

170 FERC ¶ 61,180
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New Jersey Board of Public Utilities

Docket No. EL18-54-001

v.

PJM Interconnection, L.L.C., New York Independent System Operator, Inc., Consolidated Edison Company of New York, Inc., Linden VFT, LLC, Hudson Transmission Partners, LLC and New York Power Authority

ORDER DENYING REHEARING

(Issued March 4, 2020)

1. On December 22, 2017, the New Jersey Board of Public Utilities (New Jersey Board) filed a complaint (Complaint) against PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc. (NYISO), Consolidated Edison Company of New York, Inc. (Con Edison), Linden VFT, LLC (Linden), Hudson Transmission Partners, LLC (Hudson) and New York Power Authority (NYPA) (collectively, Respondents), alleging that certain actions taken by Respondents had resulted in unjust and unreasonable rates for New Jersey ratepayers. On May 24, 2018, the Commission issued an order denying the Complaint.¹ On June 22, 2018, the New Jersey Board requested rehearing of the Complaint Order. As discussed below, we deny rehearing.

I. Background

A. Bergen-Linden Corridor Project Cost Responsibility Assignments

2. Relevant to this proceeding is the assignment of cost responsibility for transmission enhancements and expansions included in the PJM Regional Transmission Expansion Plan (RTEP), principally including the Bergen-Linden Corridor (BLC)

¹ *N.J. Bd. of Pub. Utils. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,139 (2018) (Complaint Order).

Project. The BLC Project is a double circuit 345kV transmission line project that was approved in December 2013 by the PJM Board of Directors.

3. Cost responsibility for the BLC Project was assigned pursuant to PJM's Order No. 1000² regional cost allocation method, which became effective February 1, 2013, prior to the effective date of PJM's Order No. 1000 RTEP process.³ PJM assigns cost responsibility to transmission owners and other firm service entities for RTEP improvements, such as the BLC Project, in accordance with Schedule 12 of its Open Access Transmission Tariff (PJM Tariff).

4. Total costs for the BLC Project are approximately \$1.2 billion.⁴ For the BLC Project's preliminary cost allocation, Con Edison was allocated approximately \$720.4 million of the costs. Linden was allocated approximately \$9.6 million, Hudson was allocated approximately \$103.2 million, and PSEG was allocated approximately \$88.4 million.

5. At the time of the preliminary cost allocation, Con Edison had transmission service agreements (TSAs) supporting a wheeling arrangement that enabled Con Edison to wheel 1,000 MW of power through Public Service Electric and Gas Company (PSEG) facilities within PJM in northern New Jersey for delivery to New York City in NYISO's service territory.

6. In 2017, pursuant to the terms of a 2009 settlement agreement,⁵ Con Edison terminated the TSAs that supported its wheeling arrangement, and, pursuant to the

² *Transmission Planning & Cost Allocation by Transmission Owning & 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).

³ *See PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,074 (2013).

⁴ PJM initially filed the cost responsibility assignments for the BLC Project in Docket No. ER14-972-000. *See PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,028 (2014) (accepting proposed PJM Tariff sheets).

⁵ *See PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,221 (2010) (approving the settlement agreement continuing the wheeling arrangement (Settlement)); *see also PJM Interconnection, L.L.C.*, Docket No. ER12-1661-000 (May 31, 2012) (delegated order) (approving revisions to Schedule 12 of the PJM Tariff implementing the Settlement). Parties to the Settlement included PJM, PSEG, Con Edison, NYISO, and the New Jersey Board.

provisions of Schedule 12(b)(xi) of the PJM Tariff implementing the Settlement, PJM reassigned Con Edison's cost responsibility for the BLC Project to Linden, Hudson, and PSEG.⁶ Linden and Hudson⁷ subsequently converted their Firm Transmission Withdrawal Rights (TWRs) to Non-Firm TWRs.⁸ PJM filed to implement these conversions by eliminating the cost responsibility assignments to Hudson and Linden for RTEP projects included in Schedule 12-Appendix and Schedule 12-Appendix A of the PJM Tariff, and by reassigning the costs for the BLC Project to PSEG. The Commission accepted that filing.⁹

B. The New Jersey Board Complaint Proceeding

7. In its December 2017 Complaint, the New Jersey Board argued that NYISO and PJM violated the Joint Operating Agreement (JOA),¹⁰ specifically the mutual benefits provision,¹¹ by permitting NYISO to receive capacity and reliability benefits from the

⁶ With the termination of the Con Edison TSAs, approximately \$530.8 million of the \$720.4 million that was originally assigned to Con Edison for the BLC Project was reassigned to Hudson, approximately \$122 million of those costs were reassigned to Linden, and approximately \$40 million of those costs were reassigned to PSEG.

