

161 FERC ¶ 61,264
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Linden VFT, LLC

Docket No. EL17-90-000

v.

Public Service Electric and Gas Company
and PJM Interconnection, L.L.C.

ORDER GRANTING COMPLAINT, IN PART

(Issued December 15, 2017)

1. On September 18, 2017, Linden VFT, LLC (Linden),¹ pursuant to section 206 of the Federal Power Act (FPA),² filed a complaint (Complaint) contending that Public Service Electric and Gas Company (PSEG) is unreasonably withholding its consent to an amendment to the existing Linden interconnection service agreement (Existing ISA) between Linden, PJM Interconnection, L.L.C. (PJM), and PSEG to allow Linden to convert Firm Transmission Withdrawal Rights (Firm TWRs) to Non-Firm Transmission Withdrawal Rights (Non-Firm TWRs).³ Additionally, or alternatively, Linden contends that the PJM Open Access Transmission Tariff (tariff or OATT) is unjust and unreasonable to the extent that it does not permit a merchant transmission facility

¹ Linden owns and operates a controllable alternating-current Merchant Transmission Facility that connects PJM Interconnection, L.L.C. (PJM) with New York Independent System Operator (NYISO).

² 16 U.S.C. §§ 824e (2012).

³ See Service Agreement No. 3579, *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,070 (2013).

Owner to reduce all of its Firm TWRs to Non-Firm TWRs without an amendment to its ISA or the consent of the transmission owner that is party to that agreement.⁴

2. As discussed below, and based on the filings described herein, we find that the Existing ISA is unjust and unreasonable insofar as it does not permit Linden to convert its Firm TWRs to Non-Firm TWR.

I. Background

3. PJM's Open Access Transmission tariff (tariff or OATT) provides merchant transmission facilities with the right to elect TWRs in lieu of other transmission rights and to request either Firm or Non-Firm TWRs.⁵ Firm TWRs allow the merchant transmission facility to schedule energy and capacity withdrawals from the PJM system.⁶ 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 allow the merchant transmission facility to schedule transmission service on an as-available basis and are subject to curtailment.⁷

⁴ Firm Transmission Withdrawal Rights are defined as the rights to schedule energy and capacity withdrawals from a Point of Interconnection of a Merchant Transmission Facility with the Transmission System. Non-Firm Transmission Withdrawal Rights are defined as the rights to schedule energy withdrawals from a specified point on the Transmission System. *See* PJM OATT § I, OATT Definitions 1.13A,E-F, 5.0.1 and L-M-N, 14.0.0.

⁵ Interconnection customers can elect TWRs in lieu of Incremental Deliverability Rights, Incremental Auction Revenue Rights, Incremental Capacity Transfer Rights, and Incremental Available Transfer Capability Revenue Rights. *See* PJM OATT § 232, Transmission Injection Rights and Transmission Withdrawal Rights.

⁶ Firm TWRs have rights similar to those under Firm Point-to-Point Transmission Service. Firm TWRs are rights to schedule energy and capacity withdrawals between a point of interconnection of a merchant transmission facility with the transmission system that can only be awarded to a merchant transmission facility, whereas Firm Point-to-point Transmission Service is reserved or scheduled energy between specified Points of Receipt and Points of Delivery for transmission customers generally. *See* PJM OATT § I, OATT Definitions 1.13A, E-F, 5.0.1 and Definitions L-M-N, 14.0.0. *See also* PJM OATT § II, Point-to-Point Transmission Service.

⁷ *See* PJM OATT § I, OATT Definitions L-M-N, 14.0.0, Non-Firm Transmission Withdrawal Rights.

