

169 FERC ¶ 61,095  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.  
Appalachian Power Company

Docket Nos. ER19-2105-000  
ER19-2105-001

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS, AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued November 5, 2019)

1. On June 11, 2019, the PJM Interconnection, L.L.C. (PJM) Transmission Owners (PJM TOs) submitted a filing,<sup>1</sup> pursuant to section 205 of the Federal Power Act (FPA), section 35.13 of the Commission's regulations,<sup>2</sup> and Section 9.1(a) of the PJM Open Access Transmission Tariff (Tariff),<sup>3</sup> proposing revisions to Schedule 7, Schedule 8, and Attachment H-A of the Tariff, along with a new definition and several technical corrections to the Tariff. In this order, we accept the PJM TOs' proposed Tariff revisions for filing, suspend them to become effective January 1, 2020, subject to refund, and establish hearing and settlement judge procedures.

---

<sup>1</sup> PJM filed the proposed Tariff revisions pursuant to Order No. 714, on behalf of the PJM TOs, as provided by the Consolidated Transmission Owners Agreement. Transmittal Letter at 1 n.2; *see also Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008) (Order No. 714); PJM Rate Schedules, TOA-42, § 4.1.3 PJM Tariff (0.0.0) ("Each Party shall transfer to PJM ... responsibility for administering the PJM Tariff").

<sup>2</sup> 16 U.S.C. § 824s (2018); 18 C.F.R. §35.13 (2019).

<sup>3</sup> PJM, Intra-PJM Tariffs, OATT, Section 9.1 Rights of Transmission Owners (2.1.0).

## I. Background

2. PJM provides firm and non-firm point-to-point transmission service to each zone in PJM and to the border of the PJM Region under Part II of the PJM Tariff. The rates for firm and non-firm point-to-point transmission service are set forth in Schedules 7 and 8 of the PJM Tariff, respectively. The rates for firm and non-firm point-to-point transmission service to the PJM border currently are stated rates. Section 1 of Schedules 7 and 8 set forth the rate for the applicable charge for a point of delivery, including points of delivery at the border of PJM. Both schedules also provide that transmission customers are responsible for applicable congestion, losses and capacity export charges; charges for other supporting facilities and taxes; and transmission enhancement charges (TECs) for which it is designated a responsible customer under Schedule 12 to the PJM Tariff. The border rate does not apply to any point-to-point transmission service or network service to serve load in the Midcontinent Independent System Operator, Inc. (MISO).<sup>4</sup>

3. PJM also provides network integration transmission service (NITS) to non-zone network load, i.e., network load outside of the PJM Region that is served from within PJM (Non-Zone Service) under Part III of the PJM Tariff and Attachment H-A to the PJM Tariff.

## II. PJM TOs' Filing

4. The PJM TOs state that their proposed Tariff revisions update the rates in Schedules 7 and 8 for firm and non-firm point-to-point transmission service to the border of PJM (Border Rate) and the annual transmission rate in Attachment H-A for NITS for non-zone network load (Non-Zone Service Rate).<sup>5</sup> The PJM TOs state that the revisions also include a methodology for updating those rates on an annual basis beginning with calendar year 2020 to more accurately reflect the composite or average cost of providing such service in the PJM region.

---

<sup>4</sup> See PJM, Intra-PJM Tariffs, OATT, Schedule 7 (7.2.0), § 1; *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168, at P 80 (2004).

<sup>5</sup> Transmittal Letter at 2. The PJM TOs also explain that although Schedule 8 includes rates for non-firm point-to-point service to the PJM border, PJM currently charges a uniform discounted rate for such service of \$0.67 per MWH, the PJM TOs do not propose to change that standard discount, and the proposed Tariff revisions to Schedule 8 should be viewed as a maximum rate that could be charged in the event the existing discount is changed. *Id.* at 5 & n.20.

5. The PJM TOs explain that because the Border Rate and Non-Zone Service Rates are for transmission service through and out of the PJM region, both the Border Rate and the Non-Zone Service Rate are intended to reflect the composite or average cost of service in the PJM Region because all of the facilities are available to provide such service.<sup>6</sup> The PJM TOs state that the current Border Rate is a stated rate that does not update automatically, has not been revised since 2004, and, therefore, does not reflect the changes in revenue requirements of transmission owners since that date, or the addition of new transmission owners to the PJM region.<sup>7</sup>

6. The PJM TOs contend that it is not apparent that customers taking Border Rate service have been consistently charged TECs, speculating that it may be due to the ambiguity as to which specific TECs applied to Border Rate service.<sup>8</sup> The PJM TOs argue that the proposed revisions will end the cross-subsidy that zonal NITS customers in PJM have been providing to Border Rate and Non-Zone Service Rate customers because revenue from customers taking service under each of these rates is either directly or eventually credited back to zonal NITS customers.<sup>9</sup> The PJM TOs aver that the proposed revisions do not increase the total cost of providing transmission service in PJM because the increase in the Border Rate and Non-Zone Service Rate are offset by a rate decrease for zonal NITS customers.

7. Specifically, the PJM TOs explain that PJM will calculate the Border Yearly Charge, which is the basis for the kW-year charge for Border Rate service, for both firm and non-firm transmission service, and the MW-year charge for Non-Zone Service.<sup>10</sup> The PJM TOs explain that the methodology to calculate the Border Yearly Charge is set

---

<sup>6</sup> *Id.* at 3-4. The PJM TOs note that under an agreement approved by the Commission resolving issues arising out of the integration of the American Electric Power Companies (AEP), Commonwealth Edison (ComEd), and the Dayton Power & Light Company (Dayton) into PJM, there is no charge under Schedules 7 and 8 for points of delivery within the MISO region. The PJM TOs state that the proposed Tariff revisions do not propose to change the exemption for deliveries to MISO. *Id.* at 3 & n.8, 5 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168 at P 80).

<sup>7</sup> *Id.* at 3-4.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.* at 2-3.

