

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

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| Independent Power Producers of |) | |
| New York, Inc. |) | |
| |) | |
| v. |) | Docket No. EL18-189-000 |
| |) | |
| New York Independent System |) | |
| Operator, Inc. |) | |

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

In accordance with Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully moves for leave to answer, and files a response to, the *Motion for Leave to Answer and Answer of Independent Power Producers of New York, Inc.*, (the “IPPNY Answer”). In addition, the NYISO briefly addresses a request made by the PJM Interconnection, L.L.C. (“PJM”) in its September 10 *Motion for Leave to Answer and Answer* (“September 10 PJM Answer”).

For the reasons set forth below, the IPPNY Answer provides no support for IPPNY’s July 31, 2018 complaint in this proceeding (the “Complaint”), which itself was without merit. As the NYISO’s August 20 answer (“the “NYISO Answer”) explained in detail, the NYISO has correctly determined that the facilities owned by the Linden VFT, LLC (“Linden VFT”) and Hudson Transmission Partners, LLC (“HTP”) (together, the “Zone J MTFs”) continue to be eligible to support capacity imports from the PJM Interconnection, LLC to the New York Control Area (“NYCA”). This is the case notwithstanding the fact that the Zone J MTFs elected

¹ 18 C.F.R. §§ 385.212, 385.213 (2018).

to convert their Firm Transmission Withdrawal Rights (“Firm TWRs”) to Non-Firm Transmission Withdrawal Rights (“Non-Firm TWRs”) (the “TWR Conversions”).² The NYISO’s conclusion was based on its review, which included a review of the North American Electric Reliability Corporation’s (“NERC”) Transmission Loading Relief (“TLR”) Procedures and independent testing using NERC’s Interchange Distribution Calculator (“IDC”). The NYISO’s evaluations were corroborated by PJM.

Nothing in the IPPNY Answer or the Answering Affidavit of Thomas M. Piascik (“Second Piascik Affidavit”) alters the fact that the TWR Conversions have no impact on the curtailment priority of transactions across the Zone J MTFs, provided that they are supported by Long Term Firm Point to Point Service to the MTF bus and that all other requirements of Section 5.12.2.1 of the NYISO’s Services Tariff are satisfied.³ IPPNY’s collateral estoppel and collateral attack arguments, to the extent they apply to the NYISO at all, are devoid of any merit. Simply stated, it cannot plausibly be contended that Commission statements in earlier proceedings that did not address Section 5.12.2.1 or the eligibility of the Zone J MTFs to support capacity imports to the NYCA somehow represented binding Commission determinations on those issues. Even if IPPNY’s estoppel arguments had merit, they cannot override the express requirements of NERC TLR Procedures. IPPNY’s claims that the NYISO (and PJM) have

² The NYISO’s references to “MTFs,” “Firm TWRs,” “Non-Firm TWRs,” and PJM’s Regional Transmission Expansion Plan (“RTEP”) in this answer have the meanings specified in the PJM Open Access Transmission Tariff (“PJM OATT”). Other capitalized but undefined terms used in this pleading shall have the meaning specified in the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).

³ As in the NYISO Answer (*see* n. 37 therein), this further answer does not describe the other Services Tariff requirements to qualify as Installed Capacity because they are not at issue in the Complaint.

somehow misunderstood or misapplied the TLR Procedures are equally misplaced.⁴ Finally, IPPNY's stated concerns that accepting capacity imports over the Zone J MTFs would somehow threaten reliability are totally unfounded and would only serve the short-term economic interests of its members.

The IPPNY Answer therefore fails, as did the Complaint, to show that the NYISO has not followed Section 5.12.2.1. Accordingly, the NYISO reiterates its request that the Complaint be denied.

I. MOTION FOR LEAVE TO ANSWER

The Commission has discretion to, and routinely accepts, answers to protests where, as here, they help to clarify complex issues, provide additional information, are otherwise helpful in the development of the record in a proceeding, or assist in the decision-making process.⁵ The IPPNY Answer makes elaborate claims implicating multiple proceedings in an attempt to support a theory that the NYISO Answer somehow represents a prohibited collateral attack on earlier Commission orders. It also makes a number of inaccurate factual assertions. This answer clarifies and corrects the record. In addition, it helps to clarify a complex procedural issue raised

⁴ The NYISO is not responding to the IPPNY Answer's assertions regarding the PJM OATT except to the limited extent set forth in Section II.B.2 of this answer. The NYISO is not responsible for administering the PJM OATT and does not purport to speak for PJM.