4. Once a merchant transmission facility has elected to obtain TWRs rather than another type of transmission rights, PJM determines the necessary upgrades to support the Firm or Non-Firm TWRs requested through its interconnection process.⁸ Upon receiving an interconnection request, PJM undertakes feasibility and system impact studies, and based on these costs, the merchant transmission facility decides the level of Firm TWRs it wishes to obtain. The interconnecting merchant transmission facility is assigned the costs of the Merchant Network Upgrades that would not have been incurred “but for” the interconnection request.⁹ The merchant transmission facility, PJM, and the transmission owner to which the facility will be interconnected enter into a three-party ISA establishing the costs and conditions of the interconnection. In addition, a merchant transmission facility is responsible for the costs of any post-interconnection network upgrades that are included in the Regional Transmission Expansion Plan (RTEP) necessary to support the merchant transmission facility’s Firm TWRs.¹⁰

5. The Existing ISA sets out the rights and responsibilities of PJM, Linden, and PSEG with respect to the interconnection to the PJM system of Linden’s facility, a 315 megawatt (MW) merchant transmission project consisting of three 105 MW variable frequency transformers connected between the PSEG system and the Consolidated Edison Company of New York, Inc. system. On August 9, 2017, PJM, at the request of Linden, filed, under section 205 of the FPA,¹¹ an unexecuted, amended ISA between PJM, Linden, and PSEG. Linden sought to amend its Existing ISA to convert its

⁸ PJM OATT § 232.3, Determination of Transmission Injection Rights and Transmission Withdrawal Rights to be Provided to Interconnection Customer.

⁹ *PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,277, at P 4 (2003). Merchant Network Upgrades are additions or upgrades to, or replacement of, existing transmission system facilities by or on behalf of a merchant transmission facility developer. *See* PJM OATT § I, OATT Definitions - L - M - N, 11.0.0. In exchange for their Merchant Network Upgrades, merchant transmission facilities receive Firm TWRs and Financial Transmission Rights. *See* PJM Filing, ER03-405-000 at 12 (identifying transmission-related rights to which merchant transmission facility developers may be entitled), PJM OATT, 206.5 Estimates of Certain Upgrade-Related Rights.

¹⁰ *See* PJM OATT § Schedule 12 (b), and PJM OATT § 232.2, Right of Interconnection Customer to Transmission Injection Rights and Transmission Withdrawal Rights. *See also*, *PJM Interconnection, L.L.C.*, Opinion No. 503, 129 FERC ¶ 61,161 (2009) (finding that merchant transmission facilities should be responsible for the costs of maintaining network reliability, including RTEP costs, based on their Firm TWRs).

¹¹ 16 U.S.C. § 824d (2012).

330 MW of Firm TWRs to Non-Firm TWRs.¹² On October 5, 2017, the Commission rejected PJM's filing, finding that neither the Existing ISA nor PJM's tariff permitted PJM to file, under section 205, an unexecuted amended ISA with modifications requested by an interconnection customer, noting that subsequent to the filing of amendments to the Linden ISA, Linden filed its Complaint.¹³ The Commission stated that it would address concerns related to Linden's request to convert its Firm TWRs to Non-Firm TWRs in proceedings related to the Complaint.

II. Linden Complaint

6. In its Complaint, Linden argues that PSEG is unreasonably withholding its consent to the amendment of the Existing ISA, which constitutes an abuse of power and violates principles of open access.¹⁴ In support of its request that the Commission direct PSEG to consent to the amendment to the Existing ISA, Linden argues that PSEG has not identified a legitimate objection to Linden's request to amend the Existing ISA.¹⁵ Linden also states that it has fully paid for the network upgrades necessary to support its Firm TWRs. Linden argues that there are no reliability concerns or operational issues raised as a result of its request to reduce the level of service from Firm TWRs to Non-Firm TWRs, and, because PJM is not obligated to plan to support Non-Firm TWRs, PJM will not need to plan any additional upgrades as of result of it request. Linden adds that its transmission facility will remain fully controllable by PJM, and in the event of a reliability or other operational issue, flow can be shut off consistent with applicable rules and procedures.¹⁶

7. Linden analogizes TWRs with Point-to-Point Transmission Service in which transmission service customers are free to select between firm and non-firm service without incurring additional non-firm transmission service charges or executing a new service agreement.¹⁷ Linden specifically identifies that those entities owning and operating generation facilities are free to convert Firm Point-to-Point

¹² PJM made this filing under Docket No. ER17-2267-000.

¹³ *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,021 (2017).

¹⁴ Complaint at 9-10.

¹⁵ *Id.* at 11.

¹⁶ *Id.* at 11-12.

¹⁷ *Id.* at 12.

