

163 FERC ¶ 61,168
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. EL05-121-009

ORDER ON CONTESTED SETTLEMENT

(Issued May 31, 2018)

1. On June 15, 2016, the Settling Parties,¹ pursuant to Rule 602 of the Commission's rules of practice and procedure,² submitted an offer of settlement (Settlement) in the matter set for hearing and settlement judge procedures in this proceeding.
2. In this order, we approve the Settlement, finding that the overall result of the Settlement is just and reasonable.

I. Background

3. On April 19, 2007, the Commission issued Opinion No. 494,³ an order on an initial decision concerning the cost allocation method for existing and new transmission facilities contained in PJM Interconnection, L.L.C.'s (PJM) then-current Open Access Transmission Tariff (Tariff). In Opinion No. 494, the Commission, acting under section 206 of the Federal Power Act,⁴ found PJM's existing cost allocation method, which used a violation-based distribution factor (DFAX) method⁵ to allocate 100 percent of the costs

¹ Appendix A lists the Settling and Non-Opposing Parties.

² 18 C.F.R. § 385.602(h) (2017).

³ *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007), *order on reh'g*, Opinion No. 494-A, 122 FERC ¶ 61,082 (2008).

⁴ 16 U.S.C. § 824e (2012).

⁵ Under the violation-based DFAX method, to determine cost responsibility for new transmission facilities, PJM conducted studies to determine which loads contribute to the reliability violation that caused the upgrade by examining power flows on the

of new transmission facilities that operate at or above 500 kV, unjust and unreasonable and required PJM to allocate 100 percent of the costs of such facilities on a load-ratio share basis (the 100 percent load-ratio share method),⁶ to the Merchant Transmission Facilities and Zones⁷ of the Responsible Customers pursuant to Schedule 12 of the PJM Tariff.⁸

4. Parties sought review of Opinion No. 494 in the U.S. Court of Appeals for the Seventh Circuit (Court). The Court granted the petition for review regarding the allocation of all of the costs of new transmission facilities that operate at or above 500 kV on a load-ratio share basis and remanded the case to the Commission for further proceedings.⁹ On remand, the Commission affirmed the 100 percent load-ratio share

constrained facilities at the time of a reliability violation. The Zones that are using the constrained facilities at the time of the violation are allocated the costs of the reliability upgrades because they are considered to be the ones that “cause” the violation and “benefit from” the addition of upgrades that eliminate the violation. *See* Opinion No. 494, 119 FERC ¶ 61,063 at P 2, fn.2.

⁶ Opinion No. 494, 119 FERC ¶ 61,063 at P 82 (accepting PJM’s proposal “to fully allocate, on a region-wide basis, the costs of new, centrally-planned facilities that operate at or above 500 kV,” noting that “lower voltage facilities that are necessary to construct a particular new project at 500 kV and above would also be rolled in to the 500 kV and above postage stamp rate”).

⁷ The PJM Tariff defines Zone as an area within the PJM Region, as set forth in the Tariff, Attachment J. PJM Tariff, W-X-Y-Z, OATT Definitions - W - X - Y - Z, 4.0.0. *See* PJM Tariff, ATTACHMENT J PJM Transmission Zones.

⁸ Responsible Customers are those customers designated by PJM as responsible for Transmission Enhancement Charges. *See* Schedule 12 (b)(viii). Transmission Enhancement Charges are established to recover the revenue requirement with respect to a Required Transmission Enhancement. *See* PJM Tariff, Schedule 12(a)(i). The PJM Tariff defines Required Transmission Enhancements as “[e]nhancements and expansions of the Transmission System that (1) a Regional Transmission Expansion Plan developed pursuant to Schedule 6 of the Operating Agreement or (2) any joint planning or coordination agreement between PJM and another region or transmission planning authority set forth in Schedule 12-Appendix B (“Appendix B Agreement”) designates one or more of the Transmission Owner(s) to construct and own or finance. PJM Tariff Definitions - R - S, OATT Definitions - R - S, 13.0.0.

⁹ *See Illinois Commerce Comm’n v. FERC*, 576 F.3d 470 (7th Cir. 2009).

method for new transmission facilities that operate at or above 500 kV.¹⁰ The Commission found that, while there is imprecision in valuing the benefits of new transmission facilities that operate at or above 500 kV, the benefits of such facilities are sufficiently shared across the PJM region to justify region-wide cost allocation.

5. Parties again sought review and the Court again reversed and remanded the Commission's determination that the costs of transmission facilities that operate at or above 500 kV should be allocated on a 100 percent load-ratio share basis. The Court found that the Order on Remand failed to respond to the directive "to quantify the benefits" of new transmission facilities that operate at or above 500 kV.¹¹ The Court stated that "[c]ost-benefit analysis is the standard method of valuation for large public or commercial projects, and it is hardly alien to the electric power industry."¹² The court concluded that Commission had not provided a quantitative estimate of the benefits of the new transmission facilities or demonstrated that "the benefits can't be quantified even roughly."¹³

6. While this second proceeding on remand was pending before the Commission, and on compliance with Order No. 1000,¹⁴ the PJM Transmission Owners proposed and the Commission accepted a hybrid cost allocation method for Regional Facilities and Necessary Lower Voltage Facilities,¹⁵ selected in the PJM Regional Transmission

¹⁰ *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230 (2012) (Order on Remand), *order on reh'g*, 142 FERC ¶ 61,216 (2013).

¹¹ *Illinois Commerce Comm'n. v. FERC*, 756 F.3d 556, 562 (7th Cir. 2014).

¹² *Id.* at 561.

¹³ *Id.* at 564.

