

181 FERC ¶ 61,181
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

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

Docket Nos. ER19-2105-005
ER19-2105-004

ORDER APPROVING SETTLEMENT

(Issued December 2, 2022)

1. On October 7, 2021, the Settling Parties,¹ filed in Docket No. ER19-2105-005, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure,² a Settlement Agreement and Offer of Settlement (Settlement), including revised tariff records,³ regarding the rates for point-to-point transmission service at the border of PJM Interconnection, L.L.C. (PJM) for delivery to neighboring regions (Border Rate). In this order, we approve the Settlement. In addition, the Settlement resolves the clarification request filed in Docket No. ER19-2105-004.

I. Background

2. On June 11, 2019, the PJM Transmission Owners (PJM TO) submitted a filing, pursuant to section 205 of the Federal Power Act (FPA),⁴ section 35.13 of the Commission's regulations,⁵ and section 9.1(a) of the PJM Open Access Transmission Tariff (Tariff),⁶ proposing revisions to Schedule 7 (Firm Point-to-Point Transmission

¹ The Settling Parties are identified in Appendix A.

² 18 C.F.R. § 385.602 (2021).

³ PJM Interconnection, L.L.C., Intra-PJM Tariffs, SCHEDULE 7, OATT SCHEDULE 7 (8.1.0); SCHEDULE 7, OATT SCHEDULE 7 (12.0.0); SCHEDULE 7, OATT SCHEDULE 7 (11.2.0).

⁴ 16 U.S.C. § 824d.

⁵ 16 U.S.C. § 824s; 18 C.F.R. §35.13 (2021).

⁶ PJM, Intra-PJM Tariffs, OATT, Section 9.1 Rights of Transmission Owners (2.1.0).

Service), Schedule 8 (Non-firm Point-to-Point Transmission Service), and Attachment H-A (Non-zone Network Load Transmission Service) of the Tariff, along with a new definition of the border yearly charge and several technical corrections to the Tariff. The revisions replaced the existing stated rate for Border Rate service with a formula rate that updates annually, clarified the forms of transmission service that constitute Border Rate service, and revised the non-zone network load network integration transmission service rate.

3. The Commission accepted the PJM TOs' proposed Tariff revisions, suspended them to become effective January 1, 2020, subject to refund, and established hearing and settlement judge procedures.⁷

II. Settlement

4. The Settling Parties state that the Settlement modifies the formula rate for calculating the Border Rate, establishes procedures for inquiries into and challenges to the updated Border Rate, and provides for discounts to the Border Rate for Border Rate customers reserving service for certain terms of service on specified transmission paths during the periods covered by the Settlement.⁸ The Settlement provides two sets of discounts.

5. Section 2.3 of the Settlement establishes that PJM will offer the specified discount rates for delivery at the border of PJM to transmission customers taking long-term and short-term firm point-to-point transmission service using the transmission paths "PJM to Linden," "PJM to HTP," or "PJM to Neptune" (collectively, MTF Paths) for the years 2021 through 2027 (MTF Discount Rate). Section 2.4.3 provides that the MTF Discount Rate will be offered to any new or existing transmission customer taking Border Rate service using any of the MTF Paths.

6. Section 2.5 states that, for the time period of January 1, 2028, through December 31, 2039, PJM will offer discounted rates for Border Rate service using an MTF Path (MTF Discount Percentage). The MTF Discount Percentage will be a percentage reduction based upon the total amounts owed for transmission enhancement charges (TEC) assigned to a merchant transmission facility or its transmission customers for any category of TEC assignment under PJM Tariff, Schedule 12 during the 12-month period ending October 31 of the year prior to the year in which service is taken. The MTF Discount Percentage will be determined separately with respect to each MTF Path. Section 2.6.1 provides for an MTF Discount Percentage Cap, where, during any calendar

⁷ *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,095 (2019) (Hearing Order), *order on reh'g*, 172 FERC ¶ 61,156 (2020).

⁸ Transmittal Letter at 2; *see also* Settlement, art. II.

year, for service other than firm yearly Border Rate service, the percentage discount will continue to be applied until the total dollar amount of the discount provided exceeds the cap applicable to the specific MTF Path.