Transmission Service to non-firm transmission service without amending their interconnection agreements.¹⁸

8. Linden further contends that PSEG could not have reasonably relied on an allocation of costs to Linden for post-interconnection network upgrades.¹⁹ Linden argues that, under the PJM tariff, cost responsibility assignments for RTEP projects are based on Firm TWRs, and are updated annually. Linden argues that there is nothing in the tariff that requires or even suggests that costs could be allocated for the life of an upgrade based on the Firm TWRs held by merchant transmission facilities when the project is included in the RTEP.²⁰ Linden notes that PSEG admits that Linden could unilaterally terminate the Existing ISA.²¹ Linden contends that the Commission should not allow PSEG to withhold consent to the amendment to the Existing ISA for financial reasons. Linden further argues that concerns related to cost responsibility assignments are irrelevant to its request to reduce the level of service of its TWRs.

9. In addition, or alternatively, Linden requests that the Commission direct PJM to revise its tariff to permit merchant transmission facilities to unilaterally reduce the service level of their TWRs without requiring an amendment to the Existing ISA.²² Linden maintains that the tariff establishes procedures in which a merchant transmission facility may request TWRs and elect the associated level of service; specifically, firm, non-firm, or some combination of the two. Linden contends that although the Commission may already interpret the tariff to provide merchant transmission facilities with the unilateral right to reduce their Firm TWRs to Non-Firm TWRs without requiring an amendment to an Existing ISA, this is not explicitly provided for in the tariff.²³

¹⁸ *Id.* at 13.

¹⁹ *Id.* at 14.

²⁰ *Id.* at 15.

²¹ *Id.* at 16.

²² *Id.* at 17. Linden requests that if an amendment is necessary, the tariff should be amended to specify that the merchant transmission facility has the right to file an unexecuted ISA. *Id.* at 21.

²³ *Id.* at 19.

III. Notice of Filing and Responsive Pleadings

10. Notice of the Complaint was published in the *Federal Register*, 82 Fed. Reg. 44,766 (2017), with interventions and protests due on or before October 10, 2017.

11. Notice of intervention was filed by New Jersey Board of Public Utilities (New Jersey Board). Timely motions to intervene were filed by FirstEnergy Service Company; Exelon Corporation; Monitoring Analytics;²⁴ Public Citizen, Inc.; Hudson Transmission Partners, LLC (HTP);²⁵ Consolidated Edison Company of New York, Inc.; Long Island Power Authority; PPL Electric Utilities Corporation; Brookfield Energy Marketing LP; American Electric Power Service Corporation; New York Power Authority; ITC Lake Erie Connector, LLC; and City of New York.

12. PJM filed an answer to the Complaint. PJM states that it will comply with any findings and directives that the Commission reasonably requires. PJM requests that should the Commission allow Linden to amend its Existing ISA to convert its Firm TWRs to Non-Firm TWRs, the Commission should grant the requested effective date with the understanding that such effective date shall not relieve Linden of its RTEP cost responsibility obligations under Schedule 12 of the tariff.²⁶

13. PSEG filed a motion to dismiss, or in the alternative, an answer requesting that the Commission deny the Complaint. PSEG states that through the Complaint, Linden seeks to reduce Firm TWRs in an attempt to avoid cost responsibility assignments for RTEP projects, assignments that are the subject of other complaints and related proceedings that are currently pending before the Commission. PSEG argues that the Complaint is nothing more than a collateral attack on PJM's cost allocation method and an end run of those other proceedings. PSEG states that Linden's real grievance is the cost allocation method, and because the Complaint provides no new evidence, those other proceedings are the proper vehicle to address its concerns. Accordingly, PSEG requests that the Commission dismiss the Complaint.

14. In the alternative, PSEG requests that the Commission deny the Complaint. PSEG contends that Linden should not be allowed to amend its Existing ISA so that it can escape its cost responsibility assignments for RTEP projects. PSEG argues that it reasonably relied on Linden maintaining its Firm TWRs, and there is an expectation that the Linden facility will remain in service and will continue to be beneficial to New York.

²⁴ As the Independent Market Monitor for PJM (Market Monitor).

²⁵ In a separate proceeding, Linden sought to convert its Firm TWRs to Non-Firm TWRs. *See PJM Interconnection, L.L.C.*, 160 FERC ¶ 61,021 (2017).

