

139 FERC ¶ 61,242  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

PJM Interconnection, L.L.C.	Docket Nos. ER06-456-022 ER06-456-023 ER06-954-018 ER06-954-019
PJM Interconnection, L.L.C.	ER06-1271-017 ER06-1271-018
PJM Interconnection, L.L.C.	ER07-424-013 ER07-424-014
PJM Transmission Owners	ER06-880-017 ER06-880-018
PJM Interconnection, L.L.C.	EL07-57-008 EL07-57-009
PJM Interconnection, L.L.C.	ER07-1186-002 ER07-1186-003
PJM Interconnection, L.L.C.	ER08-229-002 ER08-229-003
PJM Interconnection, L.L.C.	ER08-1065-002 ER08-1065-003
PJM Interconnection, L.L.C.	ER09-497-003 ER09-497-004
PJM Interconnection, L.L.C.	ER10-268-002 ER10-268-003

ORDER ACCEPTING COMPLIANCE FILINGS

(Issued June 21, 2012)

1. On February 19, 2010, PJM Interconnection, L.L.C. (PJM) submitted: (1) revisions to Schedule 12 of the PJM Open Access Transmission Tariff (Tariff) to incorporate the methodology for assigning cost responsibility to Merchant Transmission Facilities for transmission upgrades approved as part the PJM Regional Transmission Expansion Plan (RTEP) as directed by Opinion No. 503;<sup>1</sup> and (2) revisions to Schedule 12-Appendix of its Tariff to revise the existing cost responsibility assignments for transmission upgrades in accordance with that revised methodology. On May 14, 2010, PJM submitted a refund report reflecting refunds made in accordance with the revised methodology. In this order, we accept PJM's proposed tariff sheets, effective on the dates requested, and accept PJM's refund report. Because the revised tariff sheets were not filed through the Commission's eTariff system, we also require PJM to submit a compliance filing within 30 days of the issuance of this order that revises its currently effective tariff sections to reflect the language approved in this proceeding.

### **I. Background**

2. On January 5, 2006, May 4, 2006, July 21, 2006, and January 11, 2007, pursuant to section 205 of the Federal Power Act (FPA),<sup>2</sup> PJM filed: (1) reports containing assignments of cost responsibility for certain transmission projects approved by the PJM Board of Managers (PJM Board) as part of PJM's RTEP; and (2) revised tariff sheets incorporating into Schedule 12-Appendix of the PJM Tariff the assignments of cost responsibility for the PJM Board-approved RTEP upgrades. The Commission accepted and suspended the filed tariff revisions, made them effective subject to refund, established hearing and settlement judge procedures, and consolidated Docket Nos. ER06-456, ER06-954, ER06-1271, and ER07-424 (Consolidated Proceeding).<sup>3</sup> The Commission also added the PJM Transmission Owners' Filing in Docket No. ER06-880-000 to the Consolidated Proceeding. This filing led to a settlement, which provided a

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<sup>1</sup> *PJM Interconnection, L.L.C.*, 129 FERC ¶ 61,161 (2009) (Opinion No. 503).

<sup>2</sup> 16 U.S.C. § 824d (2006).

<sup>3</sup> See *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,261 (2006); *PJM Interconnection, L.L.C.*, 116 FERC ¶ 61,118 (2006); *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,058 (2006), *order on reh'g*, 119 FERC ¶ 61,067 (2007); *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,033, *order on reh'g*, 120 FERC ¶ 61,193 (2007).

mechanism by which RTEP costs associated with the Neptune Merchant Transmission Facility could be passed through to customers (Neptune Settlement).<sup>4</sup>

3. Among the issues set for hearing in the Consolidated Proceeding was whether PJM's proposed methodology for allocating RTEP costs to the two existing Merchant Transmission Facilities, Neptune Regional Transmission System, LLC (Neptune) and East Coast Power, L.L.C., was unduly discriminatory or preferential, and whether the proposed allocation of costs to those two projects "directly correlate[d] to their contribution to the need for such reliability upgrades."<sup>5</sup> On April 19, 2007, the Commission expanded the scope of the Consolidated Proceeding to include the appropriate methodology to be added to PJM's Tariff to implement a beneficiary-pays approach for the allocation of costs for new transmission facilities that operate below 500 kV.<sup>6</sup>

4. On September 14, 2007, the parties filed a partial settlement, which resolved all issues set for hearing regarding the assignment of cost responsibility for below 500 kV RTEP upgrades to PJM transmission zones, except for certain issues concerning assignments of cost responsibility of Merchant Transmission Facilities, which were reserved for hearing.<sup>7</sup> The Commission accepted the Partial Settlement on July 29, 2008.<sup>8</sup> Additionally, the issue of how PJM is to allocate RTEP costs for 500 kV and

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<sup>4</sup> See *PJM Interconnection, L.L.C.*, Docket Nos. ER07-632-000, *et al.* (May 3, 2007) (delegated letter order).