7. Section 2.7 provides that the MTF Parties' agreement to the MTF Discount Percentage and MTF Discount Percentage Cap does not constitute an admission or agreement that the underlying formula rate and any resulting rates are just and reasonable and reserves the MTF Parties' rights to challenge, object to, or protest such formula methodology and any rates, terms and conditions for Border Rate service, as applied to reservations after December 31, 2039.

8. Section 2.8 provides for refunds to be made no later than the first monthly billing date after 180 days following the effective date, including accrued interest pursuant to 18 C.F.R. § 35.19a (2021), for all payments made by a Border Rate service transmission customer for charges in excess of those agreed upon.

9. Section 2.9 provides a rate freeze for non-firm Border Rate service using an MTF Path and that it will remain at the current discounted rate of \$.067 per MWh through December 31, 2027.

10. Section 2.10 provides that, up to January 1, 2028, should the MTF Parties attempt to change certain loading rules so that they apply to a merchant transmission facility customer taking service over a merchant transmission facility with firm transmission withdrawal rights, the PJM TOs will not oppose such effort.

11. Section 2.11 provides that the MTF Parties may challenge inclusion in the border yearly charge formula the revenue requirement of a transmission enhancement project subject to a funding agreement.

12. Section 2.12 provides that, upon Commission approval of the Settlement and the satisfaction of all conditions to its effectiveness, the Settlement resolves all remaining issues and the MTF Parties will move to dismiss their petition(s) for review.

13. Section 4.2 provides that, unless the Settling Parties otherwise agree in writing, any modification to the Settlement proposed by one of the Settling Parties after the effective date

shall, as between them, be subject to the "public interest" application of the just and reasonable standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified in *Morgan Stanley Capital Grp., Inc. v. Public Util. Dist. No. 1 of Snohomish County*, 554 U.S. 527 (2008) and refined in

NRG Power Mktg. v. Maine Pub. Utils. Comm’n, 558 U.S. 165 (2010).

Section 4.2 also provides that this standard of review applicable to the Settling Parties shall not apply to the exercise of the rights and reservations expressly preserved by the MTF Parties in Sections 2.7, 2.9, and 2.11.

14. Section 4.2 also provides that “[t]he standard of review for any Modifications requested by any party other than a Settling Party or initiated by the Commission acting *sua sponte* shall be the most stringent standard permissible under applicable law.”

III. Comments

A. Initial Comments

15. Commission Trial Staff (Trial Staff) and PJM filed comments in support of the settlement. Trial Staff states that the Settlement would resolve all issues set for hearing and save the participants and the Commission from expending substantial resources in litigation.⁹ Trial Staff also states that the Settlement would resolve petitions for review of the Hearing Order.¹⁰ Though it supports the Settlement, PJM states that it takes no position with respect to the merits of the rates or discounts agreed to by the parties in the Settlement.¹¹

16. The New Jersey Board of Public Utilities (NJ BPU) filed comments opposing the Settlement. The NJ BPU contends that the Border Rate would compound inequities along the PJM-New York Independent System Operator, Inc. (New York ISO) border unless the full services, benefits, and costs associated with the merchant transmission facilities’ operation were understood and addressed.¹²

17. The NJ BPU argues that the Border Rate cannot be shown to be just and reasonable or in accordance with the cost causation principle “without a fulsome accounting of whether the offset to the Border Rate – i.e. the Schedule 12 [TECs] assigned to the [merchant transmission facilities] – are appropriate.”¹³ The NJ BPU

⁹ Trial Staff Initial Comments at 2, 17.

¹⁰ *Id.*

¹¹ PJM Initial Comments at 2.

¹² NJ BPU Comments at 2, 9.

¹³ *Id.* at 6.

argues that the Settlement would discount the MTFs Border Rate through 2039 based on the merchant transmission facilities' TEC payments, but does not attempt to explore whether the TEC payments are appropriate in the first place.¹⁴ The NJ BPU also contends that this is compounded by section 2.10, which does not allow the PJM TOs to challenge any further merchant transmission facility effort to alter the transmission loading relief rules applicable to them if they hold firm transmission withdrawal rights.