²⁶ *See* PJM OATT, Schedule 12, §§ (b) (i), (iii).

PSEG contends that if Linden is permitted to convert its Firm TWRs to Non-Firm TWRs, Linden and New York will continue to benefit from interconnection with the PJM transmission system at the expense of New Jersey ratepayers. PSEG states that the PJM transmission system is planned and designed to accommodate a planned megawatt quantity, both at the time of interconnection and in subsequent studies to maintain reliability. PSEG argues that the fact that a merchant transmission facility may not be using all of the Firm TWRs allotted to it under its existing ISA is irrelevant to the transmission planning process.

15. PSEG further argues that to allow for the unilateral amendment of existing ISAs because one party to the agreement is no longer satisfied accords unfair and undue preferential treatment, as well as compromises and introduces significant additional uncertainties into the interconnection queue process, potentially further inhibiting infrastructure development. PSEG adds that the *Mobile-Sierra* doctrine requires that the Commission presume that the contract rates and terms contained in the Existing ISA are just and reasonable unless otherwise shown to be contrary to the public interest, and that showing has not been made in this proceeding.²⁷

16. New Jersey Board filed comments supporting PSEG's motion to dismiss, and argues that Linden's efforts to eliminate its cost allocation are intended to yield a preferential rate for customers in New York at the unjust and unreasonable expense of New Jersey ratepayers.

17. Linden filed an answer to PSEG reiterating that PJM has no obligation to plan its system for Non-Firm TWRs. Noting that PSEG's motion focuses largely on cost allocation issues, Linden answers that PSEG's challenge as it relates to the operation of the cost allocation provisions of the tariff represents a collateral attack on the Commission's order accepting provisions providing for a process that reallocates cost responsibilities assignments on an annual basis. Linden argues that the Commission should not in this proceeding address cost allocation issues already pending in other proceedings. Linden states that, where PJM's tariff permits cost responsibility assignments to shift over time as different users benefit from an upgrade, there is no reasonable basis for PSEG to rely on Linden maintaining its Firm TWRs over the long term. Further, Linden notes that PSEG acknowledges that Linden has the unilateral right to terminate its Existing ISA.

18. Addressing PSEG's *Mobile-Sierra* arguments, Linden answers that contracts that apply generally applicable rates, terms, or conditions, such as the relevant language of Linden's Existing ISA, do not qualify for protections provided by the *Mobile-Sierra*

²⁷ PSEG Answer at 6. See *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

doctrine. Linden states that, as the relevant language is in the form agreement, the parties were not in a position to negotiate the terms and conditions of this agreement “freely at arm’s length.” Linden states that, as the relevant language is in the form agreement, the parties were not in a position to negotiate the terms and conditions of this agreement “freely at arm’s length.” Furthermore, Linden argues that, where the existing rate or term might impair the financial ability of a public utility to continue its service, PSEG’s actions are sufficient to meet the public interest standard and overcome the *Mobile-Sierra* presumptions.

19. The Market Monitor, noting that Linden has taken steps to obtain Firm Point-to-Point Transmission service coupled with Non-Firm TWRs, filed comments that address the responsibility for an allocation of transmission upgrade costs to transmission customers that have a point of delivery at the border where the transmission system interconnects with merchant transmission facilities. The Market Monitor contends that Linden seeks to substitute Firm Point-to-Point Transmission service coupled with Non-Firm TWRs to maintain the ability to export capacity to the NYISO from PJM with the same level of transmission service they have with Firm TWRs. The Market Monitor asserts that this creates a discrepancy in cost allocation between section 232.2 and Schedule 12 of the tariff in that Schedule 12 omits any reference to merchant transmission facilities that hold both firm transmission service to the PJM border and Non-Firm TWRs. The Market Monitor concludes that it would not be just and reasonable to require merchant transmission providers to retain the same capacity exports though firm point-to-point transmission service and avoid RTEP cost allocation.

20. The PJM Transmission Owners also filed an answer in response to Linden, to clarify that Schedule 12 defines customers with Firm Point-to-Point Transmission Service as customers responsible for the costs of RTEP projects. The PJM Transmission Owners also state that Schedule 7 specifies that Firm Point-to-Point transmission customers should not be charged for the same RTEP costs under their applicable Point-to-Point service rate, and that Firm Point-to-Point customers can thus be assessed RTEP costs.²⁸

IV. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,²⁹ the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

²⁹ 18 C.F.R. § 385.214 (2017).