¹⁴ *See Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011) (Order No. 1000), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

¹⁵ Regional Facilities are defined as Required Transmission Enhancements included in the Regional Transmission Expansion Plan that are transmission facilities that: (a) are AC facilities that operate at or above 500 kV; (b) are double-circuit AC facilities that operate at or above 345 kV; (c) are AC or DC shunt reactive resources connected to a facility from (a) or (b); or (d) are DC facilities that meet the necessary criteria as described in section (b)(i)(D). Necessary Lower Voltage Facilities are defined as Required Transmission Enhancements included in the Regional Transmission

Expansion Plan (RTEP) for purposes of cost allocation.¹⁶ Under the cost allocation method accepted as complying with Order No. 1000, for Regional Facilities and Necessary Lower Voltage Facilities that address a reliability need,¹⁷ 50 percent of the costs are allocated on a load-ratio share basis and the other 50 percent of the costs are allocated using the solution-based DFAX method.¹⁸ The Commission granted a February 1, 2013 effective date for cost allocation method accepted as complying with Order No. 1000.¹⁹ As a result, the 100 percent load-ratio share method accepted by the Commission in Opinion No. 494 and at issue in the remand proceedings was applied only

Expansion Plan that are lower voltage facilities that must be constructed or reinforced to support new Regional Facilities. PJM Tariff, Schedule 12(b)(i). The PJM Tariff defines Required Transmission Enhancements as “[e]nhancements and expansions of the Transmission System that (1) a Regional Transmission Expansion Plan developed pursuant to Schedule 6 of the Operating Agreement or (2) any joint planning or coordination agreement between PJM and another region or transmission planning authority set forth in Schedule 12-Appendix B (“Appendix B Agreement”) designates one or more of the Transmission Owner(s) to construct and own or finance. PJM Tariff Definitions - R - S, OATT Definitions - R - S, 13.0.0.

¹⁶ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013), *order on reh’g and compliance*, 147 FERC ¶ 61,128 (2014), *order on reh’g and compliance*, 150 FERC ¶ 61,038, and *order on reh’g and compliance*, 151 FERC ¶ 61,250 (2015).

¹⁷ PJM identifies reliability transmission needs and economic constraints that result from the incorporation of public policy requirements into its sensitivity analyses, and allocates the costs of the solutions to such transmission needs in accordance with the type of benefits they provide. *See PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 441. *See also* PJM Tariff, Schedule 12 (b)(v) Economic Projects (assigning cost responsibility for Economic Projects).

¹⁸ The solution-based DFAX method evaluates the projected relative use on the new facility by the load of each transmission Zone or Merchant Transmission Facility and, through this power flow analysis, identifies projected beneficiaries for individual entities in relation to power flows. *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 416. The solution-based DFAX method replaced the violation-based DFAX method that assigned cost responsibility by determining which loads contribute to the reliability violation that caused the upgrade.

¹⁹ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 1; *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128 at PP 18, 29.

to those new transmission facilities that operate at or above 500 kV approved by the PJM Board of Directors prior to February 1, 2013.²⁰

7. In the second proceeding on remand, the Commission established hearing and settlement judge procedures to determine the appropriate cost allocation for the transmission projects that remain at issue in this proceeding (i.e., those new transmission facilities that operate at or above 500 kV that PJM planned and were approved before February 1, 2013 whose costs were allocated in accordance with the 100 percent load-ratio share method established in Opinion No. 494).²¹ On June 15, 2016, the Settling Parties submitted a Settlement in this proceeding. On August 16, 2016, the Settlement Judge issued a report of the contested Settlement.²²

II. Settlement

8. The Settlement specifies the terms that will be incorporated into a new Schedule 12-C added to the PJM Tariff to be effective as of January 1, 2016. The Settlement defines Covered Transmission Enhancements as those Required Transmission Enhancements for which costs were assigned under the 100 percent load-ratio share method that was accepted by the Commission in Opinion No. 494 that the PJM Board approved prior to February 1, 2013, and that are planned to operate at or above 500 kV. This includes any Necessary Lower Voltage Facilities (as defined in the PJM Tariff) associated with those Required Transmission Enhancements.²³ The Covered Transmission Enhancements, including those Covered Transmission Enhancements that were canceled or abandoned before entering service (Cancelled Projects), are listed in Appendix A to new Schedule 12-C of the PJM Tariff.

9. The Settlement contains different methods for recovery of costs incurred for Covered Transmission Enhancements for the periods before and starting January 1, 2016. From January 1, 2016 onward (going-forward period), and continuing until all charges authorized by the Commission with respect to each Covered Transmission Enhancement are fully recovered, the Settlement provides that PJM shall collect a Current Recovery

²⁰ Tariff, Schedule 12(a)(v).

²¹ *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,233, at P 2 (2014).

²² *PJM Interconnection, L.L.C.*, 156 FERC ¶ 63,027 (2016).

²³ As previously noted, Necessary Lower Voltage Facilities are defined as Required Transmission Enhancements included in the Regional Transmission Expansion Plan that are lower voltage facilities that must be constructed or reinforced to support new Regional Facilities. Tariff, Schedule 12(b)(i).

Charge from Responsible Customers for each Covered Transmission Enhancement. Specifically, PJM will assign cost responsibility for the revenue requirement associated with each Covered Transmission Enhancement through a hybrid method in which: (1) 50 percent of the cost responsibility shall be assigned to Responsible Customers on an annual load-ratio share basis, as set forth in section (b)(i)(A)(1) of Schedule 12 of the PJM Tariff; and (2) 50 percent of the cost responsibility shall be assigned to Responsible Customers based on the solution-based DFAX method, as set forth in subsection (b)(i)(A)(2)(a) of Schedule 12, provided that the Current Recovery Charges with respect to each Covered Transmission Enhancement reflect only the amounts that the Commission authorizes the owner(s) to recover from and after January 1, 2016.²⁴

10. To address the period from 2007 to January 1, 2016 (historical period), in which the costs of the Covered Transmission Enhancements were recovered under the method approved in Opinion No. 494, the Settlement also provides for Transmission Enhancement Charge Adjustments to the billings for the Covered Transmission Enhancements through a schedule of credits and payments from Responsible Customers.²⁵ Specifically, effective as of January 1, 2016 and continuing through December 31, 2025, in addition to the Current Recovery Charge, PJM shall collect from or credit to Responsible Customers the Transmission Enhancement Charge Adjustments set forth in Appendix C to Schedule 12-C for each Zone and each Merchant Transmission Facility.