18. The NJ BPU also argues that the Settlement does not satisfy the *Trailblazer* standards.¹⁵ The NJ BPU argues that the Settlement cannot be approved under the first *Trailblazer* approach because there is an inadequate record to support numerous Settlement provisions as just and reasonable¹⁶ and "some . . . aspects of the settlement may be problematic."¹⁷ Specifically, the NJ BPU argues that: (1) the MTF Discount Rate through 2027 would prolong the subsidy between network customers and Border Rate customers and is therefore unjust and unreasonable;¹⁸ (2) the record is absent any evidence supporting the size of the discounts resulting from the MTF Discount Percentage that the merchant transmission facilities will continue to receive from 2028 through 2039 in proportion to their Schedule 12 TECs and that these discounts cannot be shown to accord with cause causation principle without analysis of the inputs, i.e. the merchant transmission facility's TEC assignments;¹⁹ (3) the Settlement provides discounts only to the MTF Parties;²⁰ and (4) the record cannot support the Settlement terms that are not connected to the PJM TOs' initial section 205 filing, such as the sections 2.9 and 2.10.²¹

19. The NJ BPU also argues that the Settlement cannot be approved under the second *Trailblazer* approach because the Border Rate and Schedule 12 cost allocation are

¹⁴ *Id.*

¹⁵ *Id.* at 2 (citing *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,082 (1998)).

¹⁶ *Id.* at 7 (citing *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345 (*Trailblazer*), order on reh'g 87 FERC ¶ 87 FERC ¶ 61,110 (1998) (*Trailblazer Rehearing Order*), reh'g denied, 88 FERC ¶ 61,168 (1999)).

¹⁷ *Id.* at 9 (quoting *El Paso Nat. Gas Co.*, 132 FERC ¶ 61,139, at P 64 (2010)).

¹⁸ *Id.* at 7.

¹⁹ *Id.* at 8.

²⁰ *Id.*

²¹ *Id.*

intertwined, and the ongoing litigation and proceedings involving the merchant transmission facilities and transmission planning, including challenges to the methodology used to assign TEC costs, could significantly change the just and reasonable analysis for the Border Rate, which the Settlement would lock in for the better part of 20 years.²² The NJ BPU also notes that the Settlement would prevent parties from making updates, and impose the *Mobile/Sierra* standard of review if future parties attempt to challenge the Settlement rates.²³

B. Reply Comments

20. Trial Staff, PJM TOs, and MTF Parties each filed comments in response to the NJ BPU's comments.

21. Trial Staff, PJM TOs, and MTF Parties contend that the NJ BPU's opposing comments are outside the scope of the Settlement proceeding, specifically, a holistic review of broader PJM-New York ISO seams issues and transmission withdrawal rights,²⁴ pending in other Commission dockets or before the U.S. Court of Appeals, or have already been rejected by the Commission.²⁵ PJM TOs assert that the NJ BPU repeats claims unrelated to the Border Rate formula rate methodology and its opposition is broadly aimed at seeking resolution of its long-running, broader concerns regarding the costs of merchant transmission facilities and who should pay to move energy and power into New York, which it has advanced in numerous other proceedings before the Commission.²⁶

22. Trial Staff argues that the NJ BPU fails to meet the standard of Commission Rule 602(f)(4) for establishing a dispute as to a genuine issue of material fact, the NJ BPU failed to submit an affidavit, and its comments do not substantiate why any of the contested provisions are unjust and unreasonable.²⁷ PJM TOs and

²² *Id.* at 9.

²³ *Id.*

²⁴ Trial Staff Reply Comments at 1-2, 3-5; PJM TOs Reply Comments at 3-6; MTF Parties Reply Comment at 4.

²⁵ PJM TOs Reply Comments at 3-6.

²⁶ *Id.* at 4, 6. The PJM TOs do not express an opinion regarding the merit of the NJ BPU's assertions and note that the concerns are being addressed in other proceedings.

²⁷ Trial Staff Reply Comments at 2, 5-10.

MTF Parties also contend that the NJ BPU fails to raise any genuine issue of material fact.²⁸

23. Trial Staff, PJM TOs, and MTF Parties argue that the Settlement's discounts are consistent with Schedule 7 of the PJM Tariff, which permit discounts on particular transmission paths, are not limited to MTF Parties, and do not constitute an undue preference for MTF Parties.²⁹ PJM TOs contend that the discounts are reasonable, measured, and designed to encourage greater firm service that generates revenue offsetting network customer transmission charges.³⁰ PJM TOs state that, in response to the filing in this proceeding that updated the Border Rate and resulted in a significantly higher Border Rate, there has been a reduction to firm service to the MTFs.³¹ PJM TOs argue that the settlement provides a strong, transparent incentive to take firm service and the MTF discount benefits network service customers because such firm service yields almost four times as much revenue available to offset network service rates as non-firm service under the most steeply discounted rate in effect in 2021.³² MTF Parties contend that the discounted rate provides an incentive for the MTF customers to continue taking firm through and out-service to the MTFs with benefits accruing to PJM TOs and their