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,³⁰ prohibits an answer to a protest and or answer unless otherwise ordered by the decisional authority. We will accept the answers and responsive pleadings because they have provided information that assisted us in our decision-making process.

B. Complaint

23. We grant the Complaint, in part. As discussed below, and based on the filings described herein, we find that the Existing ISA is unjust and unreasonable insofar as it does not permit Linden to convert its Firm TWRs to Non-Firm TWRs.³¹ Accordingly, upon written notice from Linden, PJM shall make a compliance filing amending section 2.2 of Specifications for the Existing ISA to reflect the conversion of 330 MW Firm TWRs for a total of 0 MW Firm TWRs and 330 MW Non-Firm TWRs, to be effective on the date requested by Linden in its written notice, but no earlier than the date of that notice.³² Because we find that Linden may convert its Firm TWRs to Non-Firm TWRs, we further find that revisions to the *pro forma* tariff are unnecessary. We reject the arguments that the Commission should dismiss the Complaint.

24. We see no reasonable basis for barring Linden from converting from higher quality Firm TWRs to lower quality Non-Firm TWRs by amending the Existing ISA. ISAs establish the requirements and upgrades necessary for interconnection. Once a merchant transmission facility has elected to obtain Firm TWRs, PJM determines the necessary upgrades to support the Firm TWRs requested through its interconnection process. Linden already has satisfied these interconnection requirements, and we find that requiring it to maintain such Firm TWRs for the life of the merchant transmission

³⁰ 18 C.F.R. § 385.213(a)(2) (2017).

³¹ In the Complaint, Linden argues (1) the PJM tariff is unjust and unreasonable and unduly discriminatory to the extent it fails to allow Linden to convert Firm TWRs to Non-Firm TWRs and (2) PSEG's failure to consent to an amendment to the Existing ISA reflecting the same is unjust, unreasonable, and unduly discriminatory. Because we have found that the Existing ISA is unjust and reasonable insofar as it does not permit Linden to convert its Firm TWRs to Non-Firm TWRs, we need not address whether PSEG acted unreasonably in withholding consent to an amendment to the Existing ISA reflecting the same.

³² Linden does not request a specific effective date for its amendment to the Existing ISA. Rather, Linden requests that the Commission act on its Complaint by December 15, 2017 in order for Linden to provide notice to PJM and PSEG of its amendment to the Existing ISA no later than December 31, 2017. Complaint at 2, 25-26.

facility is unjust and unreasonable in the absence of any operational or reliability basis for doing so.

25. Under the Existing ISA and PJM's tariff, PJM must guarantee that its transmission system is robust enough to permit Linden to use its Firm TWRs to export 330 MWs of power from its source in PJM across the river to New York at all times. Converting those Firm TWRs to Non-Firm TWRs imposes no additional obligation on PJM and, in fact, is less burdensome in that PJM will no longer have to guarantee that its transmission system can support such use. In terms of reliability, Linden supports that the conversion "will not exceed the nominal rated capability of Linden VFT's facility"³³, and no additional facilities would be necessary to support Linden's conversion from Firm TWRs to Non-Firm TWRs. In any case, the Linden facility is fully controllable by PJM so that PJM can shut off flows if those flows jeopardize reliability or cause operational problems in New Jersey or elsewhere on the PJM system.³⁴ PSEG has offered no evidence to the contrary.

26. PSEG argues that, under section 16.1.2 and 16.2.1 of Appendix 2 of the ISA, Linden could effectuate such a reduction in Firm TWRs by exercising its unilateral right to terminate the Existing ISA and disconnecting its line. Linden could then reapply for Non-Firm TWRs. However, interpreting the Existing ISA, as PSEG did in its protest in Docket No. ER17-2267-000, to require that Linden terminate the Existing ISA and disconnect an already operational merchant transmission facility, rather than amending the Existing ISA, to convert Firm TWRs to Non-Firm TWRs, would be unjust and unreasonable. Linden supports that it has "fully paid for the network upgrades necessary for its Firm [TWRs] and therefore the reduction will not affect payments for previously constructed facilities."³⁵ We also do not find, as PSEG alleges, that allowing Linden to convert its Firm TWRs to Non-Firm TWRs will undermine the interconnection process as Linden has already fulfilled its interconnection requirements. As discussed above, Non-Firm TWRs impose less of a burden on the transmission system than do Firm TWRs, and Linden's conversion of Firm TWRs to Non-Firm TWRs does not require any additional system upgrades as the Non-Firm TWRs do not increase system withdrawals.³⁶ Moreover, PJM, as the system operator, does not represent that such a conversion will have adverse reliability or operational impacts, and Linden's amendment to the Existing