⁷ Linden and Hudson operate separate merchant transmission facilities connecting the PJM transmission system and the transmission system in NYISO.

⁸ Firm TWRs allow the merchant transmission facility to schedule energy and capacity withdrawals from the PJM system. In contrast, Non-Firm TWRs only allow the merchant transmission facility to schedule energy and, as such, are similar to Non-Firm Point-to-Point Transmission Service in that Non-Firm TWRs only allow the merchant transmission facility to schedule transmission service on an as-available basis and are subject to curtailment. *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,262, at P 2 (2017); see also PJM Tariff § I, OATT Definitions L-M-N, 14.0.0, Non-Firm Transmission Withdrawal Rights.

⁹ *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,197 (2018) (accepting proposed Tariff revisions eliminating cost responsibility to Hudson and Linden for RTEP projects included in Schedule 12-Appendix and Schedule 12-Appendix A).

¹⁰ The JOA is included in Attachment CC to NYISO's Open Access Transmission Tariff (NYISO Tariff). The Commission accepted the JOA in October 2017. See *N.Y. Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,033 (2017) (JOA Order), *reh'g denied*, 169 FERC ¶ 61,208 (2019).

¹¹ The mutual benefits provision of the JOA recognizes that NYISO and PJM "share [mutual benefits] such as transient and steady-state support" and that "the Parties shall endeavor to operate or direct the operation of the Interconnection Facilities to

BLC Project without commensurate compensation.¹² In addition, the New Jersey Board alleged that the termination of Con Edison's TSAs and Linden's and Hudson's conversion of their Firm TWRs to Non-Firm TWRs are contrary to the principles in Order No. 1000 and are unduly discriminatory, unjust, and unreasonable.¹³ The New Jersey Board also argued that, in allowing Linden and Hudson to convert their Firm TWRs to Non-Firm TWRs, PJM failed to fully implement its Tariff regarding cost allocation, resulting in unjust and unreasonable rates.¹⁴

8. In the Complaint Order, the Commission denied the Complaint, finding that: (1) Order No. 1000 requires that, absent NYISO's agreement to be allocated costs for a regional transmission project in PJM, the costs of such a project (here, the BLC Project) may not be allocated to NYISO regardless of any benefits that the project provides;¹⁵ (2) the JOA does not require that NYISO bear the costs of the BLC Project;¹⁶ and (3) PJM properly implemented its Tariff.¹⁷

9. On rehearing, the New Jersey Board argues that the Commission erred by "failing to examine the total effect of the actions taken by [R]espondents."¹⁸ The New Jersey Board alleges that the Commission should have set for hearing disputed issues of material fact. On July 27, 2018, NYPA and Hudson filed a joint motion for leave to answer and answer to the New Jersey Board's rehearing request.

10. On September 14, 2018, the New Jersey Board and the New Jersey Division of Rate Counsel moved to consolidate the New Jersey Board's pending request for rehearing of the Complaint Order with proceedings for which the Commission established

realize the [mutual benefits]." NYISO OATT, § 35.4 OATT Attach. CC Mutual Benefits (0.0.0).

¹² Complaint at 1-2, 33-36.

¹³ *Id.* at 2, 36.

¹⁴ *Id.* at 1-2, 43.

¹⁵ Complaint Order, 163 FERC ¶ 61,139 at PP 52-54.

¹⁶ *Id.* P 55.

¹⁷ *Id.* P 57.

¹⁸ Rehearing Request at 3.

settlement judge procedures in a July 2018 order.¹⁹ As relevant here, on November 21, 2019, the Commission dismissed as moot the request to consolidate the New Jersey Board's request for rehearing of the Complaint Order with proceedings for which the Commission established settlement judge procedures.²⁰

II. Discussion

A. Procedural Matters

11. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2019), prohibits an answer to a request for rehearing. Accordingly, we deny the joint motion to answer filed by NYPA and Hudson and reject that answer.

B. Substantive Matters

1. The Commission fully addressed all issues raised in the Complaint

12. The New Jersey Board argues that the Commission "siloed" Respondents' actions by viewing them "in disparate vacuums, rather than looking at the overall *effect*."²¹ Specifically, the New Jersey Board alleges that the Commission did not address "whether the [merchant transmission facilities'] reduction of transmission rights and termination of Con Edison's service agreements and PJM's changed modeling assumptions results in unjust, and unduly discriminatory rates for New Jersey and other PJM ratepayers, and when combined with NYISO's statements about continued transmission reliability and resource adequacy benefits, an unlawfully preferential rate for New York ratepayers."²² We disagree. As discussed below, the Commission has considered each of these issues, either in this proceeding or in other related proceedings, and has found that the actions taken by Respondents were consistent with the relevant tariff provisions cited in the Complaint²³ and with Order No. 1000 and, therefore, did not result in unjust and

¹⁹ *Linden VFT, LLC v. PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,034 (2018) (establishing settlement judge procedures).