²⁸ PJM TOs Reply Comments at 3 & n.14 (citing *Entergy Gulf States La., L.L.C.*, 154 FERC ¶ 61,197, at P 50 (2016) (where contesting party "provides no affidavit supporting its belief by specific reference to documents, testimony, or other items included in the offer of settlement, or items not included in the settlement, that are relevant to support the claim" the contesting party has raised on "policy-based issues" which may be decided under *Trailblazer* approach one)); *id.* at 11; MTF Parties Reply Comments at 13-16.

²⁹ Trial Staff Reply Comments at 2, 6-9, 10-12; PJM TOs Reply Comments at 17-18; MTF Parties Reply Comments at 14-15.

³⁰ PJM TOs Reply Comments at 19.

³¹ *Id.* PJM TOs state that, while Linden is locked into a five-year service agreement that was entered into prior to the initial filing in this docket and no firm service is currently being taken to HTP, LIPA took less firm service 2021. Specifically, in 2019 and 2020, LIPA took 675 MWs of firm service for nine and eight months, respectively, and in 2021, LIPA only took two full months of firm service and at a reduced amount of 384 MW. *Id.*

³² *Id.* at 19-20.

network customers through an increase in revenue above the level that would result from non-firm service.³³

24. PJM TOs and MTF Parties argue that the Commission can approve the Settlement under the second and third *Trailblazer* approaches, and PJM TOs also argue that it can be approved under the first approach.³⁴ PJM TOs contend that the NJ BPU, and all other participants, would incur substantial expenses if the proceeding continued in litigation, and the relief that the NJ BPU seeks has a low chance of success if the Settlement is rejected and litigation continued.³⁵ PJM TOs contend that, because there is nothing in the Settlement that addresses the core NJ BPU concern of the cost responsibility for regional transmission expansion planning (RTEP) projects in New Jersey under Tariff, Schedule 12, the NJ BPU would not be in a better position to obtain the relief it seeks if the matter were to proceed in litigation.³⁶ PJM TOs contend that the discounts contemplated by the Settlement will result in a more efficient use of the transmission system by encouraging increased firm service, while also delivering benefits to network customers in the form of increased network service rate offsets.³⁷ MTF Parties argue that the NJ BPU would be no worse off under the Settlement than under the result that would likely be reached following litigation.³⁸ MTF Parties argue that the Settlement is just and reasonable because it replaces the uncertainty of litigation outcomes with a structure for Border Rate charges to the MTF Parties that reflects a balanced resolution of the parties' disputes, and removes the significant risk, cost, and uncertainty of continued litigation.³⁹

³³ MTF Parties Reply Comments at 8-9.

³⁴ PJM TOs Reply Comments at 3; MTF Parties Reply Comments at 5. Trial Staff contends that because the NJ BPU has not properly contested the Settlement, the Commission need not analyze the Settlement under the four *Trailblazer* approaches for approving contested settlements. Trial Staff Reply Comments at 3 (citing *Hunlock Energy, LLC*, 170 FERC ¶ 61,090, at PP 27-32 (2020)).

³⁵ PJM TOs Reply Comments at 23-24.

³⁶ *Id.* at 24.

³⁷ *Id.* at 25.

³⁸ MTF Parties Reply Comments at 9, 13-16.

³⁹ *Id.* at 12.

IV. The Presiding Judge's Certification

25. On December 21, 2022, the Presiding Judge certified the Settlement as uncontested.⁴⁰ The Presiding Judge found that the NJ BPU failed to attach an affidavit and, after being made aware of its procedural infirmity, made no effort to correct it.⁴¹ As a result, the Presiding Judge concluded that, therefore, pursuant to Rule 602(f)(4), “there is not genuine issue of material fact related to the” Settlement.⁴²

26. The Presiding Judge also found that the settlement could be approved as fair and reasonable and in the public interest.

