denying Linden complaint regarding reallocation).

⁵⁹ PJM, Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 12.0.0, § (b)(iii)(A)(6).

solution-based DFAX method value.⁶⁰ We find that Linden’s proposal is inconsistent with the provisions of Schedule 12 of the PJM Tariff, and would ignore that the cost responsibility assignments for the Bergen-Linden Corridor Project were initially allocated under Schedule 12 of the PJM Tariff to those Responsible Customers previously identified, which included Con Edison, Linden, and Hudson. Specifically, Schedule 12 of the PJM Tariff provides that PJM “shall make a preliminary cost responsibility determination for each Required Transmission Enhancement subject to section (b)(iii) of this Schedule 12 at the time such Required Transmission Enhancement is included in the [RTEP].”⁶¹ At least one of the parties was assigned a solution-based DFAX method value above the one percent threshold, obviating the application of the default provision, specifically, the Schedule 12 provision allocating 100 percent of the cost of a Required Transmission Enhancement to the zone in which the facility is located. Where cost responsibility assignments were allocated to Con Edison consistent with the Tariff, Schedule 12 Section (b)(xi) provides that they be eliminated with the termination of the Con Edison TSAs. With the reallocation, at least one of the remaining parties to which cost responsibility was assigned had a solution-based DFAX method value above the one percent threshold, and thus application of the default provision is not authorized by the Tariff.

35. Linden argues that, because it was not a party to the Settlement Agreement, it cannot be reallocated costs previously assigned to Con Edison with the termination of the TSAs based on the Settlement Agreement. Settlement of tariff-related issues are generally applicable to all parties subject to the tariff.⁶² However, Linden relies on

⁶⁰ Linden points to the PJM Response to Deficiency Letter, Docket No. ER14-1485-001 at 3. In that application of the default provision, *all* the solution-based DFAX values were below one percent, and the costs allocated one hundred percent to the zone in which the enhancements were located.

⁶¹ PJM Intra-PJM Tariffs, Schedule 12, OATT Schedule 12, 12.0.0, § (b)(iii)(H). Schedule 12, § (b)(iii)(H)(2) provides for an update of the preliminary cost responsibility determination for each Required Transmission Enhancement “[b]eginning with the calendar year in which a Required Transmission Enhancement is scheduled to enter service, and thereafter annually at the beginning of each calendar year”).

⁶² See *United Gas Pipe Line Co.*, 57 FERC ¶ 61,161, at 61,583 (1991) (“There is no point in resolving disputes over the exact number of supporters and nonsupporters of the settlement, or the percentage of refunds each group represents. In Commission proceedings, settlements are frequently supported by some, but not necessarily all, of the parties; if on examination they are found equitable and are approved by the Commission, then the terms of settlements are binding on all the parties, even though not all are in accord as to the result.”), *rev’d on other grounds sub nom, Laclede Gas Co. v. FERC*, 997 F.2d 936 (D.C. Cir. 1993); *Cf. Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345, at 62,344 (1998) (a settlement applies to all parties unless a party is severed).

Opinion No. 543, in which a partial settlement was not applied to the parties to a proceeding that did not sign the settlement, to support its argument that it cannot be allocated costs based on the termination of the Con Edison TSAs.⁶³ We find that the facts underlying Opinion No. 543 are distinguishable from this proceeding, in which the PJM Tariff assigns cost responsibility in accordance with the terms and conditions of the Settlement Agreement and the relevant provisions of the Settlement Agreement are incorporated by reference in the Tariff. While Linden and Hudson were not parties to the Settlement Agreement, which requires PJM to reallocate costs allocated to Con Edison on termination of the TSAs, Schedule 12 Section (b)(xi) provides that “[a]ll cost responsibility assignments for Required Transmission Enhancements pursuant to this Schedule 12 shall be adjusted at the commencement and termination of service under the [Con Edison] Service Agreements to take account of the assignments under the [TSAs].” Schedule 12 Section (b)(xi) included no provisions to exempt any party and is generally applicable to Responsible Customers. Accordingly, we are not persuaded by Linden’s argument.

VII. Request for Clarification or, in the Alternative, Rehearing

36. We deny the requests for clarification, or in the alternative, rehearing of the April 25, 2017 Order.

37. Linden protested, asking that the Commission clarify that the April 25, 2017 Order is not a final order, and that the Commission will issue a substantive order addressing Linden’s protest. In the alternative, Linden maintains that placing the cost allocations included in the February 8, 2017 Filing into effect without further proceedings would be arbitrary and capricious, and would not reflect reasoned decision making.

38. NYPA seeks clarification that the Commission’s April 25, 2017 acceptance of the cost allocations included in the February 8, 2017 Filing will not prejudice or otherwise dispose of its protest regarding the deficiencies in PJM’s support of the filing. In the alternative, NYPA maintains that PJM has not met its burden to demonstrate that the proposed reallocations of costs that were previously assigned to Con Edison are just and reasonable.

39. The requests for clarification, or in the alternative rehearing, contend that the Commission, in the April 25, 2017 Order did not address substantive issues raised by the protests of the February 8, 2017 Filing. In this order, we address those protests of Linden, Hudson, and NYPA. Accordingly, we deny the requests for rehearing and clarification of the April 25, 2017 Order, because the arguments raised in the protests are addressed in this further order, as discussed above.

⁶³ Linden Protest at 14-15 (citing Opinion No. 543, 153 FERC ¶ 61,216 at P 18, n.34).

The Commission orders:

(A) The assignments of cost responsibility included February 8, 2017 Filing are hereby accepted, effective May 1, 2017, as requested, as discussed in the body of this order.

(B) The requests for clarification, or in the alternative rehearing, of the April 25, 2017 Order are denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.