

164 FERC ¶ 61,192
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee,
and Richard Glick.

PJM Interconnection, L.L.C.

Docket No. ER17-2073-001

ORDER DENYING REHEARING

(Issued September 20, 2018)

1. In an order dated September 8, 2017, the Commission rejected an unexecuted, amended Interconnection Service Agreement (Amended ISA) filed pursuant to section 205 of the Federal Power Act (FPA) by PJM Interconnection, L.L.C. (PJM). The proposed Amended ISA modified Service Agreement No. 2536 (Original ISA), whose parties are PJM, Hudson Transmission Partners, L.L.C. (HTP), and Public Service Electric and Gas Company (PSEG). Under the proposed Amended ISA, HTP sought to convert its 320 megawatts (MW) of Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights.¹

2. On October 10, 2017, Linden VFT, LLC (Linden) filed a timely request for rehearing of the September 8 Order. For the reasons described below, we deny Linden's request for rehearing.

I. Background

3. PJM's open access transmission tariff (tariff) provides merchant transmission facilities the right to elect Transmission Withdrawal Rights in lieu of other transmission

¹ *PJM Interconnection, L.L.C.*, 160 FERC ¶ 61,056, at P 1 (2017) (September 8 Order). Although the Commission rejected the Amended ISA, the Commission also instituted a proceeding pursuant to section 206 of the FPA to examine the justness and reasonableness of HTP being unable to convert its Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights. *Id.* P 2. The Commission later found the Original ISA unjust and unreasonable and ordered PJM to make a compliance filing to reflect the conversion of 320 MW Firm Transmission Withdrawal Rights to a total of 0 MW of Firm Transmission Withdrawal Rights and 673 MW Non-Firm Transmission Withdrawal Rights. *See PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,262, at P 41 (2017) (December 15 Order), *order establishing settlement judge procedures sub nom. Linden VFT, LLC v. PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,034 (2018).

rights² and to request either Firm or Non-Firm Transmission Withdrawal Rights. Firm Transmission Withdrawal Rights include the right to schedule energy and capacity withdrawals from the PJM system, whereas Non-Firm Transmission Withdrawal Rights only include the right to schedule energy.

4. Through its interconnection process, PJM determines the necessary upgrades to support the level of Firm or Non-Firm Transmission Withdrawal Rights requested.³ These upgrades include costs to interconnect to PJM's system and the cost of upgrades to the network to support the Firm Transmission Withdrawal Rights requested.⁴ Based on these costs and other considerations, the merchant transmission facility will decide the level of Firm Transmission Withdrawal Rights it wishes to obtain. The merchant transmission facility, PJM, and the transmission owner to which the merchant transmission facility will be connected enter into a three-party ISA.

5. PJM, HTP, and PSEG entered into the Original ISA setting out the rights and responsibilities of the parties with respect to the interconnection to the PJM system of HTP's facility, which include a 660 MW high voltage direct current merchant transmission facility that connects PJM and the New York Independent System Operator, Inc. (NYISO) via a 345 kV undersea cable. PJM stated that, pursuant to section 2.2 of the Original ISA, HTP was granted 320 MW of Firm Transmission Withdrawal Rights and 353 MW of Non-Firm Transmission Withdrawal Rights at PSEG's Bergen substation.

6. On July 10, 2017, PJM explained that HTP sought to amend section 2.2 of the Original ISA to reflect the surrender of all 320 MW of Firm Transmission Withdrawal

² Interconnection customers can elect Transmission Withdrawal Rights in lieu of Incremental Deliverability Rights, Incremental Auction Revenue Rights, Incremental Capacity Transfer Rights, and Incremental Available Transfer Capability Revenue Rights. *See* PJM OATT § 232, Transmission Injection Rights and Transmission Withdrawal Rights.

³ PJM OATT § 232.3, Determination of Transmission Injection Rights and Transmission Withdrawal Rights to be Provided to Interconnection Customer.