11. Section 2.2 (d) of the Settlement states that the total amounts credited or recovered for Covered Transmission Enhancements as Transmission Enhancement Charge Adjustments are the result of a “black box” Settlement. As a negotiated black box Settlement, the Settling Parties acknowledge that there is agreement only on the total amounts to be collected or credited by PJM from or to Responsible Customers as stated in Appendix C, with no separately stated components in the Covered Transmission Enhancements with respect to the cost of equity or debt, capital structure, regulatory asset amount, or other elements. Further, there is no separate statement of how the individual zonal and Merchant Transmission Facility monthly charges were derived.

12. The Settlement also provides for adjustments to the Transmission Enhancement Charge Adjustments to address (1) any determination that all or a portion of the costs recovered by the Potomac Appalachian Transmission Highline (PATH) were not properly

²⁴ Settlement, Section 2.2(c). Because there will be no flow over the Cancelled Projects to allow for the use of the solution-based DFAX method, 50 percent of the cost responsibility for Covered Transmission Enhancements that are not assigned on a load-ratio share basis will be assigned to Responsible Customers based on the violation-based DFAX method for the cost responsibility assignments not assigned on a load-ratio basis.

²⁵ Settlement, Section 2.2(d).

recoverable, and (2) any circumstance under which all Responsible Customers in a Zone or associated with a Merchant Transmission Facility are no longer subject to Transmission Enhancement Charges during the period in which Transmission Enhancement Charge Adjustments are collected. In the latter scenario, during the portion of the period that such Responsible Customers are not subject to Transmission Enhancement Charges, the payments from or credits to such Responsible Customers shall cease and PJM shall adjust the Transmission Enhancement Charge Adjustments to other remaining Responsible Customers on a *pro rata* basis.

13. The Settlement provides that, unless the Settling Parties and Non-Opposing Parties otherwise agree in writing, any modification to the Settlement or to the rates and charges set forth in Attachment C to the Settlement (but not including a modification that implements section 2.2(e) of the Settlement)²⁶ proposed by one of the Settling Parties or Non-Opposing 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 Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish County, Washington*, 554 U.S. 527 (2008) and refined in *NRG Power Mktg. v. Maine Pub. Utils. Comm'n*, 558 U.S. 165 (2010).²⁷ The standard of review for any modifications requested by any party other than a Settling Party, Non-Opposing Party, or initiated by the Commission acting *sua sponte* shall be the most stringent standard permissible under applicable law.²⁸

14. The Settlement further provides that upon the Commission's approval of the Settlement and the satisfaction of all conditions to its effectiveness, all remaining issues in all sub-dockets of Docket No. EL05-121, including any issues raised in a request for rehearing or a petition for judicial review, shall be fully and finally resolved on the basis of the Settlement and no Settling Party or Non-Opposing Party shall retain any right to pursue any such issue.

²⁶ Section 2.2(e) of the Settlement implements the Adjustments to the Transmission Enhancement Charge Adjustments.

²⁷ Settlement, Section 4.2.

²⁸ *Id.*

III. Comments

15. Comments supporting the Settlement were filed by PJM and the PJM Transmission Owners (PJM Parties),²⁹ Michigan Commission, Indiana Commission, Pennsylvania Commission, and Commission Trial Staff (together with PJM Parties, Supporting Parties).³⁰ The Illinois Municipal Electric Agency (IMEA) submitted comments not opposing the Settlement, but requesting the addition of clarifying language.

16. Linden VFT, LLC (Linden VFT) filed comments opposing the Settlement.³¹ Joint comments opposing the Settlement were filed by Neptune Regional Transmission System, LLC (Neptune) and Long Island Power Authority (LIPA),³² and Hudson Transmission Partners, LLC (Hudson) and New York Power Authority (NYPA).³³ The Retail Energy Supply Association (RESA) filed an out-of-time motion to intervene and comments requesting a modification to the Settlement.³⁴

²⁹ PJM and the PJM Transmission Owners included declarations from Paul F. McGlynn (McGlynn Declaration) and Raymond L. Gifford (Gifford Declaration), and exhibits supporting the PJM Transmission Owners proposed hybrid cost allocation methodology for new high voltage transmission facilities planned and approved by the PJM Board on or after February 1, 2013 in PJM's Order No. 1000 compliance proceedings.

³⁰ The PJM Transmission Owners indicate that their comments are supported by the Michigan Commission, Indiana Commission, and Pennsylvania Commission.

³¹ Linden VFT included an affidavit of John J. Marczewski (Marczewski Affidavit).

³² Neptune and LIPA included an affidavit of Jeffery T. Wood (Wood Affidavit).

³³ Hudson and NYPA also included the Wood Affidavit.

³⁴ The Chief Judge denied the RESA motion to intervene (limited to denying intervention). *See PJM Interconnection, L.L.C.*, 156 FERC ¶ 63,012 (2016). The Motions Commissioner rejected a motion for interlocutory appeal. We address the RESA comments in this order.

17. Commission Trial Staff, PJM Transmission Owners,³⁵ IMEA, and Linden VFT filed reply comments.³⁶ Neptune, Hudson, NYPA, and LIPA (Joint Opposing Parties) filed joint reply comments.

18. Linden VFT and the Joint Opposing Parties filed answers to the PJM Transmission Owners reply comments,³⁷ and the PJM Transmission Owners filed a response.³⁸ Linden VFT filed a supplemental answer.