³³ Complaint at 11.

³⁴ Complaint at 11.

³⁵ Complaint at 11.

³⁶ Linden explains that it does not seek to expand the withdrawal capacity of its facilities, Complaint at 27.

ISA will not affect payments for previously constructed facilities.³⁷ Thus, we find that it is unjust and unreasonable not to allow Linden to amend the Existing ISA to convert its Firm TWRs to Non-Firm TWRs.

1. Mobile-Sierra

27. As a threshold matter, we find that the Existing ISA is not eligible for the *Mobile-Sierra* “public interest” presumption. Aside from the fact that the Existing ISA was filed and accepted by the Commission, PSEG provides no other support for its contention that the Existing ISA is protected by the *Mobile-Sierra* doctrine.³⁸ As the Commission has explained, the *Mobile-Sierra* “public interest” presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm’s length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm’s-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption.

28. We find that the terms and conditions of the Existing ISA at issue here are generally applicable and, therefore, are not protected by the *Mobile-Sierra* presumption. The granting of Firm and Non-Firm TWRs to a Transmission Interconnection Customer is governed by generally applicable provisions of the PJM Tariff, namely section 232 of the PJM Tariff.³⁹ Once determined by PJM following a System Impact Study, such rights become available to the Transmission Interconnection Customer (e.g., Linden) pursuant to execution of an ISA based on the *pro forma* ISA attached to the PJM Tariff as Attachment O. The terms and conditions in the Existing ISA, including the terms related to Amendments, Termination, and Disconnection, were identical in relevant part to the

³⁷ See *PJM Interconnection, L.L.C.*, 160 FERC ¶ 61,056, at P 43 (2017).

³⁸ PSEG Answer at 6.

³⁹ See PJM Tariff, Section 232.3 (Determination of Transmission Injection Rights and Transmission Withdrawal Rights to be Provided to Customer) (“The Office of Interconnection [PJM] shall determine the ... Transmission Withdrawal Rights ... to be provided to eligible Transmission Interconnection Customer(s)”).

terms and conditions set forth in the *pro forma* ISA in PJM's Tariff.⁴⁰ The Commission has found that such generally applicable rates, terms and conditions are not the type of contract rates that qualify for the *Mobile-Sierra* presumption.⁴¹

29. Another, independent reason why the *Mobile-Sierra* presumption does not apply in these circumstances is that the Existing ISA contains the same standard *Memphis* clause⁴² as in the *pro forma* ISA. That provision preserves for PJM and PSEG their section 205 filing rights and preserves the rights of any Interconnection Party to bring complaints under section 206. Specifically, section 22.3 of the Existing ISA states in pertinent part:

This Interconnection Service Agreement may be amended or supplemented only by a written instrument duly executed by all Interconnection Parties. An amendment to the Interconnection Service Agreement shall become effective and a part of this Interconnection Service Agreement upon satisfaction of all Applicable Laws and Regulations. Notwithstanding the foregoing, nothing contained in this Interconnection Service Agreement shall be construed as affecting in any way any of the rights of any Interconnection Party with respect to changes in applicable rates or charges under Section 205 of the Federal Power Act and/or FERC's rules and regulations thereunder, or any of the rights of any

⁴⁰ Section 2.1 of the Specifications and Schedule F of the Existing ISA contain non-standard terms and conditions. Schedule F of the Existing ISA sets forth the status of the construction and transfer of ownership of certain switchyard facilities and reserves certain rights with respect to the transfer of ownership of the switchyard facilities. The non-standard terms and conditions in Section 2.1 of the Specifications separates transmission injection rights by energy and capacity and makes capacity transmission injection rights contingent on completion of a certain RTEP upgrade.