⁴ Pursuant to Schedule 12 of the PJM tariff, merchant transmission facilities with Firm Transmission Withdrawal Rights may be responsible for paying for transmission upgrades, including Regional Facilities. *See* PJM OATT § Schedule 12(b), and PJM OATT § 232.2, Right of Interconnection Customer to Transmission Injection Rights and Transmission Withdrawal Rights.

Rights and to convert such rights to Non-Firm Transmission Withdrawal Rights.⁵ PJM stated that, initially, HTP requested these modifications consistent with section 16.0 of the Original ISA, which required the written consent of all parties to an amendment to the agreement.⁶ In a letter submitted to PJM, PSEG declined the proposed modifications and instead suggested that HTP terminate the Original ISA or submit the matter to informal dispute resolution. HTP responded that it was not willing to terminate the Original ISA and that dispute resolution was inconsistent with Section 12.1 of the PJM tariff.⁷ As a result, PJM stated that it filed the Amended ISA at HTP's request.

7. In the September 8 Order, the Commission rejected the Amended ISA, finding that neither the Original ISA nor PJM's tariff permitted PJM to file, under section 205, an unexecuted amended ISA with modifications requested by an interconnection customer. The Commission held that, while "section 22.3 [of Appendix 2 of the Original ISA] provides that an amendment [to the agreement] can be made *only* with the consent of all parties to the agreement,"⁸ the language also preserves the parties' statutory rights under section 205 of the FPA "with respect to changes in applicable rates or charges," and statutory rights to file a section 206 complaint to seek a modification to the Original

⁵ PJM Transmittal Letter, Docket No. ER17-2073-000, at 3 (July 10, 2017).

⁶ Section 16 of that Original ISA provided as follows: "Amendment. This ISA or any part thereof, may not be amended, modified, or waived other than by a written document signed by all parties hereto."

⁷ Appendix 2, section 20.1 of the Original ISA references Section 12.1 of the PJM tariff.

⁸ September 8 Order, 160 FERC ¶ 61,056 at P 38. Section 22.3 of Appendix 2 to the Original ISA provides, in relevant part, as follows:

Amendments and Rights Under the Federal Power Act: This Interconnection Service Agreement may be amended or supplemented only by a written instrument duly executed by all Interconnection Parties. . . . Notwithstanding the foregoing, nothing contained in this Interconnection Service Agreement shall be construed as affecting in any way any of the rights of any Interconnection Party with respect to changes in applicable rates or charges under Section 205 of the Federal Power Act and/or FERC's rules and regulations thereunder, or any of the rights of any Interconnection Party under Section 206 of the Federal Power Act and/or FERC's rules and regulations thereunder.

ISA.⁹ The Commission interpreted “this language to preserve the statutory rights of the parties to the agreement, not to provide additional filing rights to an interconnection customer to require the filing of an unexecuted amendment to the [Original] ISA under section 205.”¹⁰ The Commission also stated that “section 22.3 of the [Original] ISA expressly limits section 205 filings only to requesting changes in rates and charges.”¹¹ Accordingly, the Commission stated that even if HTP could demand that PJM file an unexecuted ISA with respect to rates and charges, it could not require PJM to file the instant unexecuted amended ISA because converting Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights constitutes a change in the terms of service rather than a change to rates and charges.

II. Linden’s Request for Rehearing

8. Linden argues that the Commission erred in holding: (1) that PSEG’s consent is necessary to amend the Original ISA in order to reduce HTP’s level of service; and (2) that HTP lacks the unilateral right to require PJM to file the Amended ISA with the Commission unexecuted. Linden asserts that the Commission’s interpretation of section 22.3 of Appendix 2 of the Original ISA contradicts the PJM tariff and other provisions in the Original ISA, and grants broad authority to interconnected transmission owners to discriminate unduly against interconnection customers. Given the Commission’s finding that reducing the service level of HTP’s Transmission Withdrawal Rights from Firm to Non-Firm would have no substantive effect on PJM’s system, Linden contends that the Commission erred in holding that such non-substantive changes to ISAs require the interconnected transmission owner’s consent, thereby permitting interconnected transmission owners to discriminate unduly and to restrict open access. Linden states that the Commission should have instead recognized HTP’s requested amendment to the Original ISA as a non-substantive, ministerial amendment similar to other changes PJM regularly files under section 205 of the FPA with the Commission.¹² Linden states that Section 212.7 of PJM’s tariff and section 22.1 of the Original ISA permit HTP to request that PJM file with the Commission an unexecuted ISA that PSEG has refused to execute and that the Commission’s limiting these sections to new ISAs

⁹ September 8 Order, 160 FERC ¶ 61,056 at P 38.