<sup>10</sup> *Id.* at 8; 13. The PJM TOs also propose to include a new definition of Border Yearly Charge in the definitions section of the PJM Tariff. *Id.* at 14.

forth in section 11 of Schedule 7 and is the sum of the revenue requirements each PJM transmission owner uses to determine NITS charges, as set forth in Attachment H to the Tariff, with some adjustments, divided by the sum of each zone's annual peak load from the most recently completed 12-month period ending October 31.

8. The PJM TOs contend that because formula rates for the individual transmission owners vary in how they treat sources of revenue other than NITS charges, such as TECs for regional transmission expansion plan (RTEP) project cost responsibility assigned to other zones, Border Rate revenue, Attachment H-A revenue, and other revenue for transmission service not paid by NITS customers (collectively, Revenue Credits), certain adjustments to individual PJM transmission owner revenue requirements will ensure that the total revenue requirement for Border Rate service reflects the full composite cost of all transmission facilities available for use by Border Rate customers.<sup>11</sup> As a result, the PJM TOs explain, for the Border Yearly Charge calculation, an individual transmission owner's revenue requirement will be increased by the amount of any Revenue Credits used to reduce the NITS charge to zonal network customers. The PJM TOs note that this adjustment is not applicable to individual transmission owners with formula rates that separately credit these revenues to customers or to those using stated rates.<sup>12</sup> The PJM TOs state that the proposed Tariff revisions will include TECs as part of the Border Rate, removing the need for PJM to include TECs as a separate line item charge for Border Rate service.<sup>13</sup> The PJM TOs explain that the payment of the Border Rate, however, does not relieve merchant transmission facilities (MTFs) with firm transmission withdrawal rights (FTWRs) of responsibility for TECs assigned to such MTFs pursuant to Schedule 12 of the PJM Tariff.<sup>14</sup>

9. To prevent an MTF with FTWRs or its customers from being charged twice for the identical TECs included in the Border Rate, the PJM TOs propose to remove those TECs paid in connection with the MTF's FTWRs from the cost of Border Rate service through the operation of a crediting mechanism, the Merchant Transmission Facilities Credit (MTFC), which is equal to the percentage that TECs paid by the MTF represent of the sum of the total revenue requirements included in the Border Rate calculation.<sup>15</sup>

---

<sup>11</sup> *Id.* at 10.

<sup>12</sup> *Id.* at 11.

<sup>13</sup> *Id.* at 8.

<sup>14</sup> *Id.* at 11.

<sup>15</sup> *Id.* at 11-12. Proposed Tariff revisions, Schedule 7, §11(H). The MFTC is equal to the yearly Border Rate Charge multiplied by the total annual TECs applicable to

10. The PJM TOs state that, under the proposed annual updating process for the Border Yearly Charge, PJM shall calculate the Border Yearly Charge as of January 1 each year and post on its website all of the inputs and calculations used to determine the Border Yearly Charge no later than December 1 of each year.<sup>16</sup> The PJM TOs state that the proposed revisions also require PJM to submit the posted information as an informational filing with the Commission. The PJM TOs aver that all of the information necessary to calculate the Border Yearly Charge will be taken from Attachment H or derived pursuant to formula protocols set forth in the relevant sections of Attachment H, each of which was already subject to stakeholder input and/or review by the Commission.<sup>17</sup> The PJM TOs explain that any true-ups or adjustments to inputs will be incorporated into the revenue requirements the following year.<sup>18</sup> The PJM TOs state that PJM is required to correct errors in the Border Yearly Charge if an incorrect input or calculation is discovered.

11. The PJM TOs state that the proposed Tariff revisions also clarify that service at the border of PJM includes service to a point of delivery at an MTF that provides service to a neighboring transmission system.<sup>19</sup> The PJM TOs also state that the proposed Tariff revisions include several ministerial and clean up revision to Schedules 7 and 8.<sup>20</sup>

12. The PJM TOs note that under the proposed Tariff revisions, PJM will publish the first annual update on December 1, 2019 to take effect on January 1, 2020.<sup>21</sup> The PJM TOs request an effective date of the proposed Tariff revisions within sixty days of the date of the filing.<sup>22</sup> The PJM TOs explain that such a date would provide reasonable time for customer to adjust to the new rates and provide certainty regarding future rates.

---

the MTF to which the customer taking point-to-point transmission service for the calendar year divided by the sum of the Attachment H revenue requirements.

<sup>16</sup> *Id.* at 15.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 16.

<sup>19</sup> *Id.* at 11; Proposed Tariff revisions, Schedule 7, § 11(G).

<sup>20</sup> *Id.* at 12-13.

<sup>21</sup> *Id.* at 17; Proposed Tariff revisions, Schedule 7, § 11(A) (specifying that the formula for determination of the Border Year Charge begins with calendar year 2020).

<sup>22</sup> Transmittal Letter at 20.

### **III. Notice of Filing and Responsive Pleadings**

13. Notice of the PJM TOs' filing was published in the *Federal Register*, 84 Fed. Reg. 28,296 (2019), with interventions and protests due on or before July 2, 2019.

14. The Illinois Commerce Commission and the New Jersey Board of Public Utilities (NJ Board) filed notices of intervention. American Electric Power Service Corporation; American Municipal Power, Inc.; Duke Energy Corporation; FirstEnergy Service Company; Hudson Transmission Partners, LLC; Independent Power Producers of New York, Inc. (IPPNY); ITC Lake Erie Connector, LLC; Linden VFT, LLC (Linden); Long Island Power Authority (LIPA); Louisville Gas and Electric Co./Kentucky Utilities Co.; Neptune Regional Transmission System, LLC (Neptune); New Jersey Division of Rate Counsel; New York Power Authority (NYPA); North Carolina Electric Membership Corporation; NRG Power Marketing LLC; and PSEG ER&T LLC and PSEG Power LLC; and Public Service Electric and Gas Company (collectively, PSEG) filed timely motions to intervene. Exelon Corporation, PPL Electric Utilities Corporation, and Helix Ravenswood, LLC filed motions to intervene out of time.