²⁰ *Linden VFT, LLC v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,116 (2019).

²¹ Rehearing Request at 1-2 (emphasis in pleading).

²² *Id.*

²³ The Commission was not persuaded by the New Jersey Board's argument that NYISO and PJM did not comply with the mutual benefits provision of the JOA. Complaint Order, 163 FERC ¶ 61,139 at P 55. The Commission also did not find persuasive the argument that PJM failed to fully implement the cost allocation provisions

unreasonable rates. The fact that New Jersey ratepayers now pay higher rates as a result of a combined set of permissible circumstances does not by itself render such rates unjust and unreasonable. Accordingly, we deny rehearing on this issue.

13. The New Jersey Board incorrectly claims that the Commission did not address the effect of Hudson's and Linden's conversion of their Firm TWRs to Non-Firm TWRs.²⁴ In the Complaint Order, the Commission explained that merchant transmission facilities with Non-Firm TWRs (i.e., Linden and Hudson) do not receive the same service and benefits because PJM can curtail or interrupt the withdrawal service for reliability and economic reasons, irrespective of the priority of any upstream firm transmission service.²⁵ Given the benefits that merchant transmission facilities with Non-Firm TWRs forgo, we affirm that it is appropriate, and not inconsistent with the principles underlying Order No. 1000, that Hudson and Linden were relieved of cost responsibility assignments for the BLC Project in accordance with the cost allocation provisions contained in Schedule 12 of the PJM Tariff. The Commission has addressed the issue of whether Con Edison continues to receive a benefit after the termination of its TSAs such that it

of its Tariff. *Id.* P 57 (“We therefore disagree . . . that PJM fails to fully implement Section 232.2 and find no inconsistency between PJM’s cost allocation provisions of Schedule 12 and Section 232.2 of the Tariff.”). The New Jersey Board does not challenge either of these two findings on rehearing.

²⁴ The Commission separately addressed the permissibility of Linden’s and Hudson’s conversion of Firm TWRs to Non-Firm TWRs in other proceedings. *See PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,262, *order on reh’g*, 170 FERC ¶ 61,021 (2020); *Linden VFT, LLC v. Pub. Serv. Elec. & Gas Co.*, 161 FERC ¶ 61,264 (2017), *order on reh’g*, 170 FERC ¶ 61,023 (2020).

²⁵ Complaint Order, 163 FERC ¶ 61,139 at P 59. The Commission also stated that the possibility of Hudson and Linden receiving capacity payments from NYISO could be determined only by examination of the NYISO Tariff and was outside the scope of the Complaint. *Id.* The Commission subsequently addressed this issue in its December 19, 2019 order denying a complaint against NYISO filed by the Independent Power Producers of New York, Inc. *Indep. Power Producers of N.Y., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,209 (2019). In that order, the Commission reiterated prior determinations recognizing that Linden and Hudson became subject to curtailment under the PJM Tariff following their conversion of Firm TWRs to Non-Firm TWRs. *Id.* P 42.

would be required to assume cost responsibility for the BLC Project in other proceedings.²⁶

14. On rehearing, the New Jersey Board points to acknowledgements by NYISO that, despite the conversion of Firm TWRs to Non-Firm TWRs, New York continues to receive reliability and capacity benefits from the BLC Project via the Linden and Hudson merchant tie lines.²⁷ The New Jersey Board also states that it previously “challenged that PJM revised its capacity market modeling assumptions regarding emergency imports from NYISO, such that capacity prices in New Jersey would rise.”²⁸ The result, the New Jersey Board contends, is “a preferential rate for New York load, while New Jersey ratepayers experience extreme financial burden.”²⁹ We are unpersuaded by these arguments.³⁰ The New Jersey Board fails to recognize that any “acknowledged” benefit to New York is irrelevant “because the Bergen-Linden Corridor Project was planned by a single region, i.e., PJM, and without a voluntary commitment to share cost responsibility by the other region, i.e., NYISO, it is just and reasonable for the costs of the BLC Project to be allocated solely within that region, PJM.”³¹ Order No. 1000—specifically,

²⁶ JOA Order, 161 FERC ¶ 61,033 at P 50 (finding that the JOA need not assign cost responsibility to Con Edison for PJM RTEP projects, including the BLC Project); *PJM Interconnection, L.L.C.*, 170 FERC ¶ 61,124, at P 33 (2020); *Linden VFT, LLC, v. PJM Interconnection, L.L.C.*, 170 FERC ¶ 61,123, at P 31 (2020).

²⁷ Rehearing Request at 4-5 (citing NYISO Comments Docket No. ER17-2073, at 1, 3 (July 31, 2017)).

²⁸ *Id.* at 5.