¹⁰ *Id.*

¹¹ *Id.* P 39.

¹² Linden Request for Rehearing at 3-8.

adds limiting language to the agreement that is not there, thereby rendering these sections meaningless.¹³

9. Linden also argues that the Commission incorrectly interpreted section 22.1 of Appendix 2 of the Original ISA as only allowing initial ISAs to be filed unexecuted with the Commission under section 205 of the FPA. Linden argues that this interpretation is contrary to the plain language of the provision and the canons of contract interpretation because it would govern agreements that are not yet effective. Linden states that section 22.1 of Appendix 2 of the Original ISA applies instead to situations *after* an ISA becomes effective, such as an amendment to the Amended ISA at issue in this proceeding.¹⁴

10. Linden states that PJM's tariff treats Firm Transmission Withdrawal Rights similar to Firm Point-to-Point Transmission Service. Linden contends that PJM's tariff "provides guidance on an Interconnection Customer's ability to reduce the level of service of its [Transmission Withdrawal Rights]."¹⁵ Linden explains that the definition of Firm Transmission Withdrawal Rights provides that "[w]ithdrawals scheduled using Firm Transmission Withdrawal Rights have rights similar to those under Firm Point-to-Point Transmission Service"¹⁶ and similarly, the definition of Non-Firm Transmission Withdrawal Rights provides that withdrawals using Non-Firm Transmission Withdrawal Rights have rights similar to those under Non-Firm Point-to-Point Transmission Service.¹⁷ Linden also states that the PJM tariff provides that transmission customers with Firm Point-to-Point Transmission Service may require PJM "to provide transmission service on a non-firm basis . . . without incurring an additional Non-Firm Point-To-Point Transmission Service charge or executing a new Service Agreement."¹⁸ Accordingly, Linden reasons that, because "Interconnection Customers, such as those owning and operating generation facilities, are free to convert Firm transmission service to Non-Firm service without amending their *interconnection* agreement," the PJM tariff likewise

¹³ *Id.* at 4-10.

¹⁴ *Id.* at 4, 8-10.

¹⁵ *Id.* at 6.

¹⁶ *Id.* (citing PJM, Intra-PJM Tariffs, E-F, OATT Definitions E-F (14.0.0) (internal citations omitted)).

¹⁷ *Id.* (citing PJM, Intra-PJM Tariff, L-M-N, OATT Definitions L-M-N (14.0.0)).

¹⁸ *Id.* (citing PJM, Intra-PJM Tariffs, OATT § 22.1, Modifications on a Non-Firm Basis (internal citations omitted)).

permits holders of Firm Transmission Withdrawal Rights to convert a Firm Transmission Withdrawal Right unilaterally.¹⁹ Linden states that the Commission's acknowledgement that HTP could convert its Transmission Withdrawal Rights from Firm to Non-Firm by terminating the ISA, disconnecting its facility and reentering PJM's interconnection queue puts form over substance and would be unjust and unreasonable. Linden states that requiring PSEG's consent before amending the Original ISA conflicts with section 12.2.1 of the Original ISA, which permits an interconnection customer to assign the Original ISA without PSEG's or PJM's prior consent.²⁰

III. Discussion

11. For the reasons discussed below, we deny Linden's request for rehearing of the September 8 Order. We review below Linden's contentions with respect to various specific sections of the Original ISA and the PJM tariff.