<sup>5</sup> Opinion No. 503, 129 FERC ¶ 61,161 at P 7 (*citing PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,261, at P 51 (2006)).

<sup>6</sup> *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,067 (2007); *see also PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007), *order on reh'g*, Opinion No. 494-A, 122 FERC ¶ 61,082, *order on reh'g*, 124 FERC ¶ 61,033 (2008), *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470 (7th Cir. 2009), *order on remand*, 138 FERC ¶ 61,230 (2012).

<sup>7</sup> Offer of Settlement and Partial Settlement Agreement, Docket Nos. ER06-456, *et al.* (Sept. 14, 2007) (Partial Settlement).

<sup>8</sup> *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,112 (2008); *see also PJM Interconnection, L.L.C.*, Docket Nos. ER06-456-015, *et al.* (Oct. 15, 2008) (delegated letter order).

above upgrades to Merchant Transmission Facilities was later included as a hearing issue.<sup>9</sup>

5. On September 18, 2008, the Presiding Administrative Law Judge (ALJ) issued an initial decision generally upholding PJM's proposal to allocate RTEP costs to Merchant Transmission Facilities.<sup>10</sup> On November 19, 2009, the Commission issued Opinion No. 503 "largely affirming the Initial Decision's determination that PJM's proposal for allocating the costs of transmission upgrades approved as part of PJM's RTEP to Merchant Transmission Facilities is just and reasonable, and not unduly discriminatory or preferential, with certain modifications."<sup>11</sup> In Opinion No. 503, the Commission directed PJM to submit revisions to the PJM Tariff "to implement this order, including revisions to Schedule 12-Appendix to recalculate the allocations to Merchant Transmission Facilities, as necessary."<sup>12</sup>

6. In addition, subsequent to the Consolidated Proceeding, in Docket Nos. ER07-1186, ER08-229, ER08-1065, ER09-497, and ER10-268, PJM submitted further cost responsibility assignments for RTEP upgrades in Schedule 12-Appendix. In each of these dockets, the Commission accepted the cost responsibility assignments subject to refund and the outcome of the issues set for hearing in the Consolidated Proceeding.<sup>13</sup>

## **II. PJM's Filing**

7. On February 19, 2010, PJM submitted revisions to Schedule 12 of its Tariff to incorporate the methodology for assigning cost responsibility to Merchant Transmission Facilities for transmission upgrades approved as directed by Opinion No. 503.<sup>14</sup>

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<sup>9</sup> Opinion No. 494-A, 122 FERC ¶ 61,082, at P 92 (2008).

<sup>10</sup> *PJM Interconnection, LLC*, 124 FERC ¶ 63,022 (2008) (Initial Decision).

<sup>11</sup> Opinion No. 503, 129 FERC ¶ 61,161 at P 1.

<sup>12</sup> *Id.* P 147.

<sup>13</sup> See *PJM Interconnection, L.L.C.*, 121 FERC ¶ 61,034, at Ordering Para. (A); *PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,130, at Ordering Para. (A); *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,197, at Ordering Para. (A); *PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,016, at Ordering Para. (A); *PJM Interconnection, L.L.C.*, 130 FERC ¶ 61,103, at Ordering Para. (A).

<sup>14</sup> In Opinion No. 503, the Commission directed PJM to submit its compliance filing within 30 days of the issuance of the order. On December 18, 2009, PJM filed a motion for extension of time until February 19, 2010 to make its compliance filing.

Specifically, the proposed revisions: (1) allocate cost responsibility to Merchant Transmission Facilities for 500 kV and above facilities, and the lower voltage facilities necessary to support such facilities,<sup>15</sup> based on a Merchant Transmission Facility's awarded Firm Transmission Withdrawal Rights for the year following the year in which the Merchant Transmission Facility initiates operation, and based on the Merchant Transmission Facility's annual peak load for all subsequent years; (2) provide that, until a Merchant Transmission Facility goes into service or is awarded its full amount of Firm Transmission Withdrawal Rights, deferred charges for below 500 kV upgrades will be recorded in a deferred asset account and a deferred liability account; and (3) remove language that allocates cost responsibility to Merchant Transmission Facilities based on "Interim Values," since this language is no longer applicable. PJM also notes that no changes were necessary to comply with the ALJ's directive that "PJM should recover all RTEP upgrade costs allocated to [Merchant Transmission] from the [Merchant Transmission Facility] owners,"<sup>16</sup> because this is already clearly stated in Schedule 12. Additionally, PJM submitted retroactive and currently effective tariff sheets to incorporate the revised cost responsibility assignments for Merchant Transmission Facilities for RTEP upgrades that were included in the Consolidated Proceeding and subsequent Docket Nos. ER07-1186, ER08-229, ER08-1065, ER09-497, and ER10-268.<sup>17</sup>