15. Linden,<sup>23</sup> LIPA, Neptune, NYPA, and PSEG filed protests. On July 17, 2019, Linden filed a motion to answer and answer to PSEG's protest. On July 19, 2019, IPPNY filed a motion to answer and answer to Linden's protest. On July 26, 2019, the PJM TOs filed a motion for leave to answer and answer.

#### **A. Protests**

##### **1. Linden Protest**

16. Linden argues that under the PJM TOs' proposal, Linden's rate will increase from its current Border Rate charges of \$6.1 million to approximately \$16 million per year. Linden argues that if the firm Border Rate were to go into effect as proposed, Linden will either become insolvent or be forced to fundamentally change its business model. Linden requests that the Commission reject the PJM TOs' proposal, or in the alternative, set it for hearing and settlement judge procedures and requests that the proposed changes be suspended for the maximum allowable period by law.<sup>24</sup>

---

<sup>23</sup> With its protest, Linden included the affidavit of Paul A. Dumais.

<sup>24</sup> Linden Protest at 16.

17. Linden objects to the new language clarifying that point-to-point transmission service under Schedule 7 to an MTF providing service to a neighboring region constitutes service at the Border of PJM.<sup>25</sup> Linden maintains that it has the option to obtain other services under the PJM Tariff, including an individual transmission owner's zonal point-to-point transmission service under Schedule 7, and that the proposed clarification in the Tariff revisions is an attempt to foreclose that option.<sup>26</sup>

18. Linden also argues that the PJM TOs' proposal is unjust and unreasonable because it seeks to impose on Linden and other similarly situated entities the costs of lower voltage transmission facilities from which they receive no benefit. Specifically, Linden notes that the Border Rate service Linden and Neptune use is only over high-voltage lines within PJM. Linden contends that the Commission could implement a voltage-differentiated rate design that differentiates between customers that only use the high voltage transmission system and customers that rely on both high voltage and low voltage transmission.<sup>27</sup>

19. Linden further argues that the PJM TOs' proposal would result in firm point-to-point service costing more than the weighted average of the NITS zonal rates, despite the higher value of NITS, and thus Linden argues that the firm Border Rate is inconsistent with cost causation principles and is unjust, unreasonable and unduly discriminatory and preferential.<sup>28</sup>

20. Linden notes that there are no Border Rate charges for transmission from PJM to points of delivery within MISO and that similarly, there is no Border Rate-like charge between New York Independent System Operator (NYISO) and Independent System Operator-New England (ISO-NE). Linden further argues the Commission approved the elimination of rates charged for service between PJM and MISO finding that it did not wish to perpetuate rate pancaking for inter-RTO service.<sup>29</sup> Further, Linden argues that the Commission should encourage PJM to work with NYISO to develop a mutually

---

<sup>25</sup> *Id.* at 7.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 9-11.

<sup>28</sup> *Id.* at 12.

<sup>29</sup> *Id.* at 14 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168 at P 80).

agreeable mechanism that would allow PJM to eliminate the Border Rate for transactions between PJM and NYISO.<sup>30</sup>

21. Linden argues that the PJM TOs' proposal to determine the Border Rate only allows interested parties 30 days to review the proposed changes, identify any potential flaws in the calculation, and voice any identified concerns. Linden further argues there is no procedure to make informational requests or to challenge the calculations and that the Commission should reject the PJM TOs' proposal with respect to review protocol, or lack thereof, and to direct them to establish more reasonable protocols.<sup>31</sup>

## 2. PSEG Protest

22. PSEG argues that the PJM TOs' proposal incorrectly suggests that the intent of the current PJM Tariff is for deliveries to an MTF to be considered deliveries to the border of PJM. PSEG argues that the PJM Tariff actually contemplates that such deliveries are made within the zone of the transmission owner where the MTF is located. PSEG argues that MTFs that hold FTWRs could be treated as an exception but that the PJM TOs' proposal fails to make this distinction for three distinct reasons.<sup>32</sup>

23. First, PSEG argues the deliveries to an MTF's terminal within a transmission owner's zone, by definition, are not deliveries to the "border" of PJM and argues power flows do not reach the PJM border until transmitted to that point by the MTF's facilities. Second, PSEG argues that interpreting the PJM Tariff as contemplating that deliveries to an MTF that lacks FTWRs as deliveries to the border of PJM would lead to unfair and inequitable results. Third, PSEG argues while border service could be deemed appropriate under the PJM Tariff for MTFs that hold FTWRs, the factors arguably supporting border delivery treatment are not satisfied when the MTF lacks FTWRs.<sup>33</sup>

24. PSEG argues that the proposed Tariff revisions are unduly discriminatory as they would require MTFs to only take border transmission service. PSEG argues that this practice would advantage transmission customers located in a zone with an MTF that holds FTWRs notwithstanding that an MTF that takes long-term firm point-to-point transmission service imposes the same transmission planning obligations. PSEG argues that for an MTF that lacks FTWRs, the level of an MTF's firm point-to-point

---

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 15.

<sup>32</sup> PSEG Protest at 3.

<sup>33</sup> *Id.* at 3-6.



transmission service reservation also reasonably represents the expected levels of withdrawals, and thus, there is no rational basis for having widely divergent revenue allocations in these two cases.<sup>34</sup>

### 3. NYPA Protest

25. NYPA notes that under the PJM TOs' proposal the costs of all of the PJM TOs' transmission facilities will be incorporated into the proposed Border Rate, including the costs associated with all RTEP projects. NYPA argues that the Commission has previously determined certain RTEP project costs must be allocated to a single zone in order to satisfy the Commission's cost-causation and beneficiary pays principles.<sup>35</sup> As such, NYPA argues the PJM TOs have not shown that the inclusion of the costs of all such facilities in the Border Rate calculation is just and reasonable and that inclusion of such costs in the Border Rate calculation blatantly contradicts the methodology for allocating RTEP project costs set forth in Schedule 12 of the PJM Tariff.<sup>36</sup> Additionally, NYPA argues the PJM TOs' proposal to exclude MISO-PJM border transactions from the Border Rate charge, which incorporates the cost of *all* RTEP projects in the PJM region, including necessarily costs associated with supporting firm service to the MISO border, is unduly discriminatory and preferential.<sup>37</sup>

26. NYPA argues that the PJM TOs' proposal attempts to redefine Border Rate service in a manner that singles out and unduly discriminates against MTFs with points of interconnection within the PJM system. Specifically, NYPA argues that the PJM TOs clarifying language is an attempt to create a separate, and unjustified classification of customers for purposes of extracting a higher point-to-point transmission service rate from such customers.<sup>38</sup> NYPA argues the Commission has previously determined that MTFs with points of interconnection within a PJM zone are comparable to PJM load

---

<sup>34</sup> *Id.* at 8.