A. Section 22.3 of Appendix 2 of the Original ISA

12. The September 8 Order explained that section 22.3 of Appendix 2 of the Original ISA explicitly permits amendments or supplements to the Original ISA "only by a written instrument duly executed by *all* Interconnection Parties."²¹ However, section 22.3 also provides that, notwithstanding such requirement, "nothing contained in the [Original] ISA shall be construed as 'affecting in any way any of the rights of any Interconnection Party with respect to changes in applicable rates or charges under Section 205 of the Federal Power Act and/or FERC's rules and regulations thereunder.'"²² We continue to interpret this language of the Original ISA "to preserve the statutory rights of the parties to the agreement, not to provide additional filing rights to an interconnection customer to require the filing of an unexecuted amendment to the [Original] ISA under section 205" of the FPA.²³ We also interpret section 22.3 of Appendix 2 of the Original ISA to preserve the interconnection customer's statutory rights to file a section 206 complaint to

¹⁹ *Id.* (citing PJM, Intra-PJM Tariffs, OATT § 22.1, Modifications on a Non-Firm Basis (internal citations omitted)).

²⁰ *Id.* at 6-8.

²¹ Original ISA, Appendix 2 § 22.3 (emphasis added).

²² September 8 Order, 160 FERC ¶ 61,056 at P 38 (citing Original ISA, Appendix 2 § 22.3).

²³ *Id.*

seek a modification to the Original ISA.²⁴ No arguments on rehearing cause us to revisit this interpretation and the September 8 Order's finding that PJM lacks authority under its tariff and the Original ISA to file an unexecuted Amended ISA under section 205 of the FPA with the new terms and conditions requested by HTP, the interconnection customer.

13. On a broader level, we reject Linden's argument that the Original ISA's prohibition on unilateral amendments is unduly discriminatory against interconnection customers.²⁵ The restriction on unilateral amendments to the Original ISA applies equally to all parties to the Original ISA: the transmission owner (here, PSEG), the transmission provider (here, PJM), and the interconnection customer (here, HTP).

B. Section 22.1 of Appendix 2 of the Original ISA

14. The Commission in the September 8 Order also found that section 22.1 of Appendix 2 of the Original ISA does not permit amendments like the one PJM filed in the instant proceeding. As relevant here, section 22.1 of Appendix 2 of the Original ISA grants an interconnection customer "the right, with respect to any Interconnection Service Agreement *tendered to* it, to request . . . that Transmission Provider file the agreement unexecuted with the Commission."²⁶ The Commission interpreted "this provision as a

²⁴ Original ISA, Appendix 2 § 22.3 (emphasis added).

²⁵ Linden Request for Rehearing at 4-5.

²⁶ Original ISA, Appendix 2 § 22.1 (emphasis added). Section 22.1 of Appendix 2 of the Original ISA provides:

In the event that this Interconnection Service Agreement contains any terms that deviate materially from the form included in Attachment O of the Tariff, Transmission Provider shall file the Interconnection Service Agreement on behalf of itself and the Interconnected Transmission Owner with FERC as a service schedule under the Tariff within thirty days after execution. Interconnection Customer may request that any information so provided be subject to the confidentiality provisions of Section 17 of this Appendix 2. An Interconnection Customer shall have the right, with respect to any Interconnection Service Agreement tendered to it, to request (a) dispute resolution under Section 12 of the Tariff or, if concerning the Regional Transmission Expansion Plan, consistent with Schedule 5 of the Operating Agreement, or (b) that Transmission Provider file the agreement unexecuted with the Commission. With the filing of any

reference to the initial ISA resulting from the interconnection process; this provision specifically applies in instances in which an interconnection customer is pursuing a new interconnection request, but is tendered an ISA by PJM containing terms which are unacceptable to the interconnection customer.”²⁷ The Commission stated that “the interconnection customer can then request that PJM file the ISA under section 205 of the FPA unexecuted”²⁸ The Commission stated that Section 22.1 of Appendix 2 of the Original ISA “does not provide that PJM must file an unexecuted ISA, amended or otherwise, containing the terms and conditions preferred by the interconnection customer.”²⁹