IV. Discussion

A. Initial Comments

1. Comments Supporting Settlement

19. The PJM Parties state that the Commission should approve the Settlement because it satisfies the Commission's *Trailblazer* standard for approval of contested settlements.³⁹ Specifically, they argue that the Settlement meets the standard set out under the second approach set forth in *Trailblazer* because the Settlement package as a whole presents a just and reasonable result.⁴⁰ The PJM Parties contend that the Settlement implements a cost allocation method that is substantially the same as the method that the Commission has already found to be a just and reasonable method of allocating the costs of similar

³⁵ The PJM Transmission Owners included the declarations of Scott W. Gass (Gass Declaration) and Michael M. Schnitzer (Schnitzer Declaration).

³⁶ With its reply comments, Linden VFT included an affidavit of John J. Marczewski (Marczewski Reply Affidavit).

³⁷ Linden VFT included an affidavit of John J. Marczewski (Marczewski Answer Affidavit). Linden VFT and the Joint Parties also filed a motion to strike both the McGlynn Declaration and Gifford Declaration. *See PJM Interconnection, L.L.C.*, 156 FERC ¶ 63,025 (denying motions to strike and granting leave to answer), 156 FERC ¶ 63,049 (2016) (denying reconsideration and granting clarification).

³⁸ *See PJM Interconnection, L.L.C.*, 156 FERC ¶ 63,022 (2016) (granting motions to answer).

³⁹ PJM Parties Comments at 5. *See Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345 (1998), *order on reh'g*, 87 FERC ¶ 61,110, *reh'g denied*, 88 FERC ¶ 61,168 (1999) (*Trailblazer II*).

⁴⁰ *Id.* at 18 (citing *Trailblazer II* at 9).

transmission projects in PJM, and the likely result of litigation would not differ materially from the Settlement's proposed resolution.⁴¹ The PJM Parties also contend that the Commission could approve the Settlement under the first approach set forth in *Trailblazer* by addressing the contesting parties' contentions on the merits because the Settlement cost allocation method is just and reasonable and supported by Commission policy and precedent.⁴²

20. The Supporting Parties provide the McGlynn Declaration to support the assertion that the Settlement presents a just and reasonable result. For the going-forward period, McGlynn states that the Settlement applies the cost allocation method that the Commission accepted in PJM's Order No. 1000 compliance proceedings (hybrid cost allocation method). For the historical period, McGlynn contends that the allocation of credits and payments under the negotiated provisions of the Settlement is substantially similar to what the cost allocation would have been had it been developed based on the hybrid cost allocation method.⁴³ In support, McGlynn states that there is only an 11.9 percent difference between the total amount of adjustments to the credits and payments under the negotiated provisions of the Settlement and what PJM staff estimated the total amount of adjustments to the credits and payments would have been under the Settlement going-forward period method. McGlynn also states that, on a zonal load and Merchant Transmission Facility basis, the credits and payments using the negotiated amounts vary from what the credits and payments would have been under the PJM staff estimated going-forward period method in a range of only 7.5 to 13.5 percent. Therefore, McGlynn contends that the adjustments to the credits or payments under the Settlement negotiated provisions are substantially similar to what would have been credited or paid if the Settlement going-forward period method was used to allocate the costs recovered between 2007 and January 1, 2016.⁴⁴

21. The Michigan Commission contends that the Settlement presents a fair resolution to the allocation issues before the Commission and produces just and reasonable rates. The Pennsylvania Commission contends that the Settlement precludes the possibility of further lengthy and expensive litigation, and resolves the concerns raised by the Court by implicitly adopting a cost allocation method that the Commission has previously approved as reasonable. The Indiana Commission requests that the Commission approve

⁴¹ PJM Parties Comments at 19.

⁴² PJM Parties Comments at 32.

⁴³ McGlynn Declaration at 6-9. The 50 percent of the cost responsibility assignments not assigned on a load-ratio basis is based on the solution-based DFAX method, using a year 2019 power flow model.

⁴⁴ McGlynn Declaration at 10.

the Settlement as embodying a definitive resolution that will foreclose the possibility of further litigation and provide certainty to all interested parties.

22. Commission Trial Staff supports approval of the Settlement under either the first or second approach identified by *Trailblazer*. Commission Trial Staff contends that the Settlement resolves all issues set for hearing in a manner that is either supported or unopposed by a majority of PJM Transmission Owners and all of the affected state commissions, and ensures funding of the necessary transmission investments.

23. While not opposing the Settlement, IMEA requests clarifying language to ensure that the revenues from Transmission Enhancement Charge Adjustments identified in the Settlement are properly refunded by the transmission owners who receive them.

24. RESA does not contest the amounts to be exchanged under the Settlement. However, RESA objects to the implementation of the Settlement effective January 1, 2016. RESA contends that the Settlement should be effective and the rates collected effective the later of the date the Commission approves the Settlement or January 1, 2017.

2. Comments Opposing Settlement

25. Parties opposing the Settlement contend that the Commission should reject the Settlement because it fails to establish a just and reasonable cost allocation method that is supported by substantial evidence.⁴⁵ Parties opposing the Settlement further contend that the Settlement fails to meet the Court's requirement for a quantitative assessment of the costs and benefits of the new transmission facilities. Instead, the parties opposing the Settlement contend that the Settlement imposes significant additional costs on the Merchant Transmission Facilities without any record evidence of a cost-benefit analysis or showing that the benefits of the new transmission facilities are proportional to the increased costs.⁴⁶

26. Parties opposing the Settlement contend that there are genuine issues of material fact in dispute related to the identification of the benefits and beneficiaries that must be answered with substantial evidence before the Commission can determine a cost allocation method that assigns costs in a manner that satisfies the Court's remand. The parties opposing the Settlement argue that the Settlement relies on a cost allocation method for the Covered Transmission Enhancements that was accepted by the

⁴⁵ Hudson and NYPA Comments at 20; Neptune and LIPA Comments at 19.

⁴⁶ The Wood Affidavit details the cost increases to Neptune and Hudson under the Settlement as compared to the existing cost responsibility assignments made pursuant to the 100 percent load-ratio share method.

Commission to apply prospectively, which is not comparable to the fact-based scenario now before the Commission.