⁵ See, e.g., *Southern California Edison Co.*, 135 FERC ¶ 61,093 at P 16 (2011) (accepting answers to protests "because those answers provided information that assisted [the Commission] in [its] decision-making process"); *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,058 at P 24 (2011) (accepting the answers to protests and answers because they provided information that aided the Commission in better understanding the matters at issue in the proceeding); *New York Independent System Operator, Inc.*, 140 FERC ¶ 61,160 at P 13 (2012) and *PJM Interconnection, LLC*, 132 FERC ¶ 61,217 at P 9 (2010) (accepting answers to answers and protests because they assisted in the Commission's decision-making process).

in the PJM September 10 Answer. This pleading will therefore aid the Commission’s decision-making process and should be accepted.

II. ANSWER

IPPNY begins by wrongly asserting that the NYISO Answer made “clear statements” that the NYISO “will not comply with its tariff to prohibit”⁶ capacity sales across the Zone J MTFs. Mr. Piascik made a similar misstatement, claiming that the NYISO Answer “implicitly acknowledges” that Zone J MTF customers are “authorized to transmit only energy, not capacity across their systems because these MTFs now have only Non-Firm TWRs.”⁷

These are complete mischaracterizations. The NYISO Answer clearly establishes that the NYISO reasonably concluded that the Zone J MTFs continued to be eligible to support capacity imports under Section 5.12.1.1 of the Services Tariff. The basis for this conclusion was NYISO’s understanding of the NERC TLR Procedures. The conclusion was validated by the NYISO’s independent testing using the NERC IDC calculator and supported by the joint PJM-NYISO Local Operating Procedures. It was corroborated by the NYISO’s discussions with PJM and has been further corroborated by PJM’s filings in this proceeding.⁸

The NYISO addresses IPPNY’s other assertions in Sections II.A through C below. Section II.D briefly responds to a request made by PJM.

⁶ IPPNY Answer at 2.

⁷ Second Piascik Affidavit at P 5.

⁸ See PJM September 5 Answer at 4 (confirming that capacity imports over the Zone J MTFs would have firm curtailment priority by emphasizing that “for level 5 NERC TLR events, PJM would concurrently curtail firm point-to-point transactions and PJM load that negatively affects a constrained transmission facility on a *pro rata* basis” and thus that “[t]he firm point-to-point transmission service that Linden VFT purchased would not have a higher priority than firm customer load in PJM.”)

A. The NYISO Answer Is Not Subject to Any Form of Estoppel or Preclusion Because the Commission Has Never Before Addressed Capacity Imports to the NYCA over the Zone J MTFs, or the Subsidiary Question of the Impact of the Zone J MTFs’ TWR Conversions on Capacity Imports Under Section 5.12.2.1 of the Services Tariff

The IPPNY Answer asserts that the key issue in this case, namely, whether the NYISO has correctly interpreted Section 5.12.2.1 of the Services Tariff, was already decided by Commission statements in three earlier proceedings. IPPNY misleadingly presents disparate separate statements as a single “Non-Firm Service Subject to Curtailment Ruling.”⁹ As discussed below, none of these proceedings considered the Services Tariff or the evidence that the NYISO has presented in this proceeding. The NYISO was not even a party to two of the proceedings. Moreover, the Commission order in the docket¹⁰ where the NYISO was a party expressly stated that the interpretation of the Services Tariff was beyond its scope. There is thus no plausible basis for the Commission to find that the NYISO is engaging in “unnecessary re-litigation.”¹¹ Simply stated, the issue in this case has not been litigated before. The Commission should reject IPPNY’s effort to prevent it from considering the dispositive evidence provided in the NYISO Answer.

⁹ IPPNY Answer at 3.

¹⁰ *New Jersey Board of Public Utilities v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,139 (2018) at P 59 (“NJPBU Order”).

¹¹ *See, e.g., Pacific Gas & Electric Co.*, 121 FERC ¶ 61,065 (2007) at P 40, explaining that Commission has a well-established policy against “unnecessary re-litigation” that is based upon, but is generally more flexible than, judicial preclusion doctrines such as collateral estoppel and *res judicata*.