<sup>35</sup> NYPA Protest at 4 (citing *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,058, at P 42 (2014) (citing PJM Tariff Schedule 12 § (b)(vi)). NYPA asserts that the Commission has held that it is not inconsistent with Order No. 1000 to allocate RTEP projects costing less than \$5 million "to the zone in which the project is located."

<sup>36</sup> *Id.* at 4.

<sup>37</sup> *Id.* at 5.

<sup>38</sup> *Id.* at 6-7.

zones,<sup>39</sup> and that the PJM TOs' proposal ignores this prior treatment of each MTF as a separate zone for purposes of defining transmission service under Schedule 7. NYPA requests that the Commission find the PJM TOs' revisions to Schedule 7 and Schedule 8 of the PJM Tariff are unjust and unreasonable and must be rejected, or in the alternative, at a minimum, set for hearing.<sup>40</sup>

#### 4. LIPA Protest

27. LIPA argues that the PJM TOs failed to meet their section 205 burden of showing that the proposed rates are just and reasonable, and not unduly discriminatory or preferential. LIPA argues that the PJM TOs submitted a "bare-bones" filing with a single affidavit that does not provide supporting evidence or testimony establishing that the proposal is consistent with cost causation principles. LIPA argues that the PJM TOs' assumption that the Border Rate should include all transmission facilities within the PJM system because such facilities are available to support external transactions is unsupported with evidence and incorrect.<sup>41</sup>

28. LIPA argues that the PJM TOs propose to treat point-to-point transmission service for external transactions as equivalent to network service for purposes of establishing the applicable revenue requirement. LIPA argues that the PJM TOs claim that it is appropriate to calculate the Border Rate's revenue requirement as if the transmission service for exports uses the entire PJM system is incorrect. LIPA argues that its point-to-point transmission service schedules are set for delivery via an identified path and that LIPA has no right to shift, in real-time, the delivery point of its firm point-to-point service to another scheduling node or point in the PJM system.<sup>42</sup>

29. LIPA argues that the proposed MTF credit does not adequately prevent double collection of TECs from MTFs or their customers. According to LIPA, to correct the double charging of RTEP project costs to FTWRs holders, the proposal must either (1) remove from the Border Rate calculation applicable to a FTWR holder the revenue requirement of each RTEP projects for which such entity already pays an allocated share

---

<sup>39</sup> *Id.* at 7 (citing *PJM Interconnection, L.L.C.*, Opinion No. 503, 129 FERC ¶ 61,161, at P 73 (2009), *reh'g denied*, 139 FERC ¶ 61,243 (2012)).

<sup>40</sup> *Id.* at 8-9.

<sup>41</sup> LIPA Protest at 6-7.

<sup>42</sup> *Id.* at 8-9.

of costs via TECs, or (2) directly credit the FTWR holder for the TECs that it pays as a dollar-for-dollar adjustment to its Border Rate charge.<sup>43</sup>

## 5. Neptune Protest

30. Neptune argues that the PJM TOs' Border Rate proposal ensures that the firm point-to-point Border Rate will never include any credits to offset the rate, which Neptune argues is unduly discriminatory and preferential.<sup>44</sup> Neptune argues this failure to include credits is contrary to Schedule 12 of the PJM Tariff which states that revenue from TECs for a billing month shall be credited to firm point-to-point transmission service customers.<sup>45</sup>

31. Neptune contends that non-firm transmission service is lower quality service than firm transmission service or NITS network service provided to load in PJM, yet the PJM TOs propose the same rate for non-firm and firm transmission service Border Rate, and a higher rate than NITS service.<sup>46</sup> Neptune argues that while the PJM TOs state that the revisions to the non-firm point-to-point transmission service Border Rate is "a maximum rate" that "could be charged" in the event that the existing discount is changed, it is a new rate that has not been shown to be just and reasonable. Neptune also argues that it is unjust and unreasonable for the PJM TOs to include 100 percent of the RTEP transmission facilities in the non-firm point-to-point Border Rate because it violates cost causation principles and non-firm point-to-point service is not responsible for any RTEP charges.<sup>47</sup>

32. Neptune argues that the PJM TOs' proposed Tariff revisions to Schedule 7, section 11(G) wrongly mandate that all MTFs customers must take point-to-point service to the border of PJM even though they are not actually taking service to the border of PJM. Neptune contends that the MTFs are within PJM, customers take point-to-point service to a point of delivery within PJM, and then take a separate service over the MTF under the PJM Tariff, and that separate service is to the border of PJM. Neptune suggests that MTF customers should be permitted to choose whether to take point-to-point service

---

<sup>43</sup> *Id.* at 13-14.

<sup>44</sup> *Id.* at 6.

<sup>45</sup> *Id.* (quoting PJM Tariff, Schedule 12, paragraph (e)).

<sup>46</sup> *Id.* at 8-11.