27. Parties opposing the Settlement also contend that the Settlement does not satisfy any of the approaches identified by *Trailblazer* for approving contested settlements, and that the Settlement infringes on their right to obtain a ruling on the merits. In the alternative, the parties opposing the Settlement state that they would not object to the Commission approving the Settlement subject to a ruling that the Settling Parties cannot recover any additional costs and charges or financial obligations imposed on the parties opposing the Settlement by the Settlement.

28. Linden VFT contends that the Settlement requires it to be responsible for significantly increased costs without its consent and without providing any quantitative evidence or estimates showing that the increased allocations reflect benefits that it receives.⁴⁷ Linden VFT argues that the use of the solution-based DFAX method as an underlying rationale for the going-forward cost allocation method assigns it costs far in excess of benefits it accrues. Linden VFT further argues that the costs for the historical period are merely re-assigned on a negotiated basis, without even the flow-based rationale supporting identification of benefits. Linden VFT states that it made its concerns known during negotiations, but was excluded from meaningful settlement discussions, and has no knowledge of how the bargain was struck.⁴⁸

29. Linden VFT contends that, under traditional cost-benefit analysis it does not receive any specific benefits from the Covered Transmission Enhancements, and that the Settlement was negotiated by the Settling Parties in their own interests. Linden VFT argues that the solution-based DFAX method does not accurately or commensurately

⁴⁷ The Marczewski Affidavit details the cost responsibility assignment increases for Linden VFT as compared to the existing cost responsibility assignments made pursuant to the 100 percent load-ratio share cost allocation method. According to Marczewski, for the historical period, Linden VFT will be required to pay on average \$59,000 per month over the ten-year period; its going-forward period costs will increase by 49 percent; and costs for the Cancelled Projects will approximately double. Marczewski Affidavit at 6.

⁴⁸ Linden VFT notes that the confidentiality requirements of the Commission Rules of Practice and Procedures preclude discussion of the negotiations. 18 C.F.R. § 385.601, *et seq.* (2017).

match costs and benefits as closely as possible, citing various deficiencies and modeling conventions related to the method's implementation.⁴⁹

B. Reply Comments

30. The PJM Transmission Owners contend that the cost allocation method upon which the Settlement is founded is a just and reasonable approach for allocating the costs of high-voltage regional reliability projects and appropriately measures the benefits of these transmission projects for customers in the region. The PJM Transmission Owners state that the Commission approved the solution-based DFAX method component of the hybrid cost allocation method as a just and reasonable method of identifying the specific benefits and beneficiaries of such projects, and that the method evaluates the relative use of a facility by individual entities, including withdrawals by Merchant Transmission Facilities. The PJM Transmission Owners contend that this method can be applied to support the finding in this proceeding that the Settlement results in a just and reasonable cost allocation, and that the Merchant Transmission Facility parties' arguments lack merit.

31. In support, the PJM Transmission Owners reiterate that the Transmission Enhancement Charge Adjustments result in a cost allocation that is substantially similar to that which would have resulted if the hybrid cost allocation method had been in place since 2007. The PJM Transmission Owners further note that, because a significant portion of the costs of the Covered Transmission Enhancements remains unrecovered, over the life of the facilities covered by the Settlement, there will be very little difference between the cost allocations made pursuant to the Settlement and the cost allocations that would have been made pursuant to the hybrid cost allocation method.

32. The PJM Transmission Owners, citing the Gass Declaration, state that the increased costs to the Merchant Transmission Facility parties under the Settlement are primarily driven by their use of the Susquehanna-Roseland transmission facility, as well as their proportionate use of the other Covered Transmission Enhancements.⁵⁰ Therefore, the PJM Transmission Owners contend that the Merchant Transmission Facilities benefit from their use of the Covered Transmission Facilities to obtain deliveries from the PJM system in proportion to the costs assigned to them.

33. The PJM Transmission Owners support use of the violation-based DFAX method to allocate 50 percent of the costs of the Cancelled Projects because there will be no flow

⁴⁹ The Marczewski Affidavit details Linden VFT's concerns with the solution-based DFAX method provisions and implementation. Marczewski Affidavit at 8-16.

⁵⁰ PJM Transmission Owner Reply Comments at 16 (citing Gass Declaration at 14-16, Schnitzer Declaration at 4).

over the facilities to allow for use of the solution-based DFAX method. The PJM Transmission Owners note that, while in Opinion No. 494 the Commission rejected a violation-based DFAX method as the sole method for allocating the costs of transmission facilities operating at 500 kV and above, the Settlement employs a hybrid cost allocation method that combines an allocation based on the violation-based DFAX method with an allocation based on load-ratio share.

34. With respect to IMEA, the PJM Transmission Owners answer that the premise of IMEA's concern is incorrect, and that credits or payments pursuant to the Transmission Enhancement Charge Adjustments provisions are handled by the normal functioning of the PJM Tariff and billing processes. The PJM Transmission Owners contend that no modification to the Settlement is necessary. Commission Trial Staff further contends that modification to the Settlement to address IMEA's concerns is not necessary because Transmission Enhancement Charge Adjustments apply only to Responsible Customers, and because transmission owners only receive credits or make payments as Responsible Customers, they would not have revenues to credit.

35. In reply comments, Linden VFT contends that the inclusion by the Supporting Parties (PJM and the PJM Transmission Owners) of the McGlynn Declaration and Gifford Declaration is an attempt to create a record, using self-serving and conclusory statements that provide no evidentiary support. Linden VFT argues that the McGlynn Declaration's conclusions that the cost allocations in the Settlement are substantially similar to what the cost allocations would have been using the hybrid cost allocation method are not supported by data and cannot be tested. As a result, Linden VFT also contends that the differences between the credits and payments under the negotiated Transmission Enhancement Charge Adjustments and what would have been under the hybrid cost allocation method, on either an aggregate or zonal basis, is meaningless and not supported. Linden VFT further contends that, given the changing system topology, the use of year 2019 modeling as a basis of comparison would not produce accurate results.