8. On May 14, 2010, PJM filed its refund report as directed in Opinion No. 503. PJM states that the refunds, together with interest, are a result of the recalculation of cost responsibility assignments for upgrades included in PJM's RTEP in accordance with revisions to the PJM Tariff that modified the methodology for assigning cost responsibility to Merchant Transmission Facilities for RTEP upgrades. PJM states that the refunds reflected in the refund report were made by March 12, 2010.

9. With the refund report, PJM filed a motion to make the compliance filing out-of-time. PJM explains that it inadvertently neglected to file the report by April 30, 2010. PJM states that upon discovering the oversight it acted promptly to file the report and that no party is harmed by the delay because the refunds, with interest, were timely paid.

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<sup>15</sup> The PJM Tariff refers to these facilities as Regional Facilities and Necessary Lower Voltage Facilities, respectively.

<sup>16</sup> Initial Decision, 124 FERC ¶ 63,022 at P 202; Opinion No. 503, 129 FERC ¶ 61,161 at P 147.

<sup>17</sup> Additionally, PJM requested an extension of time until April 30, 2010, to provide the refunds directed by Opinion No. 503 and issue a refund report. The Commission granted PJM's Motion for Extension of Time on March 19, 2010.

### **III. Notice, Interventions, and Protest**

10. Notice of the February 19, 2010 Filing was published in the *Federal Register*, 75 Fed. Reg. 9892 (2010), with interventions and protests due on or before March 12, 2010.

11. Timely interventions were filed by the Illinois Commerce Commission, Duke Energy Corporation, and the North American Energy Alliance LLC. Protests were filed by East Coast Power, L.L.C., on behalf of itself and its affiliate, Linden VFT LLC (collectively, Linden VFT) and by the Long Island Power Authority and its subsidiary, the Long Island Lighting Company d/b/a LIPA, (collectively, LIPA). On March 29, 2010, Consolidated Edison Energy, Inc. (ConEd), Conectiv Energy Supply, Inc. (Conectiv), Cargill Power Markets, LLC (Cargill), and Brookfield Energy Marketing Inc. (Brookfield) (collectively, the TSR Holders), jointly filed a motion to intervene out-of-time and an answer to Linden VFT's protest.<sup>18</sup> On March 29, 2010, PJM filed an answer to LIPA's protest. On April 9, 2010, Linden VFT filed an answer to TSR Holders' answer.

12. On February 1, 2012, ConEd filed a motion to withdraw from the March 29, 2012 answer filed by TSR Holders. On February 13, 2012, PSEG Energy Resources & Trade LLC (PSEG) filed a conditional motion to withdraw, as successor in interest to Conectiv, from the March 29, 2010 answer.<sup>19</sup> On February 14, 2012, Cargill and Brookfield filed an answer to the motions to withdraw to clarify that the answer itself should not be withdrawn.

13. Notice of the May 14, 2010 Filing was published in the *Federal Register*, 75 Fed. Reg. 29,529 (2010), with interventions and protests due on or before June 4, 2010. No interventions, comments or protests were filed.

#### **A. Linden VFT's Protest**

14. Linden VFT states that PJM's compliance filing fails to fully comply with Opinion No. 503 and the Initial Decision. Linden VFT argues that PJM has interpreted paragraph 202 of the Initial Decision so narrowly that it has eliminated any obligation to modify its

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<sup>18</sup> ConEd joined the TSR Holders in their answer, but did not file a motion to intervene out of time, since it is already a party to these proceedings.

<sup>19</sup> PSEG conditioned its motion to withdraw on the Commission's acceptance of a settlement dated February 9, 2012, and filed with the Commission by Linden VFT on March 30, 2012, in Docket No. ER12-1419-000.

Tariff.<sup>20</sup> Specifically, Linden VFT states that PJM's compliance filing fails to modify the Tariff to provide that Merchant Transmission Facility owners are authorized in this proceeding to pass through RTEP costs to their customers in the manner demonstrated by the Neptune Settlement. To avoid any potential for confusion and future disputes, Linden VFT states that this policy needs to be memorialized in PJM's Tariff and suggests language to be added to section (b)(ix) of Schedule 12.