⁴¹ *Southwest Power Pool, Inc.*, 144 FERC ¶ 61,059 (2013), *on reh'g*, 149 FERC ¶ 61,048, at PP 100-104 (2014), *denying petition for review*, *Okla. Gas & Elec. Co. v. FERC*, 827 F.3d 75, 76 (D.C. Cir. 2016); *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 184 (2013) (citing *Carolina Gas Transmission Corp.*, 136 FERC ¶ 61,014, at P 17 (2011) (holding that the terms of an agreement that are "incorporated into the service agreements of all present and future customers...are properly classified as tariff rates and the *Mobile-Sierra* presumption would not apply.")).

⁴² *United Gas Co. v. Memphis Gas Div.*, 358 U.S. 103 (1958) (contracts can preserve the rights of parties to revise rates under ordinary just and reasonable standard).

Interconnection Party under Section 206 of the Federal Power Act and/or FERC's rules and regulations thereunder.

30. While section 22.3 states that the Existing ISA may be amended “only by a written instrument duly executed by all Interconnection Parties...”, the second sentence of the provision protects the parties’ unilateral filing rights. Consistent with court precedent, the Commission has found that such provisions apply the ordinary just and reasonable standard: “where provisions in an Interconnection Agreement allow either party to unilaterally request changes under FPA sections 205 or 206, the Commission has the authority to require changes to the contracts under the just and reasonable standard.”⁴³

2. Cost Allocation

31. PSEG and New Jersey Board also argue that Linden should not be permitted to relinquish its Firm TWRs, because, under Schedule 12 of PJM’s tariff, Linden would no longer be allocated costs for RTEP projects that PSEG alleges were caused by Linden’s Firm TWRs and benefit Linden. However, as explained below, it is the cost allocation provisions in Schedule 12 that provide that a Merchant Transmission Owner that does not own Firm TWRs does not receive cost responsibility assignments for RTEP projects.⁴⁴ Neither PSEG nor New Jersey Board have argued that those provisions are unjust and unreasonable. Accordingly, we find that their cost allocation argument does not provide a basis for precluding Linden from terminating its Firm TWRs under the Existing ISA.

32. Under Schedule 12 of the PJM tariff, a merchant transmission facility’s cost responsibility assignments for RTEP projects are calculated based on that facility’s Firm TWRs.⁴⁵ As the Commission has explained, the reason that the costs of RTEP projects are allocated to merchant transmission facilities with Firm TWRs is that PJM is required

⁴³ *Ontelaunee Power Operating Co., LLC*, 119 FERC ¶ 61,181, at P 24 (2007) (citing *Duke Energy Hinds LLC*, 102 FERC ¶ 61,068, at P 21 (2003)). See also *Papago Tribal Util. Auth. v. FERC*, 723 F.2d 950, 954 (D.C. Cir. 1983) (“specific acknowledgment of the possibility of future rate change is virtually meaningless unless it envisions a just-and-reasonable standard”).

⁴⁴ Although PJM implements the cost allocation provisions of Schedule 12 of the Tariff, the cost allocation method is determined by the PJM Transmission Owners, and it is the PJM Transmission Owners, not PJM, that have the section 205 filing rights for the PJM cost allocation method. See *Atlantic City Electric Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002).

⁴⁵ See PJM OATT, Schedule 12, §§ (b)(i) (3.0.0).

to provide reliable service to those facilities and therefore those merchant transmission providers are responsible for contributing to facilities necessary to support that firm service:

PJM is required to provide reliable service up to the Firm Transmission Withdrawal Rights held by these customers. In order to provide such rights, PJM must require the construction of RTEP upgrades. The Merchant Transmission Facilities can avoid these costs if instead of opting for Firm Transmission Withdrawal Rights, they opt only for Non-Firm Transmission Withdrawal Rights under the tariff.⁴⁶