<sup>47</sup> *Id.* at 10.

to the PJM zone in which their point of delivery is located, or alternatively, to select point-to-point service using the Border Rate, or select a zonal point-to-point service.<sup>48</sup>

33. Neptune argues that the MTF credit in Schedule 7, section 11(H) does not resolve the problem of double charging the MTFs and their customers for RTEP charges and TECs.<sup>49</sup> Neptune argues that the crediting mechanism is structurally flawed and would result in MTFs with FTWRs and their customers being charged twice for the same allocation of RTEP charges. Neptune contends that MTFs and their customers with FTWRs could be charged the “higher of” the two charges but not charged twice.<sup>50</sup>

## **B. Answers**

### **1. Linden Answer**

34. Linden agrees with PSEG that Linden is currently eligible to pay the PSEG zonal rate because Linden’s terminal is located within the PSEG zone. Linden argues PSEG correctly asks the Commission to reject the proposed Tariff revisions’ “clarification”, seeking to make MTFs ineligible to pay the zonal rate of the zone in which it is located. Linden also agrees with PSEG’s argument that there is no operational reason for distinguishing between Border Rate service and zonal rate service under the Tariff and that Linden should have the option to take either the Border Rate or the zonal rate of the zone in which their receiving station is allocated.<sup>51</sup>

35. Linden disagrees with PSEG’s assertion that an MTF lacking FTWRs must take the zonal rate of the zone in which it is located. Linden notes that it currently pays the firm Border Rate and has a PJM Transmission Service agreement under which it has been paying the firm Border Rate. Linden argues PSEG inaccurately relies on FERC Opinion Nos. 503 and 503-A in arguing that the Border Rate is unavailable to MTFs without FTWRs, but Linden argues those Opinions are inapposite here because they only relate to MTFs holding FTWRs. Linden argues that in both Opinions, the Commission’s reasoning applied only to MTFs holding FTWRs and did not discuss MTFs holding non-firm transmission withdrawal rights. Further, Linden argues MTFs like itself that receive

---

<sup>48</sup> *Id.* at 13-14.

<sup>49</sup> *Id.* at 15-16.

<sup>50</sup> *Id.* at 16-17.

<sup>51</sup> Linden Answer at 5-6.

energy within the PSEG zone and then deliver that energy across the border over their MTFs retain the option to continue to pay the Border Rate for this service.<sup>52</sup>

## 2. IPPNY Answer

36. IPPNY argues that the PJM TOs' proposal to update the Border Rate appears intended to require MTFs that have been able to avoid their fair allocation of RTEP costs by taking service through a rate that has not been updated in many years.<sup>53</sup> IPPNY argues that the PJM TOs have justifiably sought to update the Border Rate to reflect the changes to the PJM system over the past 15 years.<sup>54</sup> IPPNY also argues that not charging Linden its appropriate firm transmission costs will artificially suppress installed capacity (ICAP) prices in New York to the detriment of suppliers that may otherwise be economic or that should be receiving a higher payment reflective of the value of ICAP on the New York system. IPPNY argues that the fact Linden's MTF may ultimately be uneconomic under current market conditions simply means that other entities should provide ICAP to New York until such time that the price rises to a level that permits Linden to pay its transmission service costs and provide ICAP over its MTF to New York.<sup>55</sup>

37. IPPNY argues the Commission should reject Linden's arguments that the Border Rate should be eliminated. IPPNY contends that the basis for Linden's assertions are fundamentally different than the reason MTFs using point-to-point transmission service to provide service to a neighboring region are charged the Border Rate.<sup>56</sup>

## 3. PJM TOs Answer

38. The PJM TOs argue that transmission service to an MTF delivering power to load outside of PJM is, and has always been, Border Rate Service.<sup>57</sup> The PJM TOs dismiss Linden's and Neptune's arguments that this service should be considered delivery to the zones where the given MTF interconnects with PJM, noting that the Commission has found similar through-and-out service in the Southwest Power Pool (SPP) is "a different

---

<sup>52</sup> *Id.* at 6-7.

<sup>53</sup> IPPNY Answer at 3.

<sup>54</sup> *Id.* at 6-8.

<sup>55</sup> *Id.* at 9.

<sup>56</sup> *Id.* at 10-11.

<sup>57</sup> PJM TOs Answer at 4.

type of transmission service” than delivery to different loads within SPP.<sup>58</sup> Furthermore, the PJM TOs state that “power transmitted over PJM’s wires to [Linden or Neptune] goes only to one place – to NYISO, to serve load there.”<sup>59</sup>

39. The PJM TOs reject PSEG’s point that MTFs are “equivalent to Zones for purposes of assigning the costs of Regional Transmission Expansion Plan projects” as irrelevant to this proceeding. The PJM TOs argue that TECs are assessed under Schedule 12 based on an MTF’s FTWRs, and are a separate service from point-to-point transmission service paid for through the Border Rate under Schedule 7. The PJM TOs add that an MTF that holds no FTWRs would have “no liability for TECs in connection with its status as an MTF.”<sup>60</sup>

40. The PJM TOs refute PSEG’s assertion that Linden’s point-to-point transmission service is in the PSEG Zone, noting that such service is to the border of PJM. Moreover, the PJM TOs state that “rate design rights [for such services] vest exclusively in the PJM Transmission Owners.”<sup>61</sup> In addition, the PJM TOs contend that PSEG is not necessarily responsible for all reliability upgrades necessary to support a Border Rate reservation, and that other transmission owners may be responsible for constructing a project when PJM determines it to be the best action for the transmission system overall. The PJM TOs note that these responsibilities have been in place since the Border Rate was established, and such costs are a “foreseeable consequence” of joining the PJM transmission system.<sup>62</sup>

41. The PJM TOs contend that both SPP and MISO use similar average rate methodologies, and that the Commission has previously found such policies are consistent with the cost causation principle. The PJM TOs then reject Linden, LIPA, and NYPA’s claims that point-to-point transmission service requires a specified path, noting that Linden’s and Neptune’s Transmission Service Agreements (TSAs) only list PJM as the points of receipt. This, the PJM TOs argue, confirms that the “entire PJM

---

<sup>58</sup> *Id.* at 5.

<sup>59</sup> *Id.* at 6.

<sup>60</sup> *Id.* at 6-7.

<sup>61</sup> *Id.* at 7.

<sup>62</sup> *Id.* at 8-9.