15. Linden VFT asserts that a pass-through of RTEP costs to Merchant Transmission Facility customers is consistent with the public interest and contractual arrangements. Linden VFT states that the contracts it entered into with its customers (TSR Agreements) provide that Linden VFT's customers are responsible for PJM transmission service required for their use of the Linden VFT service. Linden VFT further states that if it cannot pass RTEP costs through to its customers, the rates its customers pay for PJM transmission service would begin to radically depart from the transmission rates other PJM customers pay for equivalent service.

**B. The TSR Holders' Answer to Linden VFT's Protest**

16. The TSR Holders argue that the Commission did not, as Linden VFT suggests, direct that PJM revise its Tariff to allow Merchant Transmission Facility owners to pass along RTEP costs to their customers regardless of their contractual arrangements with their customers. The TSR Holders assert that passing through RTEP charges is inconsistent with the TSR Agreements.<sup>21</sup> The TSR Holders contend that neither the Neptune Settlement nor the Partial Settlement provide Linden with the right to pass through RTEP costs to its customers. Finally, the TSR Holders contend that Linden VFT

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<sup>20</sup> Paragraph 202 of the Initial Decision states:

“Further, the [Merchant Transmission Facility] has a straightforward means of recovering the RTEP costs allocated to it from its customers. Neptune has demonstrated an approach to pass through such costs directly to its customers through OATT Schedule 14 § 9, discussed *supra*. Accordingly, PJM should recover all RTEP upgrade costs allocated to [Merchant Transmission] from the [Merchant Transmission Facility] owners.”

<sup>21</sup> *See e.g.*, sections 2.2 and 3.8 of Schedule 16. Schedule 16 of PJM's Tariff sets forth the terms and conditions of transmission service over the Linden VFT Merchant Transmission Facility.

has not demonstrated that the public interest requires the TSR Holders to bear cost responsibility for RTEP costs.

**C. Linden VFT's Answer to the TSR Holders' Answer**

17. Linden VFT contends that Commission determinations prior to the Initial Decision did not limit the pass through of RTEP costs to Merchant Transmission Facility customers and asserts that the TSR Agreements are silent on the ultimate responsibility for RTEP costs and therefore do not prohibit the pass-through of RTEP costs.

**D. LIPA's Protest**

18. LIPA asserts that PJM has failed to provide sufficient information to confirm that PJM has properly calculated its revised allocation percentages in compliance with Opinion No. 503, and therefore requests that the Commission direct PJM to provide supplemental information. Specifically, LIPA points out that: (1) PJM's compliance filing only provides the proposed allocation percentages, without a detailed description of each upgrade, consistent with its existing practice for RTEP allocations; (2) PJM provides no explanation of the reason it submitted multiple versions of each tariff sheet, or the discrepancies in the calculations from one sheet to the other; (3) PJM does not provide enough information to verify that the increase in allocations to several below 500 kV allocations to Merchant Transmission Facilities are accurate; and (4) PJM should clarify what elements of its methodology of assignment of cost responsibility remain on an "interim basis" and the nature of such ongoing interim period.

**E. PJM's Answer to LIPA's Protest**

19. In its answer, PJM responds to LIPA's request for additional information. First, to accommodate LIPA's request for cost allocation summaries for projects with revised cost responsibility assignments, PJM submits, as Attachment A to its answer, charts illustrating the loads used to determine cost responsibility assignments for Regional Facilities and Necessary Lower Voltage Facilities and associated cost responsibility assignments for 2006 to 2010. PJM states that detailed cost allocation summaries for below 500 kV upgrades were provided in Attachment D to its compliance filing.

20. Second, PJM states that it submitted multiple versions of some tariff sheets because the cost responsibility assignments in Schedule 12-Appendix have various effective dates depending on when they were filed. Furthermore, PJM explains that, because section (b)(i)(A) of Schedule 12 requires that cost responsibility assignments for Regional Facilities and Necessary Lower Voltage Facilities be updated on an annual basis, it included retroactive and currently effective tariff sheets that reflect the appropriate annual cost responsibility assignments for each year from 2006 to 2010. Moreover, PJM states that filing retroactive tariff sheets creates a record that allows the

parties to determine which cost responsibility assignment applied at any given point in time.

21. Third, PJM states that the increase in the cost responsibility assignments to Merchant Transmission Facilities for certain below 500 kV upgrades is due to the change from the use of 50 percent of the Firm Transmission Withdrawal Rights awarded to a Merchant Transmission Facility to 100 percent of the Merchant Transmission Facility's Firm Transmission Withdrawal Rights values. PJM explains that the detailed cost responsibility assignment summaries in Attachment D to its compliance filing reflect the use of the increased Firm Transmission Withdrawal Rights values.