15. We continue to find that section 22.1 of Appendix 2 does not provide an independent right for an interconnection customer to require PJM to make a filing containing the customer’s proposed revisions to an existing ISA. We find PJM included section 22.1, as well as the other Standard Terms and Conditions For Interconnection, in its *pro forma* ISA to aggregate and incorporate the tariff rights and obligations the parties have both prior to and after executing the agreement. Indeed, in section 2.0 of the *pro forma* ISA and the Original ISA, PJM makes clear that it is incorporating into the ISA the tariff provisions that apply when parties enter into the initial ISA:

Interconnection Customer has requested an Interconnection Service Agreement under the Tariff, and Transmission Provider has determined that Interconnection Customer is eligible under the Tariff to obtain this ISA. The standard terms and conditions for interconnection as set forth in Appendix 2 to this ISA are hereby specifically incorporated as provisions of this ISA.³⁰

Section 22.1 of Appendix 2 refers to “this Interconnection Service Agreement” and not to any amended or modified versions of it. Similarly, unlike section 22.3, section 22.1 does

unexecuted Interconnection Service Agreement, Transmission Provider may, in its discretion, propose to FERC a resolution of any or all of the issues in dispute between or among the Interconnection Parties.

²⁷ September 8 Order, 160 FERC ¶ 61,056 at P 35.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Original ISA § 2.0.

not contain terms such as “amend.” Contrary to Linden’s contention, the reference to “any Interconnection Service Agreement” within section 22.1 of Appendix 2 to the Original ISA is reasonably read as referencing the same ISA described in the first sentence of section 22.1 as “this Interconnection Service Agreement” and “the Interconnection Service Agreement.” Further, PJM’s recitation of the same rights, obligations, and procedures—those found in section 22.1—in both the ISA and the PJM tariff,³¹ demonstrates that PJM intended the provisions to apply before execution of an ISA. This incorporation likewise demonstrates the reasonableness of the Commission’s interpretation, which gives the same meaning to the same language found in both the PJM tariff and the Original ISA.

16. Interpreting section 22.1 of Appendix 2 of the Original ISA as providing the ability for the interconnection customer to require PJM to file an unexecuted ISA under section 205 containing the customer’s proposed amendments to ISA would create a conflict between sections 22.1 and section 22.3. Section 22.3, which is entitled “Amendments and Rights under the Federal Power Act,” sets forth the rights and obligations of the parties with respect to amendments to an existing ISA. As discussed earlier, section 22.3 explicitly provides that the ISA may be amended only with the written consent of all parties, but preserves the interconnection customer’s statutory rights to file a section 206 complaint to seek a modification to the ISA. Contractual terms should be interpreted so that the contract is consistent and all the terms have meaning.³² Interpreting section 22.1 as Linden proposes is inconsistent with Appendix 2 as accepted as a *pro forma* ISA by the Commission, as well as the explicit language of section 22.3.

17. It is also worth noting that section 22.1 of Appendix 2 provides the “Transmission Provider shall file the Interconnection Service Agreement on behalf of itself and the Interconnected Transmission Owner”; it makes no mention of filing terms requested by the interconnection customer. The Commission therefore reasonably interpreted section 22.1 of Appendix 2 of the Original ISA as setting forth the process an

³¹ Original ISA, Appendix 2 §§ 22.1, 22.3.

³² The terms of the contract should be “harmonized” and read in context, such that contractual provisions and terms should not be interpreted to render any provision or term superfluous or meaningless. *See Atl. Cas. Ins. Co. v. Garcia*, 878 F.3d 566, 569 (7th Cir. 2017) (“Interpretation of the contract should harmonize its provisions, rather than place the provisions in conflict.” (internal quotations omitted)); *Amigo Broad., LP v. Spanish Broad. Sys., Inc.*, 521 F.3d 472, 482 (5th Cir. 2008) (provisions should be interpreted in way that gives effect to “*the entire writing*” and best harmonizes “*all the provisions* of the contract” (internal quotations omitted)).

interconnection customer must follow to request that PJM file an unexecuted initial ISA rather than an unexecuted amended or modified ISA.