Transmission System supports firm export transactions by maintaining reliability and delivering the supportive ancillary services.”<sup>63</sup>

42. The PJM TOs refute Linden’s and Neptune’s arguments that the Border Rate should never be higher than the zonal NITS rates, stating that the two forms of transmission service are not comparable, and thus do not need to have comparable rates. The PJM TOs also refute Neptune’s related contention that it is improper to credit Border Rate revenues to NITS customers. Instead, the PJM TOs argue, that it is appropriate for NITS customers to receive any additional transmission revenues for use of the PJM transmission system because NITS customers are the ones “who largely pay for the cost of constructing and maintaining the PJM Transmission System.” The PJM TOs also observe that “revenues from Border Rate service have always been credited to NITS customers, and the PJM TOs are not proposing any changes to these crediting mechanisms.”<sup>64</sup>

43. Similarly, the PJM TOs dismiss Neptune’s and Linden’s arguments that the MTFC offered to MTFs that take Border Rate service and hold FTWRs is insufficient. The PJM TOs note that TECs assessed to an MTF due to its holding FTWRs are not the same as TECs factored into the sum of all Attachment H revenue requirements, and “the MTFC removes only those TECs for which an MTF is already responsible for under Schedule 12 of the Tariff.” This, the PJM TOs argue, addresses the double-counting concerns raised by Neptune and Linden.<sup>65</sup>

44. The PJM TOs reject Linden’s argument that the Border Rate annual update process in the proposed Tariff revisions is inadequate. The PJM TOs contend that, because the Border Rate is calculated as the sum of all PJM transmission owner revenue requirements, all necessary information is available in each individual transmission owner’s most recent formula rate annual update filed with the Commission, Attachment H stated rate filings approved by the Commission, or posted on PJM’s website. The PJM TOs argue that unlike an individual PJM TOs’ formula rate based on cost of service inputs that have not previously been reviewed by customers, each and every input to the Border Rate will be taken directly from either Attachment H to the PJM Tariff or from an annual formula rate informational filing or posting that is already subject to customer review.<sup>66</sup>

---

<sup>63</sup> *Id.* at 11-12.

<sup>64</sup> *Id.* at 13-14.

<sup>65</sup> *Id.* at 17-18.

<sup>66</sup> *Id.* at 19-20.

#### IV. Deficiency Letter, Response, and Pleadings

##### A. Deficiency Letter

45. On August 8, 2019, Commission staff issued a deficiency letter, requesting additional information from the PJM TOs related to the proposed Border Rate methodology and protocols, including how Border Rate customers are allocated and charged TECs; whether transmission service charges depend on whether an MTF has FTWRs; treatment of MTFs as a zone within PJM; under what procedures could a customer make informational requests or challenges to the calculations; how Border Rate charges will be allocated among transmission owners; whether the NITS charges for each zone include only costs allocable to each zone or whether other charges were included; the transmission options available to MTFs for both import and export transactions; the proposed crediting mechanism for customers taking point-to-point service to a point of delivery at an MTF holding FTWRs, among other questions.

##### B. Deficiency Response

46. On September 6, 2019, the PJM TOs submitted their response to the deficiency letter. The PJM TOs state that the PJM TOs are not the transmission provider and do not administer the PJM Tariff, and therefore, they are not responsible for reviewing the specific charges PJM assesses to individual transmission customers, including Border Rate customers. The PJM TOs note that PJM Tariff rates applicable to specific point-to-point transmission service reservations are listed on the PJM OASIS site and are available to all PJM stakeholders.<sup>67</sup> The PJM TOs contend that the proposed Tariff revisions are intended to address the fact that the current Border Rate does not reflect the majority of TECs assessed to recover transmission projects under the RTEP. The PJM TOs explain that by including the TECs in the Border Yearly Charge there will be no need to separately calculate TECs applicable to Border Rate customers and no separate TECs will need to be charged. The PJM TOs explain that a point of delivery at the interconnection between the PJM transmission system and an MTF that delivers power to load outside of PJM is a point of delivery at the border of PJM because the power will be exported to serve load outside of PJM.<sup>68</sup>

---

<sup>67</sup> Response to Deficiency Letter at 3.

<sup>68</sup> *Id.* at 4.



47. The PJM TOs state that the Linden VFT and Hudson business practice documents and PJM manuals indicate that to export power from PJM over the MTFs, both Border Rate service and service over the MTF is required.<sup>69</sup> The PJM TOs explain that customers of an MTF are not paying for duplicative services because the Border Rate service pays for the use of the PJM transmission system, while the MTF charges are a negotiated rate for use of only the specific MTF facilities, they are separate services. The PJM TOs also state that the MTF costs of service are not included in any PJM transmission system cost of service recovered under Schedules 7 or 8 or Attachment H.<sup>70</sup> The PJM TOs argue that TECs applicable to a customer based on its Border Rate Service would not overlap or duplicate the TECs applicable by virtue of the FTWRs assigned to that customer.

48. Regarding the MTFC, the PJM TOs state that any TECs assigned to an MTF because of its FTWRs will be removed from the calculation of the applicable Border Rate through the MTFC.<sup>71</sup> The PJM TOs explain that although expressed as a percentage, the credit could be understood as removing any specific TECs already paid in connection with the MTF from the calculation of the Border Rate, i.e., the calculation would be the same as the TECs paid in connection with the MTF being removed from the revenue requirement calculation used in the Border Rate calculation for the MTF or its customer assigned its TECs.<sup>72</sup> The PJM TOs contend that the purpose of the MTFC is not to remove the entire revenue requirements of projects that customers may rely on for both FTWRs and Border Rate service, but rather it removes only those TECs for which an MTF is already responsible for under Schedule 12.<sup>73</sup>

### **C. Notice of Deficiency Response**

49. Notice of the PJM TOs' Deficiency Letter response in Docket No. ER19-2105-001 was published in the *Federal Register*, 84 Fed. Reg. 48,349 (2019), with interventions and protests due on or before September 27, 2019. Linden, Neptune, NJ Board, and PSEG filed timely protests. LIPA and NYPA filed timely comments. The PJM TOs, Linden, and NJ Board filed answers.