36. The Joint Opposing Parties reiterate that the Settlement is not supported by substantial evidence, and that the Settling Parties have failed to provide any quantitative assessment of the benefits of the Covered Transmission Enhancements. Accordingly, the Joint Opposing Parties contend that the Settlement cannot be approved under either the first or second *Trailblazer* approaches. The Joint Opposing Parties further contend that the violation-based DFAX analysis, under which cost allocation is based on the cause of the project, is improper for the allocation of the costs of the Cancelled Projects under the Settlement. The Joint Opposing Parties contend that just because Merchant Transmission Facilities had been allocated some RTEP costs based on a violation-based DFAX analysis does not support that the Merchant Transmission Facilities should be subject to the hybrid cost allocation method on which the Settlement is based, and that a quantitative assessment of the benefits is necessary.

37. IMEA replies that, while it understands the intention of the Settlement, specific provisions related to the crediting of Transmission Enhancement Charge Adjustments may be read ambiguously.

C. Determination

38. We approve the Settlement. Under Rule 602 of the Commission's Rules of Practice, the Commission may decide the merits of a contested settlement if the record contains substantial evidence upon which to base a reasoned decision or the Commission determines that there is no genuine issue of material fact.⁵¹ In *Trailblazer*, the Commission identified four approaches it can use to approve contested settlements.⁵² We find analysis under the second *Trailblazer* approach relevant to the circumstances of this proceeding. Under the second *Trailblazer* approach, the Commission may approve a contested settlement as a package if the overall result of the settlement is just and reasonable.⁵³ 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, so long as the overall package falls within a broad ambit of various rates which may be just and reasonable.⁵⁴ As the Commission explained, this approach may involve some 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.⁵⁵ The Commission clarified that this approach "focuses on the end result of the

⁵¹ 18 C.F.R. § 602 (2017).

⁵² 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 II*, 85 FERC ¶ 61,345 at 62,342-62,345.

⁵³ *Trailblazer II*, 85 FERC ¶ 61,345 at 62,342-62,343.

⁵⁴ *Id.*

⁵⁵ *Trailblazer Pipeline Co.*, 87 FERC ¶ 61,110, at 61439 (1999) (*Trailblazer III*).

overall settlement, and involves a balancing of the benefits of a settlement against the costs and potential effect of continued litigation.”⁵⁶

39. We find that the overall result of the Settlement is just and reasonable as applied to the contesting parties. In the Settlement, the Settling Parties applied the existing just and reasonable cost allocation method, subject to several simplifying assumptions and a black box adjustment.⁵⁷ For the going-forward period (the period after January 1, 2016), the Settlement Tariff references Schedule 12 of the PJM Tariff to apply the currently effective PJM Tariff without modification (i.e., 50 percent of the costs of Covered Transmission Enhancements will be allocated on a load-ratio share basis and 50 percent of the costs of Covered Transmission Enhancements will be allocated according to the solution-based DFAX method). We find that using the currently effective PJM Tariff to establish the cost responsibility assignments for the Covered Transmission Enhancements during the going-forward period is just and reasonable because the hybrid cost allocation method allocates the costs of these transmission facilities in a manner that is at least roughly commensurate with the benefits that they provide.⁵⁸

40. For the historical period (the period prior to January 1, 2016), in which the Settlement provides credits or payments based on a negotiated schedule, the Settling Parties supported the allocations using a comparison to the currently effective PJM Tariff based on a proxy 2019 test year.⁵⁹ The Settling Parties then explained the negotiated changes in that allocation, such that the rates for the individual load Zones vary in a 7.5 – 13.5 percent range from what the cost responsibility assignments would have been had they been based solely on the application of the hybrid cost allocation method to the proxy 2019 test year. As explained in the McGlynn Declaration, the adjustments to the credits or payments for the historical period under the Settlement negotiated provisions are substantially similar to what would have been credited or paid if the Settlement going-forward period method was used to allocate the costs recovered between 2007 and

⁵⁶ *Trailblazer III*, 87 FERC at 61,110 at 61,439.

⁵⁷ As discussed above, these adjustments include changes to the cost allocations for the Cancelled Projects because the just and reasonable hybrid cost allocation method (which has a flow-based component) could not be applied.

⁵⁸ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 420.

⁵⁹ The parties state that they chose a single year for the comparison due to the difficulty of re-running the allocation for every intermediate year. McGlynn Declaration at 8.

January 1, 2016.⁶⁰ We find that these proposed cost responsibility assignments for the historical period are just and reasonable, as the negotiated adjustments to the cost responsibility assignments that would have resulted if the currently effective PJM Tariff were applied to the historical period result in an allocation of costs that is roughly commensurate with benefits. Specifically, we find persuasive Settling Parties' representation that the rates for individual load Zones vary by at most 13.5 percent from what they would have been had the currently effective PJM Tariff been used to establish the rates without any subsequent adjustments.⁶¹

41. We note that, under the Settlement, the contesting parties receive lower cost responsibility assignments for all Covered Transmission Enhancements (with the exception of the Susquehanna-Roseland project) than they received under the 100 percent load-ratio share method established in Opinion No. 464 and remanded by the Seventh Circuit Court. Specifically:

		\$ Allocation Based on Load Ratio Share			\$ Allocation Based on Settlement Agreement		
RTEP Project	RTEP Cost Estimate (MM)	Hudson (0.2%)	Neptune (0.4%)	Linden (0.2%)	Hudson	Neptune	Linden
Total Cost (All Projects except S-R)	\$2,700	\$5.4	\$10.8	\$5.4	\$3.5	\$9.1	\$4.3
PSEG S-R	\$746	\$1.5	\$3.0	\$1.5	\$12.6	\$11.3	\$10
PPL S-R	\$622	\$1.2	\$2.5	\$1.2	\$8.3	\$10.2	\$7.7
Total Cost	\$4,068	\$8	\$16	\$8	\$24	\$31	\$23

PJM Transmission Owners Reply Comments, Exhibit No. PTO-5 (Gass Declaration) at P 15.