22. Fourth, PJM clarifies that the reference to "interim basis" in section (b)(ii) of Schedule 12 of the PJM Tariff included in PJM's compliance filing is intended to indicate that the Partial Settlement permitted cost responsibility assignments to Merchant Transmission Facilities to be based on "Interim Values" for an "Interim Period."<sup>22</sup> PJM states that the "Interim Period" began on April 19, 2007, the date of the Commission's order reinstating a hearing in this proceeding and ended on November 19, 2009, when the Commission issued its final determination on the proper allocation of cost responsibility to Merchant Transmission Facilities in Opinion No. 503. PJM explains that, at the request of stakeholders, section (b)(ii) of Schedule 12 was retained to reflect the existence and applicability of the Partial Settlement.

#### **IV. Discussion**

##### **A. Procedural Matters**

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

24. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant the TSR Holders' late-filed motion to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept the various answers filed by parties because they have provided information that assisted us in our decision-making process.

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<sup>22</sup> See Partial Settlement ¶ 8.

26. We will also grant ConEd's and PSEG's motions to withdraw from the March 29, 2012 answer.

**B. Substantive Matters**

27. We find PJM's revised Schedule 12 tariff sheets to be consistent with the Commission's direction in Opinion No. 503 that PJM incorporate the methodology for assigning cost responsibility to Merchant Transmission Facilities for transmission upgrades approved as part of the PJM RTEP. Further, we find that PJM's revised Schedule 12-Appendix tariff sheets appropriately revise the existing cost responsibility assignments for transmission upgrades in accordance with the revised methodology. Therefore, we accept PJM's tariff sheets effective on the dates requested. However, we note that the revised tariff sheets were not filed through the Commission's eTariff system, and PJM's currently effective tariff sections do not reflect these revisions. Accordingly, we direct PJM to submit a compliance filing within 30 days of the issuance of this order that revises its currently effective tariff sections to reflect the language approved in this proceeding.

28. We reject Linden VFT's protest and find that neither the Initial Decision nor Opinion No. 503 required PJM to amend the PJM Tariff to provide that a Merchant Transmission Facility owner may pass through the costs of RTEP upgrades to its customers. Opinion No. 503 directed PJM to "modify its OATT as prescribed in Paragraph[]...202 [of the Initial Decision]." <sup>23</sup> Paragraph 202 of the Initial Decision directed PJM to "recover all RTEP upgrade costs allocated to [Merchant Transmission] from the [Merchant Transmission Facility] owners." <sup>24</sup> Linden argues that the Initial Decision's statement that "Neptune has demonstrated an approach to pass through such costs directly to its customers" was an additional directive to PJM. We disagree that this constituted a requirement. The ALJ merely noted what Neptune did by contract. But neither the ALJ nor the Commission imposed a requirement that PJM must revise its Tariff to authorize any Merchant Transmission Facility owner to pass through its costs.

29. Furthermore, the issue of whether the TSR Agreements allow for the pass-through of RTEP costs and the issue of whether pass-through of RTEP costs to Merchant Transmission Facility customers is consistent with the public interest are outside the scope of this proceeding. These issues may depend on the individual circumstances of each Merchant Transmission Facility's contracts with its customers. The issue at hand is whether PJM's Filing complies with Order No. 503's directives. PJM is in compliance

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<sup>23</sup> Opinion No. 503, 129 FERC ¶ 61,161 at P 147.

<sup>24</sup> Initial Decision, 124 FERC ¶ 63,022 at P 202.

with the requirement to implement the directives in paragraph 202 of the Initial Decision because section (b)(ix) of Schedule 12 provides that when “the Transmission Provider has allocated all or a portion of a Required Transmission Enhancement to a Merchant Transmission Facility, the owner of the Merchant Transmission Facility shall be the Responsible Customer with respect to such Required Transmission Enhancement, and shall pay the Transmission Enhancement Charges associated with the Required Transmission Enhancement.”

30. In its protest, LIPA argues that PJM fails to provide sufficient information in its filing. We find that PJM has adequately addressed LIPA’s concerns through its provision of additional information.

31. Finally, we find that PJM has submitted refunds consistent with the Commission’s direction in Opinion No. 503, and we therefore accept PJM’s refund report.

The Commission orders:

(A) PJM’s revised tariff sheets are hereby accepted for filing, effective on the dates requested.

(B) PJM is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(C) PJM’s refund report is hereby accepted for filing.

By the Commission. Commissioner Clark voting present.

( S E A L )

Kimberly D. Bose,  
Secretary.