C. Section 212.7 of PJM's Tariff

18. We reject Linden's contention that Section 212.7 of PJM's tariff applies to amendments like the one PJM proposed here.³³ Section 212.7 of PJM's tariff describes the procedures for executing an ISA and filing it with the Commission.³⁴ It does not describe how or under what conditions an existing ISA may be amended. Further, Part VI of PJM's tariff, which includes Section 212.7, is titled "Administration and Study of New Service Requests," and the preamble to this part indicates that it applies specifically to new agreements.³⁵ Here, by contrast, PJM filed an unexecuted amendment to an *existing* ISA. Accordingly, we reject Linden's argument.

D. Section 12.2.1 of Appendix 2 of the Original ISA

19. We also find without merit Linden's reliance on section 12.2.1 of Appendix 2 of the Original ISA. Section 12.2.1 of Appendix 2 applies specifically to the interconnection customer's right to assign the ISA to another owner of the interconnection customer's facilities under certain conditions without the prior consent of the transmission owner or transmission provider.³⁶ HTP did not seek to unilaterally assign the Original ISA, but instead sought to modify the ISA's terms and conditions, such that section 12.2.1 of Appendix 2 is not implicated here. Accordingly, we reject Linden's arguments with respect to section 12.2.1 of Appendix 2.

³³ Linden Request for Rehearing at 5, 7-8.

³⁴ See PJM OATT § 212.7. We note that when PJM first proposed this tariff section, it specifically described it in connection with *new* interconnection customers. See PJM Transmittal Letter, Docket No. ER13-2138-000, at 3-4 (filed Aug. 9, 2013).

³⁵ See PJM OATT Part VI, Preamble ("Part VI of the Tariff sets forth the procedures and other terms governing the Transmission Provider's administration of the *New Services Queue*; procedures and other terms regarding studies and other processing of *New Service Requests*; the nature and timing of the agreements required in connection with studies and construction of required facilities; and terms and conditions relating to the rights available to *New Service Customers* in consideration of their payments for *Customer-Funded Upgrades*." (emphasis added)).

³⁶ Original ISA, Appendix 2 § 12.2.1.

E. Point-to-Point Transmission Service

20. We also reject Linden's argument with respect to Point-to-Point Transmission Service. As discussed below, section 22.1 of PJM's tariff addresses the interconnection customer's right to request either dispute resolution or that PJM file the ISA with the Commission unexecuted.³⁷ Linden's argument is without merit because the Point-to-Point Transmission Service provisions in PJM's tariff are inapplicable to the proposed Firm Transmission Withdrawal Rights at issue in this proceeding.

21. Section 22.1 of PJM's tariff does not reference ISAs, as Linden suggests; it references Firm Point-To-Point Transmission Service Agreements. That section provides that a customer with a Firm Point-to-Point Transmission Service agreement can use that service on a non-firm basis; the section does not permit the unilateral modification of the rates, terms, or duration of the Firm Point-to-Point Transmission Service.³⁸ Here, HTP was not seeking to utilize its Firm Transmission Withdrawal Rights on a non-firm basis; it was seeking to amend the Original ISA to convert its 320 MW of Firm Transmission Withdrawal Rights to a total of 0 MW of Firm Transmission Withdrawal Rights and 653 MW of Non-Firm Transmission Withdrawal Rights, which Section 22.1 of the PJM tariff does not address. Moreover, while allowing the transmission service customer to use Non-Firm Point-to-Point Transmission Service for a different set of receipt and delivery points, Section 22.1 of PJM's tariff does not, as Linden asserts, provide a transmission service customer with a long-term Point-To-Point Transmission Service Agreement the right unilaterally to revise that agreement during its term to Non-Firm Point-to-Point Transmission Service.

22. Similarly, we recognize that PJM's tariff permits holders of Firm Point-to-Point Transmission Service to request "the Transmission Provider to provide transmission service on a non-firm basis over Receipt and Delivery Points other than those specified in the Service Agreement ("Secondary Receipt and Delivery Points"), in amounts not to exceed its firm capacity reservation, *without incurring an additional Non-Firm Point-To-*

³⁷ PJM, Intra-PJM Tariffs, OATT § 22.1, Modifications On a Non-Firm Basis (0.0.0).