V. Discussion

27. For the reasons discussed below, we approve the Settlement. NJ BPU failed to file an affidavit or any supporting evidence regarding its challenges to the Settlement as required by our regulations and failed to provide any justification for ignoring this requirement, accordingly, we find that NJ BPU has not raised any genuine issue of material fact regarding the merits of the Settlement.⁴³ We nevertheless proceed to

⁴⁰ *PJM Interconnection, L.L.C.*, 177 FERC ¶ 63,027, at P 92 (2021).

⁴¹ *Id.* P 87.

⁴² *Id.* P 87; *id.* PP 84-87 (citing 18 C.F.R. § 602(f)(4) (2021); *Panda Hummel Station*, 176 FERC ¶ 61,195, at P 31 (2021) (finding that, where the Independent Market Monitor failed to attach an affidavit to its comments, the settlement was not contested); *Hunlock Energy, LLC*, 170 FERC ¶ 61,090 at P 28 (finding that where the IMM failed to file an affidavit, the IMM comments failed to raise a genuine issue of fact); *Columbia Gas Transmission, LLC*, 142 FERC ¶ 61,062, at P 28 (2013) (“Maryland PSC did not file any affidavit with its comments demonstrating an issue of fact . . . Thus, we cannot find that its protest raises a genuine issue of fact[.]”)).

⁴³ *See* 18 C.F.R. § 385.602(f)(4) (“any comment that contests a settlement by alleging a dispute as to a genuine issue of material fact must include an affidavit detailing any issue of material fact by specific reference to documents, testimony, or other items . . . that are relevant to support the claim”); *see, e.g., Columbia Gas Transmission, LLC*, 142 FERC ¶ 61,062 at P 28 (finding that, because the Maryland PSC did not file any affidavit with its comments demonstrating an issue of fact, the Maryland PSC’s protest did not raise a genuine issue of fact); *San Diego Gas & Elec. Co. v. Sellers of Energy & Servs. into Mkts. Operated by the Cal. Indep. Sys. Operator*, 128 FERC ¶ 61,004, at P 16 (2009) (“Because SMUD did not submit an affidavit raising this issue as a genuine issue of material fact, as required by Rule 602(f)(4), we find that it is not a disputed issue of material fact.”) (internal citations omitted)).

address the merits of the NJ BPU's arguments and, as discussed below, find the overall result of the Settlement is just and reasonable.

28. In *Trailblazer*, the Commission identified four approaches it may use to approve contested settlements.⁴⁴ Under the second approach described in *Trailblazer*, the Commission may approve the contested settlement as a package if the overall result of the settlement is just and reasonable.⁴⁵ Under this approach, the Commission does not need to render a merits decision on whether each element of a settlement package is just and reasonable as long as the overall package falls within a broad ambit of various rates which may be just and reasonable.⁴⁶ As the Commission explained, this approach may involve analysis of the specific issues raised by a settlement in order to determine whether the result under the settlement is no worse for the contesting party than the likely result of continued litigation.⁴⁷ The Commission clarified that this approach “focuses on the end result of the overall settlement, and involves a balancing of the benefits of a settlement against the costs and potential effect of continued litigation.”⁴⁸

29. In applying the *Trailblazer* second approach here, we find that many of the NJ BPU's concerns are beyond the scope of the proceeding. Rather, the NJ BPU's primary objections to the Settlement appear to concern a policy issue – that the Border Rate cannot be shown to be just and reasonable without “a fulsome accounting of

⁴⁴ The four approaches laid out in *Trailblazer* are: (1) the Commission renders a binding merits decision on each contested issue; (2) the Commission approves the settlement based on a finding that the overall settlement as a package is just and reasonable; (3) the Commission determines that the benefits of the settlement outweigh the nature of the objections and the interests of the contesting party are too attenuated; and (4) the Commission approves the settlement as uncontested for the consenting parties, and severs the contesting parties to allow them to litigate the issues raised. See *Trailblazer*, 85 FERC ¶ at 62,342-45.

⁴⁵ *Id.* at 62,342.

⁴⁶ *Id.* at 62,343.

⁴⁷ *Trailblazer* Rehearing Order, 87 FERC ¶ at 61,439. See *Long Island Power Auth. v. FERC*, 27 F.4th 705, 713 (D.C. Cir. 2022) (affirming a determination under *Trailblazer* approach two when the Commission determined that the settlement was just and reasonable and that the parties “would not have been better off litigating the merits”).