---

<sup>69</sup> *Id.* at 5-6, 10, 12, 18.

<sup>70</sup> *Id.* at 8-10.

<sup>71</sup> *Id.* at 11.

<sup>72</sup> *Id.* at 17-18.

<sup>73</sup> *Id.* at 19.

**D. Protests of Deficiency Response & Answer to Protests**

50. Linden, LIPA, Neptune, NYPA, and PSEG reiterate arguments raised in their original protests of the proposed Tariff revisions. PSEG argues that the PJM TOs incorrectly rely on business rules to support their claim that the PJM Tariff contemplates payment of a Border Rate for firm service to an MTF. PSEG argues however that there is nothing in these particular business rule provisions that support their claim that the Border Rate is appropriate and would preclude the application of the zonal rate.

51. LIPA argues that the procedures for updating the Border Rate Charge are insufficient and fall well below accepted protocols and procedures the Commission approved for annual updates to a formula rate. LIPA argues that the appropriate protocols for implementation of the formula rate methodology and future updates to the Border Rate is a dispute of material fact in this proceeding and such protocols must be either rejected or resolved via settlement and hearing procedures.<sup>74</sup>

52. LIPA argues that the PJM TOs provide no justification for waiver of the Commission's notice provisions and argue the earliest possible effective date that may be granted for the Border Rate proposal would be November 5, 2019, sixty days after the Deficiency Response. LIPA argues that it is appropriate to impose the maximum five-month suspension period, subject to refund and argues that the appropriate effective date for the PJM TOs Border Rate is one that is five months from sixty days after the Deficiency Response of April 5, 2020, subject to refund if one is granted at all.<sup>75</sup>

53. NJ Board argues that the PJM TOs' proposed Tariff revisions to Schedule 7, section 11(G), are incorrectly characterized as a technical clarification by the PJM TOs and would further shift cost responsibility assignments onto native New Jersey load customers and exacerbate unjust and unreasonable rates. NJ Board argues that past cost allocation practices, i.e., the assignment of TECs, ensured that an appropriate amount of charges were assigned and ensured incumbent transmission owners were compensated depending on the transmission customers' actual use of the system. NJ Board argues the PJM TOs' proposal ensures no such assignment of TEC costs for long-term point-to-point transmission service customers and does not otherwise recognize the planning obligation of the local zone. As such, NJ Board argues the PJM TOs' proposal does not ensure a commensurate assignment of costs relative to

---

<sup>74</sup> LIPA Deficiency Response Comments at 8-10.

<sup>75</sup> *Id.* at 11-13.

the benefits received from a transmission customer's inclusion in the local zone's planning forecast.<sup>76</sup>

54. NJ Board states that the Commission has several dockets currently pending addressing changed circumstances along the NYISO-PJM seam. NJ Board requests that the Commission initiate a section 206 proceeding to holistically examine foundational issues along the PJM-NYISO seam that have led to this proceeding and several other proceedings.

55. In answering the protests and comments filed with respect to the Deficiency Response, the PJM TOs request that the Commission approve the proposed Tariff revisions without delay. The PJM TOs contend that the Commission should not tie the proposed Tariff revisions in calculating the Border Rate with issues relating to the assignment of costs under Schedule 12 of the PJM Tariff that may be pending in other proceedings. While the PJM TOs contend that issues raised by the protests already have been addressed in prior comments, the PJM TOs state that if the Commission accepts the proposed Tariff revisions, the PJM TOs commit to revise Schedule 7 on compliance to clarify that the MTFC will also be available to MTFs with either FTWRs or non-firm transmission withdrawal rights that have been assigned TECs for Targeted Market Efficiency Projects under Schedule 12 of the PJM Tariff.<sup>77</sup>

56. In answering the PJM TOs, Linden reiterates its arguments that it has the option to take zonal transmission service and that the proposed Tariff revisions would prevent Linden and other MTFs from taking zonal transmission service from the zone in which they are located. As such, Linden argues that the proposed "clarification" in the Tariff revisions is not a rate design change but a change to zonal transmission service eligibility.<sup>78</sup>

57. In answering the PJM TOs, NJ Board reiterates its arguments that the issues along the NYISO-PJM seam are plainly intertwined with the issues in this proceeding and requests that the Commission open further proceedings to address these issues.<sup>79</sup>

---

<sup>76</sup> NJ Board Deficiency Response Protest at 4-6.

<sup>77</sup> PJM TO Answer to Deficiency Response Protests at 13-14.

<sup>78</sup> Linden Answer to PJM Answer to Deficiency Response Protests at 2-3.

<sup>79</sup> NJ Board Answer to PJM Answer to Deficiency Response Protests at 3-4.

## V. Discussion

### A. Procedural Matters

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

59. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant Exelon Corporation's, PPL Electric Utilities Corporation's, and Helix Ravenswood, LLC's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absences of undue prejudice or delay.

60. 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 because they have provided information that assisted us in our decision-making process.

### B. Substantive Matters

61. In its filing, the PJM TOs propose to replace the existing stated rate for Border Rate service with a mechanism that updates annually to reflect the addition of new transmission investment as well as new transmission owners. The PJM TOs also propose to clarify the classification of Border Rate service, including which customers take the service. Our preliminary analysis indicates that the PJM TOs' proposed Tariff revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Except for the issues summarily discussed below, the PJM TOs' proposal raises issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Accordingly, we accept the PJM TOs' proposed Tariff revisions for filing, suspend them to become effective January 1, 2020, subject to refund, and establish hearing and settlement judge procedures.