42. While the contesting parties do receive higher cost responsibility assignments for the Susquehanna-Roseland project than they received under the 100 percent load-ratio share method, we find that the allocation of costs to the contesting parties for the Susquehanna-Roseland project is just and reasonable and their resulting allocation is no worse for the contesting parties than continued litigation. As noted above, the

⁶⁰ McGlynn Declaration at 10.

⁶¹ *Id.*

Commission's approval of PJM's use of the 100 percent load-ratio share method for the projects at issue here has twice been remanded by the Court. Therefore, we believe that it is reasonable to assume that the existing just and reasonable PJM Tariff, which allocates 50 percent of the costs pursuant to the load-ratio share method and 50 percent of the costs pursuant to the solution-based DFAX method, and which has previously been approved by the Commission,⁶² would be the method that would likely prevail in continued litigation.

43. First, we note that the Susquehanna-Roseland project went into service in 2015 and most of the cost of the project will be recovered under the going-forward period method (the period after January 1, 2016), using the currently effective PJM Tariff. Second, even for the historical period (which was subject to the black box adjustment of the Settlement), the cost responsibility assignments to the contesting parties are no higher than they would have been under the current just and reasonable rate. We find the data submitted by the Settling Parties in their declarations persuasive. The following chart shows the costs allocated to each contesting party for the Susquehanna-Roseland project under the hybrid cost allocation method versus the Settlement.⁶³ Specifically:

1		Neptune	Hudson	Linden
2	Total Cost Susquehanna-Roseland (MM) (PTO-5, at P15)	\$1,368.00	\$1,368.00	\$1,368.00
3	DFAX (PTO-5, at P 18)	2.80%	2.90%	2.50%
4	Load-Ratio Share (PTO-5, at P 15)	0.40%	0.20%	0.20%
5	% Allocation under Settlement (PTO-5, at P 18)	1.60%	1.50%	1.30%
6	DFAX Allocation (line 2/2 * line3)	\$19.15	\$19.84	\$17.10
7	Load-Ratio Share (line2/2 * line 4)	\$2.74	\$1.37	\$1.37
8	Total Hybrid (total line 6 and 7)	\$21.89	\$21.20	\$18.47
9	Allocation under Settlement (line 2* line 4)	\$21.89	\$20.52	\$17.78

⁶² *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 412.

⁶³ This analysis is based on the data in the Gass Declaration. PJM Transmission Owners Reply Comments, Exhibit No. PTO-5 at P 15, 18.

As this chart shows, the three contesting parties are allocated the same or lower costs under the Settlement black box allocation (line 9) than they would have had under the currently effective PJM Tariff (line 8). Accordingly, where the Settlement approximates the cost that would have been assigned under the currently effective PJM Tariff, we find that the contesting parties would be in no worse position under the Settlement than if the current just and reasonable rate were applied.⁶⁴

44. The contesting parties also question the use of the currently effective PJM Tariff in the Settlement, and maintain that the Commission should remand the Settlement to the Presiding Judge for a determination of which parties benefit from each of the transmission projects in question.⁶⁵ The Court remanded the cost allocation method for the transmission projects at issue in this Settlement, concluding that the Commission had not justified using a 100 percent load-ratio share cost allocation method for all 500 kV and above transmission projects. Subsequent to the Court's remand, the Commission adopted as just and reasonable the current hybrid cost allocation method as satisfying the cost allocation requirements of Order No. 1000, which just like the remand order, required costs to be allocated in a manner that is at least "roughly commensurate" with estimated benefits.⁶⁶ We therefore find that application of the currently effective PJM Tariff in the Settlement is just and reasonable. We recognize that, more recently, the concerns raised by the contesting parties, are pending in complaint proceedings,⁶⁷ regarding the justness and reasonableness of the hybrid cost allocation method for the 50 percent cost responsibility assigned pursuant to the solution-based DFAX method (at least in certain circumstances). To the extent that the contesting parties were to prevail in those separate proceedings and the determination affects the Covered Transmission Enhancements in the Settlement, Section 2.2(c)(ii) of the Settlement provides that "nothing in this Settlement shall prevent the Commission from adjusting the Current Recovery Charges, as necessary, if the Commission modifies the charges that the owner(s) of a Covered Transmission Enhancement are authorized to recover."⁶⁸ This

⁶⁴ *Id.*

⁶⁵ Significantly, other than alleging that they do not receive benefits commensurate with the costs allocated to them, the contesting parties do not present an alternative cost allocation mechanism.

⁶⁶ *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at PP 414-416.

⁶⁷ *See, e.g. Linden VFT. LLC v. PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,089 (2016), *reh'g pending*.

⁶⁸ Settlement, Section 2.2(c)(ii).

provision should protect the contesting parties if they succeed in their complaint proceedings.

45. The contesting parties also object to the allocation for the Cancelled Projects. The Settlement allocates 50 percent of the costs of these transmission projects pursuant to the violation-based DFAX method while the other 50 percent is assigned on a load-ratio share basis. The Settlement utilizes violation-based DFAX method because the solution-based DFAX method cannot be used given that the Cancelled Projects are not in service and thus do not support any power flows. The contesting parties claim that this allocation has not been shown to be just and reasonable as the Commission had previously raised concerns with assignment of cost responsibility pursuant to the violation-based DFAX method. While the Commission did question the use of the violation-based DFAX cost allocation method as the sole method for allocating the costs of transmission facilities operating at or above 500 kV (and any lower voltage facilities that are necessary to construct a particular new project at 500 kV and above),⁶⁹ we note that the Commission supported the identification of beneficiaries through the violation-based DFAX method for Lower Voltage Facilities at the time when the Covered Transmission Enhancements, including the Cancelled Projects,⁷⁰ were planned.⁷¹ Thus, while the Commission has raised concerns about the use of violation-based DFAX method to allocate costs under particular circumstances, the use of the violation-based DFAX method, where there are no flows in which to assign a portion of the cost responsibility pursuant to the solution-based DFAX method,⁷² is consistent with our prior orders. Here, the Settling Parties do not propose to use violation-based DFAX method as the sole cost allocation method for allocating the costs of the Cancelled Projects. Rather, the Settlement would apply a hybrid cost allocation method to the Cancelled Projects, under which 50 percent of the costs would be allocated on a load-ratio share basis and 50 percent of the costs would be

⁶⁹ See *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,063, at P 82 (2007).