⁴⁸ *Trailblazer* Rehearing Order, 87 FERC ¶ at 61,439. See also, *PJM Interconnection, L.L.C.*, 170 FERC ¶ 61,258 (2020) (finding that the overall effect of the contested settlement is just and reasonable and that the benefits, which resulted from a compromise outweigh the expense and uncertainties of further litigation).

whether the offset to the Border Rate – i.e. the Schedule 12 TECs assigned to the MTFs – are appropriate.” Moreover, the NJ BPU contends that the discounts to MTF Parties have not been justified and will result in unjust and unreasonable cost shifts to other parties.

30. We find that the instant record contains sufficient evidence to support a finding that the overall effect of the Settlement is just and reasonable and that the NJ BPU, as the objecting party, is in “no worse position” under the settlement “than if the case were litigated.”⁴⁹ The NJ BPU does not challenge the calculation of the Border Rate. Instead, on the merits, the NJ BPU makes only a generalized claim that the settlement fails to address all issues regarding the PJM-New York ISO border, such as the determination of TEC charges for the MTF parties. But the NJ BPU acknowledges that the determination of charges for the MTF Parties is at issue in another ongoing proceeding.⁵⁰ The NJ BPU contends that the questions raised in that proceeding speak directly to the Border Rate.⁵¹ We disagree. The instant proceeding relates to the appropriate calculation of the Border Rate. We therefore agree with the Presiding Judge’s ruling that this proceeding involves only the justness and reasonableness of the proposed Border Rate and the NJ BPU has not challenged the methodology for determining that rate. Further, and contrary to what the NJ BPU argues, the settlement rate does address “subsidies” between network customers and Border Rate customers because it results in a steady increase in the Border Rate through 2039 and beyond, i.e. the subsidy Border Rate customers receive from network customers will decrease over time.

⁴⁹ See *Long Island Power Auth. v. FERC*, 27 F.4th at 713 (affirming a Commission order approving a contested settlement under *Trailblazer* approach two where the Commission found that the “allocations here to be just and reasonable” and also that “[the objecting party] would not have been better off litigating the merits.”).

⁵⁰ For example, the NJ BPU notes that the Commission has initiated a proceeding to review existing transmission planning and cost allocation procedures and principles, and interregional planning concerns are central to the Commission’s effort. In that proceeding the Commission asked “can and should the Commission provide alternate pathways for transmission facilities that benefit multiple regions to be assigned cost allocation to customers across multiple regions.” See NJ BPU Comments at 10 (citing *Building for the Future Through Elec. Reg’l Transmission Plan. & Cost Allocation & Generator Interconnection*, 176 FERC ¶61,024, at P 63 (2021)).

⁵¹ See *La. Pub. Serv. Comm’n v. FERC*, 20 F.4th 1, 7 (D.C. Cir. 2021) (“FERC enjoys broad discretion in determining how best to handle related, yet discrete, issues in terms of procedures” (citing *Mobil Oil Expl. & Producing Se. Inc. v. United Distrib. Cos.*, 498 U.S. 211, 230 (1991)).

31. The NJ BPU specifically objects to the discounts in the settlement agreement offered to the parties taking service on the MTF Paths. In this regard, we find that the Settlement's discount for MTF Paths complies with Commission regulations and does not create an undue preference. Tariff, Schedule 7, section (3) permits discounts on specific paths, and specifically requires that

For any discount agreed upon for service on a path, from point(s) of receipt to point(s) of delivery, [PJM] must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

This is also consistent with Order No. 888-A, where the Commission found that, when a transmission provider offers a discount over one path, the transmission provider is required to provide the discount to those unconstrained paths that go to the same point(s) of delivery as the discounted service being provided on the transmission system.⁵²

32. Under the Settlement, the MTF Discount is available to any customers taking service with a point of delivery of an MTF Path. This is consistent with both Order No. 888-A and Tariff, Schedule 7, section (3). The record also indicates that these discounts are justified as they may increase the use of firm transmission service considering that the use of firm transmission service to the MTF Paths decreased when the Border Rate went into effect under suspension, which resulted in a significant increase in the rate.⁵³

⁵² *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at 30, 180 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Pol'y Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. N. Y. v. FERC*, 535 U.S. 1 (2002). *See also Cargill Power Mkts., LLC*, 113 FERC ¶ 61,233, at PP 7, 10 (2005) (finding that MISO's decision to discontinue a discount on through-and-out service for reservations sinking at the Michigan-Ontario Independent Electricity Market Operator interface did not require a section 205 filing).