62. As noted, while we are setting the filing for hearing, we summarily dispose of several contested issues here.

63. Linden contends that the proposed Border Rate is unjust and unreasonable because it would require Linden to pay for lower voltage transmission facilities that it does not use. We disagree. As an initial matter, the Border Rate does not depend on source or

sink points,<sup>80</sup> and Linden has provided no evidence that its Border Rate service agreement limits its use to high voltage lines.<sup>81</sup> Indeed, as the PJM TOs note, the Border Rate reflects the fact that a transmission customer may take Border Rate service from any point within PJM, and that the entire PJM transmission system, including lower voltage transmission facilities, supports the export transactions.<sup>82</sup> The Border Rate Service, therefore, permits the exporter to access generation anywhere in PJM and such transmission may utilize any of the PJM facilities, including lower voltage lines.<sup>83</sup> Moreover, since its inception, the Border Rate has included the costs of all transmission facilities in PJM, and the PJM TOs have not proposed any changes to the composition of transmission facilities included in the rate for this service.

64. Certain protestors also oppose the provision in Schedule 7 that states “Point-to-Point Transmission Service at the Border of PJM includes service to a Point of Delivery at a Merchant Transmission Facility that provides service to a neighboring transmission system.”<sup>84</sup> The protests contend that this statement improperly implies that customers taking point-to-point transmission service with a point of delivery at an MTF must subscribe to Border-Rate Service. The protests further contend that this is a change to the availability of zonal point-to-point transmission service to these same customers. In reply, the PJM TOs contend that this statement is intended to clarify that transmission service under Schedule 7 to an MTF providing service to a neighboring transmission system constitutes service at the border of PJM.

65. We find the PJM TOs’ proposed classification of service with a point of delivery at an MTF that provides service to a neighboring transmission system as Border-Rate service to be just and reasonable. The power that is delivered to the MTF that provides

---

<sup>80</sup> Transmittal at 3. As previously noted, the border rate does not apply to any reserved capacity with a point of delivery in the MISO.

<sup>81</sup> Linden also has reserved the right in its Tariff to resell its Border Rate Service to its customers, and the customers purchasing its service may well utilize lower voltage lines even if Linden does not.

<sup>82</sup> PJM TOs Answer at 11-12.

<sup>83</sup> The PJM TOs also state that this is consistent with Commission precedent. PJM TOs Answer to Deficiency Response Protests at 11 (citing *Southwest Power Pool, Inc.*, 142 FERC ¶ 61,070, at PP 28-31 (2013)).

<sup>84</sup> Proposed Tariff revisions, Schedule 7, § 11(G).

service to a neighboring transmission system goes to serve load on another system—that is, as the Commission has previously defined, what constitutes through-and-out service.<sup>85</sup> In contrast, as the Commission has previously determined, zonal point-to-point or NITS service is only applicable to deliveries of power that are consumed within that zone.<sup>86</sup> Therefore, because the load ultimately being served by an MTF that provides service to a neighboring transmission system is external to PJM, classifying service to the MTF as Border Rate service is reasonable. Indeed, current customers of such an MTF, under the current tariff and service agreements, are taking Border Rate service with a point of delivery at an MTF.<sup>87</sup> Further, we do not agree with NYPA’s argument that transmission service under the Border Rate is inconsistent with the Commission’s previous determination in Opinion No. 503.<sup>88</sup> Specifically, NYPA contends that the Commission has previously determined that MTFs with points of interconnection within a PJM zone are comparable to PJM load zones, and that the proposed Tariff classification that transmission service under the Border Rate includes service to an MTF that provides service to a neighboring transmission system ignores this prior treatment of each MTF as a separate zone for purposes of defining transmission service. In Opinion No. 503, the Commission recognized that, for the purposes of planning and the assignment of the costs of transmission facilities needed to ensure deliveries to the MTF, “[MTFs] and transmission zones are similar because they withdraw energy from the transmission grid in the same way and have the same effect on the transmission grid.”<sup>89</sup> While we agree with NYPA that the PJM TOs treated MTFs as zones for planning and cost allocation in Order No. 503, they have always treated transmission service across the MTFs that provide service to a neighboring transmission system as Border Rate service, and we do not find continuation of such treatment unjust and unreasonable in this proposal. Accordingly, the proposed Tariff revisions do not present an inconsistency with Opinion No. 503.

---

<sup>85</sup> See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,244 (2011).

<sup>86</sup> See, e.g., *Southwest Power Pool, Inc.*, 142 FERC ¶ 61,070 at P 30.

<sup>87</sup> See PJM TOs Deficiency Response at 5 & Ex. 1 (citing to OASIS records indicating that reservations for delivery to MTFs for both firm and non-firm Border Rate service); Linden Protest of Deficiency Response at 4 (stating that Linden currently pays \$18,888 per kW per year for its point-to-point transmission service reservation, which is the currently Border Rate yearly charge).

<sup>88</sup> NYPA Protest at 7.

<sup>89</sup> Opinion No. 503, 129 FERC ¶ 61,161 at PP 72- 73.

66. Finally, several protests raise a concern that the proposal does not meet the standards for formula rate protocols because the Border Rate annual update process does not allow enough opportunity for review of the inputs to the Border Rate calculation prior to becoming effective each year. The proposed Tariff revisions replace the stated Border Rate with an updating mechanism with inputs derived from either Attachment H of the PJM Tariff or from an annual formula rate informational filing or posting, each of which is already subject to customer review. Since each of the PJM TO's formula rates already are subject to challenge, the annual formula rate informational filings are the appropriate proceedings in which to review inputs to the Border Rate updating mechanism. We do not see a need for additional protocols for each of the PJM TO's formulas. However, the instant filing lacks clarity regarding the process by which parties can challenge or confirm PJM's calculation of the Border Rate from the PJM TO's formulas, and we set that issue for hearing and settlement along with the remainder of issues not summarily addressed here.

67. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>90</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.<sup>91</sup> The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The PJM TOs' proposed Tariff revisions are hereby accepted for filing and suspended to become effective January 1, 2020, subject to refund, as discussed in the body of this order.

---

<sup>90</sup> 18 C.F.R. § 385.603 (2019).

<sup>91</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the PJM TOs' proposed Tariff revisions, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2019), the Chief Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the participants decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the participants with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.



Document Content(s)

ER19-2105-000.DOCX.....1-24