⁷⁰ The Cancelled Project were all either Regional Facilities or Necessary Lower Voltage Facilities.

⁷¹ *Id.* (recognizing that it would be possible to allocate the cost of 500 kV and above facilities through a more discrete modeling methodology, such as the one set for hearing for facilities below 500 kV). See *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,112 (2008) (accepting settlement to assign cost responsibility for Lower Voltage Facilities based on the violation-based DFAX method).

⁷² See *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 at P 427 (recognizing that the solution-based DFAX method is an improvement over the violation-based DFAX method).

allocated based on the violation-based DFAX method.⁷³ We therefore find the use of the violation-based DFAX method for 50 percent of the costs of the Cancelled Projects reasonable where the relevant facilities are not in service and thus do not support any power flows.

46. RESA does not contest the amounts to be exchanged under the Settlement. However, RESA objects to the implementation of the Settlement effective January 1, 2016. RESA contends that it could not adjust its contracts retroactively and suggests that the Settlement should be effective January 1, 2017. We find January 1, 2016 date establishes a reasonable date for dividing the going-forward period from the historical period and that such a date is not an impermissibly retroactive date. As a result of the remand, the Commission would be able to make adjustments to correct the legal error.⁷⁴ The only issue here is whether the assignment of cost responsibility pursuant to the Settlement for the Covered Transmission Enhancements should be made as part of the going-forward or historical period. The parties were able to calculate the cost responsibility assignments for 2016 based on actual data rather than negotiated amounts based on the black box allocations of the Settlement as an approximation (based on the use of a 2019 proxy year) of the current just and reasonable rate applicable to the historical period. We therefore find the January 1, 2016 date for dividing the historical from the going-forward period under the Settlement reasonable.

47. IMEA, in its reply comments, notes that its concerns reflect only potential ambiguity regarding billing processes, and in response, the PJM Transmission Owners clarify that the normal PJM billing processes will be followed. Accordingly, we find IMEA's requested clarification unnecessary.

48. Because the Settlement appears to provide that the standard of review applicable to modifications to the Settlement proposed by third parties and the Commission acting *sua sponte* is to be "the most stringent standard permissible under applicable law," we clarify the framework that would apply if the Commission were required to determine the standard of review in a later challenge to the Settlement by a third party or by the Commission acting *sua sponte*. 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

⁷³ See *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230 (2012). And, in fact, the violation-based DFAX method was used for all lower voltage facilities.

⁷⁴ *Natural Gas Clearinghouse v. FERC*, 965 F.2d at 1073-74 (D.C. Cir. 1992) (holding the Commission has "broad discretion" in its remedial authority to "correct errors resulting from orders overturned by a reviewing court").

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*,⁷⁵ 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.

49. PJM is directed to make a compliance filing with revised tariff records in eTariff format,⁷⁶ within 30 days of this order, to reflect the Commission's action in this order.

The Commission orders:

- (A) The Settlement is hereby approved, as discussed in the body of this order.
- (B) PJM is directed to make a compliance filing, as discussed in the body of this order.

By the Commission. Chairman McIntyre and Commissioner Powelson are not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷⁵ *New England Power Generators Ass'n v. FERC*, 707 F.3d 364, 370-71 (D.C. Cir. 2013).

⁷⁶ See *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

Appendix A

Settling Parties

American Electric Power Service Corporation;⁷⁷
Dayton Power and Light Company;
Delaware Municipal Electric Corporation, Inc.;
Duke Energy Business Services, LLC;⁷⁸
Duquesne Light Company;
East Kentucky Power Cooperative, Inc.;
Exelon Corporation;⁷⁹
FirstEnergy Utilities;⁸⁰
PPL Electric Utilities Corporation;
UGI Utilities, Inc.;
PJM Interconnection, L.L.C.;
Public Service Commission of West Virginia;
Public Utilities Commission of Ohio;
Illinois Commerce Commission;
Indiana Utility Regulatory Commission (Indiana Commission);
Michigan Public Service Commission (Michigan Commission); and
Pennsylvania Public Utility Commission (Pennsylvania Commission).

Non-Opposing Parties

Delaware Public Service Commission; Maryland Public Service Commission; New Jersey Board of Public Utilities; Public Service Commission of the District of Columbia; Consolidated Edison Company of New York, Inc. (Con Edison); Old Dominion Electric

⁷⁷ On behalf of its operating companies: Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company); Blue Ridge Power Agency, Inc.

⁷⁸ On behalf of Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.

⁷⁹ For Commonwealth Edison Company and PECO Energy Company (with Baltimore Gas and Electric Company, Pepco Holdings, LLC, Potomac Electric Power Company, Delmarva Power & Light Company and Atlantic City Electric Company).

⁸⁰ On behalf of affiliates: American Transmission Systems, Incorporated, Cleveland Electric Illuminating Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Ohio Edison Company, Monongahela Power Company, Pennsylvania Electric Company, Pennsylvania Power Company, Potomac Edison Company, Toledo Edison Company, and West Penn Power Company.

Cooperative; PSEG Energy Resources & Trade LLC; Public Power Association of New Jersey; Public Service Electric and Gas Company; Rockland Electric Company; Virginia Electric and Power Company, and the Virginia State Corporation Commission are listed in the Settlement as not opposing the Settlement. American Municipal Power, Inc. filed comments noting it neither supports nor opposes the Settlement, but should be considered as a non-opposing party.