⁵³ *See* PJM TOs Reply Comments at 19.

33. The Commission need not find that the Settlement rate is exactly the same as the rate the Commission would establish on the merits after litigation.⁵⁴ Settlements by nature are compromises, and the Commission typically does not require settling parties to justify individual elements of a settlement package.⁵⁵ We find that the benefits of the Settlement outweigh the expense and uncertainties of further litigation, and provides a clear framework for Border Rate service on the MTF Paths until 2039. That framework balances the PJM TOs' interest to encourage MTF Parties to use firm Border Rate service, benefiting network customers, and the MTF Parties' need for certainty of the charges and terms of Border Rate service. As such, we find the overall result of the Settlement is just and reasonable.

34. The Settlement also provides that it resolves all remaining issues;⁵⁶ accordingly, PJM TOs' request for clarification in Docket No. ER19-2105-004 is deemed withdrawn.⁵⁷ The MTF Parties are reminded to move to dismiss their petition(s) for review of the Commission's orders in this docket consistent with their commitment in the Settlement.⁵⁸

35. The Settlement provides that the standard of review applicable to future modifications to the Settlement proposed by third parties and the Commission acting *sua sponte* is "the most stringent standard permissible under applicable law." Although we need not decide in this order what standard of review applies to the Settlement or any component of it, we clarify the framework that would apply if the Commission were

⁵⁴ *Trailblazer*, 85 FERC ¶ at 62,343.

⁵⁵ *PJM Interconnection, L.L.C.*, 170 FERC ¶ 61,258 at P 46 (finding that even if it were established that the settlement provided compensation in excess of the prior amount of compensation, "that factor alone would not change our determination that the benefits of the Settlement outweigh the costs of continued litigation"); *El Paso Nat. Gas Co.*, 132 FERC ¶ 61,139 at P 82 (denying rehearing of Commission order approving contested settlement under *Trailblazer* approaches one and two).

⁵⁶ Settlement, § 2.12.

⁵⁷ In any event, the clarification request to the Commission was improperly filed as the proceeding had already been set for hearing and any such filing should have been made to the Administrative Law Judge. 18 C.F.R. § 385.504(b)(8) (2021) (presiding officer has authority to "[r]ule on, and dispose of, procedural matters, including oral or written motions); 18 C.F.R. § 385.715(a) (2021) ("[a] participant may not appeal to the Commission any ruling of a presiding officer during a proceeding" without seeking approval for an interlocutory appeal).

⁵⁸ Settlement, § 2.12.

required to determine the standard of review for a later challenge to the Settlement by a third party or the Commission acting *sua sponte*.

36. 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 constitutes contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption. In *New England Power Generators Association v. FERC*,⁵⁹ however, the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the statutory “just and reasonable” standard of review on future changes to agreements that fall within the second category described above.

The Commission orders:

(A) The Settlement is hereby approved, as discussed in the body of this order.

(B) The revisions to Schedule 7 of the Tariff are hereby accepted, to become effective January 1, 2020, May 3, 2020, and January 1, 2021, respectively.

By the Commission. Chairman Glick is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

⁵⁹ *New England Power Generators Ass’n v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

Appendix A**List of Settling Parties**

The Settling Parties are:

(1) American Electric Power Service Corporation on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company, Inc., AEP Kentucky Transmission Company, Inc., AEP Ohio Transmission Company, Inc., and AEP West Virginia Transmission Company, Inc.; Dominion Energy Services, Inc. on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia; Duke Energy Corporation on behalf of its affiliates Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., and Duke Energy Business Services LLC; Exelon Corporation; FirstEnergy Service Company, on behalf of its affiliates American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Mid-Atlantic Interstate Transmission LLC, West Penn Power Company, The Potomac Edison Company, Monongahela Power Company, Keystone Appalachian Transmission Company, and Trans-Allegheny Interstate Line Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company (collectively, Indicated PJM Transmission Owners);

(2) PJM Interconnection, L.L.C. (PJM); and

(3) Long Island Power Authority (LIPA); Neptune Regional Transmission System, LLC (Neptune); New York Power Authority (NYPA); Hudson Transmission Partners, LLC (HTP); and Linden VFT, LLC (Linden) (collectively, MTF Parties).

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