³⁸ Section 22.1 of PJM's tariff states: "The Transmission Customer taking Firm Point-To-Point Transmission Service may request the Transmission Provider to provide transmission service on a non-firm basis over Receipt and Delivery Points other than those specified in the Service Agreement ("Secondary Receipt and Delivery Points"), in amounts not to exceed its firm capacity reservation, without incurring an additional Non-Firm Point-To-Point Transmission Service charge or executing a new Service Agreement, subject to the following conditions." PJM, Intra-PJM Tariffs, OATT § 22.1, Modifications On a Non-Firm Basis (0.0.0).

Point Transmission Service charge or executing a new Service Agreement.”³⁹ HTP did not make such a request. Rather, HTP sought to amend the Original ISA to convert its Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights. Moreover, we are not persuaded by Linden’s allegation that Commission precedent confers upon an interconnection customer the right to amend an ISA unilaterally. The cases Linden cites describe interconnection service’s relationship to transmission service more generally, but Linden does not explain how these cases are relevant to the relation between Transmission Withdrawal Rights and Point-to-Point Transmission Service.⁴⁰ We therefore reject Linden’s contention that holders of Firm Transmission Withdrawal Rights may unilaterally amend their interconnection agreement.

F. Additional Contentions

23. Linden alleges that reducing the service level of HTP’s Firm Transmission Withdrawal Rights has “no substantive effect on the PJM-controlled transmission system or PSEG’s facilities,” thereby rendering HTP’s requested conversion of Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights “a non-substantive change . . . akin to other ministerial amendments PJM regularly files unexecuted under Section 205 of the FPA.”⁴¹ But Linden’s comparison of this proceeding to another instance where the Commission allegedly accepted proposed modifications to unexecuted agreements as mere “ministerial amendments” is inapt. In that case,⁴² the proposed modifications to existing ISAs related to an assignment by the

³⁹ PJM, Intra-PJM Tariffs, OATT § 22.1 Modifications On a Non-Firm Basis.

⁴⁰ See Linden Request for Rehearing at 6 & n.22 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 744 (2003), *order on reh’g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh’g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh’g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008) (“interconnection is a separate component of transmission service, and . . . an Interconnection Customer may request interconnection separately from the delivery component of transmission service”); *Entergy Servs., Inc.*, 101 FERC ¶ 61,016 (2002); *S. Co. Servs., Inc.*, 95 FERC ¶ 61,307, at 62,049 (2001); *Tenn. Power Co.*, 90 FERC ¶ 61,238, at 61,761 (2000)).

⁴¹ Linden Request for Rehearing at 5.

⁴² See *PJM Interconnection, L.L.C.*, Docket No. ER17-1096-000, at 1 (Apr. 7, 2017) (delegated order).

transmission owner that was not objected to by any of the parties.⁴³ Here, by contrast, the proposed changes to the Original ISA constituted material, and disputed, changes to non-rate terms and conditions of service that, per the language of the Original ISA, could not be filed under section 205 of the FPA without PSEG's consent.⁴⁴

The Commission orders:

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

By the Commission. Chairman McIntyre is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴³ See PJM Transmittal Letter, Docket No. ER17-1096-000, at 2 (Mar. 3, 2017).

⁴⁴ September 8 Order, 160 FERC ¶ 61,056 at PP 31, 39-40. In any event, unlike here, there was no protest in that case and Commission staff accepted PJM's proposed modifications via delegated order, which is not binding precedent. See *PJM Interconnection, L.L.C.*, Docket No. ER17-1096-000, at 1 (Apr. 7, 2017) (delegated order); see also *Wyo. Interstate Co., L.L.C.*, 149 FERC ¶ 61,166, at P 5 n.9 (2014) (“[D]elegated letter orders do not establish any binding precedent on the Commission.”).