As of the effective date of Linden's conversion of its Firm TWRs to Non-Firm TWRs, PJM is no longer required to provide firm service and can curtail non-firm service whenever necessary to preserve reliability.⁴⁷ Under Schedule 12, therefore, RTEP project costs would no longer be allocable to Linden as of the effective date of Linden's conversion from Firm TWRs to Non-Firm TWRs. The cost responsibility assignments for RTEP projects are updated annually based on a range of inputs and values to determine beneficiaries of RTEP projects.⁴⁸ Thus, under Schedule 12, cost responsibility assignments for RTEP projects shift over time as usage by transmission customers of a RTEP project changes over its lifespan.⁴⁹ For example, Linden's cost responsibility assignment increased as a direct result of the termination of Con Edison's transmission service agreements.⁵⁰ Contrary to PSEG's assertion, the PJM tariff does not require a merchant transmission facility, like Linden, to be allocated costs for an RTEP project over the life of that project based on the MWs of Firm TWRs they held at the time that

⁴⁶ *PJM Interconnection, L.L.C.* Opinion No. 503, 129 FERC ¶ 61,161, at P 80 (2009).

⁴⁷ See PJM OATT, Schedule 12 § (b)(i) (3.0.0). See PJM OATT § I, OATT Definitions L-M-N, 14.0.0, Non-Firm Transmission Withdrawal Rights. See also PJM OATT § II, Point-to-Point Transmission Service.

⁴⁸ See PJM OATT, Schedule 12 § (b)(iii)(H).

⁴⁹ Schedule 12 updates cost allocations annually based on changes to the system's topology, load changes, and other events such as termination of service. See PJM OATT, Schedule 12 § (b).

⁵⁰ Complaint at 7-8, see also Mellana Affidavit at P 8.

the RTEP project was approved by PJM.⁵¹ As noted, neither PSEG nor New Jersey Board has contended that these provisions are unjust and unreasonable.

33. PSEG argues that the Complaint is a collateral attack on the PJM cost allocation method. We disagree. As discussed above, we find the Complaint appropriately raises concerns relating to Linden's request to convert Firm TWRs to Non-Firm TWRs. While PSEG identifies the potential for Linden's cost responsibility assignments for RTEP projects to change as a result of its request to convert its Firm TWRs to Non-Firm TWRs, this potential simply reflects the operation of the cost allocation method in the tariff, not a collateral attack of it.

34. Moreover, we are not persuaded by PSEG's arguments that the Commission should dismiss the Complaint because PSEG reasonably relied upon the long-term duration of the Existing ISA, and Linden maintaining its Firm TWRs, as providing for long-term cost responsibility assignments for RTEP projects to Linden. As PSEG itself acknowledged, Linden has the right unilaterally to terminate the Existing ISA, including its Firm TWRs, at any time.⁵² As we explained earlier, requiring Linden to terminate its rights in order to convert its Firm TWRs to Non-Firm TWRs is unjust and unreasonable as making such changes will not result in reliability or operational difficulties for the PJM system.

35. Similarly, the Market Monitor raises concerns with Schedule 12 and requests changes thereto in order to address an alleged discrepancy in the cost responsibility assignments for RTEP projects for merchant transmission providers that hold firm point-to-point transmission service and those that hold Firm TWRs. Those general concerns with Schedule 12 do not address whether Linden should be permitted to convert its Firm TWRs to Non-Firm TWRs. The PJM Transmission Owners also raise concerns regarding the cost responsibility assignments for RTEP projects to firm point-to-point transmission customers. We reject, as beyond the scope of this proceeding, these comments. The cost responsibility assignments for RTEP projects for firm point-to-point transmission customers under Schedule 12 are unrelated to the issue of whether Linden should be permitted to convert its Firm TWRs to Non-Firm TWRs.

The Commission orders:

(A) We grant the Complaint in part, and based on the filings described herein, we find that the Existing ISA is unjust and unreasonable insofar as it does not permit Linden to convert its Firm TWRs to Non-Firm TWRs, as discussed in the body of this order.

⁵¹ See PJM OATT, Schedule 12 § (b)(iii).

⁵² Complaint at 16.

(B) Upon written notice from Linden, PJM shall make a compliance filing amending the section 2.2 of Specifications for the Existing ISA to reflect the conversion of 330 MW Firm TWRs for a total 0 MWs of Firm TWRs and 330 MW Non-Firm TWRs, to be effective on the date requested by Linden in its written notice, but no earlier than the date of that notice, as discussed in the body of this order.

By the Commission. Chairman McIntyre is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.