²⁹ *Id.*

³⁰ As an initial matter, the New Jersey Board’s arguments here are not fully explained in its rehearing request and appear to improperly rely on arguments made in other, unspecified pleadings. The incorporation of arguments by reference from prior pleadings in a rehearing request is inconsistent with section 313(a) of the FPA. 16 U.S.C. 8251(a) (2018) (“The application for rehearing shall set forth specifically the ground or grounds upon which such application is based.”); *see also* 18 C.F.R. § 385.203(a)(7) (2019) (pleadings must articulate the position taken by the filing party, including the basis in fact and law for such position). The Commission has rejected attempts to incorporate by reference grounds for rehearing from prior pleadings. *W. Area Power Admin.*, 153 FERC ¶ 61,213, at P 20 (2015); *Alcoa Power Generating Inc.* 144 FERC 61,218, at P 10 (2013); *ISO New England Inc.*, 119 FERC ¶ 61,161, at P 16 (2007); *Mirant Americas Energy Mktg., LP*, 117 FERC ¶ 61,040, at P 22 (2006).

³¹ Complaint Order, 163 FERC ¶ 61,139 at P 54.

Regional Cost Allocation Principle 4³²—requires this result because the BLC Project was planned exclusively by PJM without a voluntary commitment by NYISO to share cost responsibility.³³ The New Jersey Board’s arguments concerning PJM’s revised capacity market modeling assumptions, which in any event are not fully explained in New Jersey’s rehearing request, are unavailing for the same reason.

2. The Commission did not err in declining to hold an evidentiary hearing

15. On rehearing, the New Jersey Board asserts that it provided material facts regarding benefits from the BLC Project accruing to NYISO and to other parties, which are in dispute, and that the Commission therefore should have ordered an evidentiary hearing to evaluate these facts.³⁴ In particular, the New Jersey Board maintains that a hearing is necessary to evaluate further disputed facts concerning NYISO’s 2016 Reliability Needs Assessment and the effect of PJM’s capacity modeling assumptions.³⁵ We deny rehearing because these facts are not material to our determination, discussed above and in the Complaint Order, that the PJM Tariff and NYISO Tariff are not unjust and unreasonable in failing to allocate costs to NYISO for transmission projects planned for and occurring solely within PJM, where NYISO has not voluntarily agreed to assume cost responsibility.³⁶ The extent of benefits that NYISO purportedly receives (including relative benefits from changes to PJM’s capacity market modeling assumptions) would not alter this finding and is therefore immaterial.

16. The New Jersey Board also states that the Commission did not address whether a hearing was appropriate “regarding the reduction of transmission rights by the [merchant transmission facilities], particularly in light of the disputed facts between the [New Jersey Board] and the [merchant transmission facilities]” and “regarding the unjustness and unreasonableness of the PJM Tariff in light of the results of the actions taken by parties,

³² Regional Cost Allocation Principle 4 provides that “[t]he allocation method for the cost of a transmission facility selected in a regional transmission plan must allocate costs *solely* within that transmission planning region unless another entity outside the region or another transmission planning region *voluntarily* agrees to assume a portion of those costs.” Order No. 1000, 136 FERC ¶ 61,051 at P 657 (emphasis added).

³³ See Complaint Order, 163 FERC ¶ 61,139 at P 54.

³⁴ Rehearing Request at 6.

³⁵ *Id.* at 6, 7-8.

³⁶ Complaint Order, 163 FERC ¶ 61,139 at P 60.

other than NYISO.”³⁷ It is unclear from the rehearing request what specific facts surrounding these issues are alleged to be in dispute, and how, in any event, any disputed facts remain material, in light of the Commission’s determination that the PJM Tariff and NYISO Tariff are not unjust and unreasonable in failing to allocate costs to NYISO for transmission projects planned for and occurring solely within PJM, where NYISO has not voluntarily agreed to assume cost responsibility. Whether Respondents’ actions were permissible and reasonable under the PJM Tariff and the NYISO Tariff is a legal dispute that the Commission has addressed in full, as discussed above and in other proceedings. Moreover, we note that the decision as to whether to conduct an evidentiary hearing is in the Commission’s discretion.³⁸ Accordingly, we deny rehearing and affirm the Commission’s determination that a hearing is unnecessary.

The Commission orders:

The New Jersey Board’s request for rehearing of the Complaint Order is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁷ Rehearing Request at 7.

³⁸ *Blumenthal v. FERC*, 613 F.3d 1142,1144 (D.C. Cir. 2010) (choice to hold an evidentiary hearing is generally discretionary); *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993) (evidentiary hearing not required where disputed issues may be adequately resolved on the written record); *Woolen Mill Assoc. v. FERC*, 917 F.2d 589, 592 (D.C. Cir. 1990) (mere allegations of disputed fact are insufficient to mandate a hearing).