1. IPPNY's Preclusion Arguments Against HTP and the Linden VFT Cannot Possibly Bind the NYISO

IPPNY makes a number of collateral attack and collateral estoppel arguments directed at statements previously made by HTP or the Linden VFT in the TWR Conversion dockets.¹² The NYISO was not a party to those dockets¹³ and takes no position regarding statements made by any other party in them.

Importantly, the TWR Conversion dockets did not address the central issue in this proceeding, *i.e.*, whether it was reasonable for the NYISO to be satisfied under Section 5.12.2.1 of its Services Tariff that capacity over the Zone J MTFs, with firm “out service”¹⁴ is deliverable

¹² IPPNY Answer at n. 3, 6 and Section I.C, referencing Docket Nos. EL7-84-000 and EL17-90-000 (the HTP and Linden VFT TWR Conversion proceedings, respectively).

¹³ Under the judicial doctrine of collateral estoppel an entity ordinarily cannot be subject to collateral estoppel based on rulings in earlier proceedings to which it was not a party. The Commission has held that it is not bound by this rule. *See, e.g., Pacific Gas & Electric Co.*, 121 FERC ¶ 61,065 (2007) at P 40 (“In *Alamito Co.*, the Commission stated that its policy against relitigation of issues is not constrained by the limits of the doctrine of collateral estoppel.”) *citing Alamito Co.*, 41 FERC ¶ 61,312 at 61,829 (1987), *order denying reconsideration and granting request for clarification*, 43 FERC ¶ 61,274 (1988). In *Alamito*, a utility asserted it was not subject to collateral estoppel because it was not a party to the previous case – an element that would have been required by federal courts. But the fact that the NYISO was not involved in the TWR Conversion cases, combined with the fact that those cases did not address the Services Tariff or the ability of the Zone J MTFs to continue to be used to import capacity into New York should nevertheless have substantial weight. Similarly, the fact that IPPNY was also not a party in those proceedings would bar estoppel claims in court and likewise militates against IPPNY’s arguments here.

¹⁴ Mr. Piascik implies that “out service” and “facility service” are new terms created by the NYISO. *See Second Piascik Affidavit* at P 5. In reality, the terms “facility” and “out” service are used by PJM. “Out Service” is a defined term in PJM’s Business Practices for each of the two Zone J MTFs (see Section 12.11 of the *PJM Business Practices for Linden VFT Transmission Service*, available at: <https://www.pjm.com/-/media/etools/oasis/merch-trans-facilities/linden-vft-oasis-business-practices-clean.ashx?la=en>, and Section 10.5 of *PJM Business Practices for Hudson Transmission Service*, available at: <https://www.pjm.com/-/media/etools/oasis/merch-trans-facilities/htp-business-practices.ashx?la=en>. PJM also used these terms in discussions with the NYISO. The NYISO adopted the same terminology. Further, PJM referred to “out service” in its filing in Docket No. EL18-54-000. *See Limited Response of PJM Interconnection, L.L.C.*, Docket No. EL18-54-000 at 2 (March 12, 2018) (“PJM did inform the NYISO that if Linden secured long-term firm Point-to-Point transmission **out service** to deliver energy to the receipt of the Linden VFT Facility, that firm service could be subject to [TLR] level 5 curtailment priority, which is consistent with the treatment of other firm transmission service reservations” (emphasis added).)

to the NYCA Interface. Given that the NYISO was not a party to those proceedings, and that those proceedings did not address Section 5.12.2.1 of the Services Tariff in any way, determinations made in them could not possibly preclude any of the arguments made by the NYISO Answer.

IPPNY suggests that the fact that the NYISO was aware of the TWR Conversion orders but did not address them in the NYISO Answer somehow undercuts the NYISO Answer.¹⁵ In fact the NYISO Answer referred indirectly to those orders but did not attempt to “rebut” the Complaint’s references to them because it was (and still is) apparent, that the TWR Conversion Orders have nothing to do with the interpretation of the Services Tariff or the eligibility of transactions using the Zone J MTFs to provide capacity to the NYCA. Like the NJBPU Order,¹⁶ neither of the TWR Conversion orders addressed the actual operation of the TLR Procedures under which the TWR Conversions have no bearing on curtailment priority. Moreover, no Commission precedent supports the proposition that an entity’s awareness of earlier orders that did not actually decide (or even address) an issue could have preclusive effect on that entity.

Accordingly, even if the Commission were to decide that HTP or the Linden VFT were now precluded from making certain arguments in this proceeding, it would not bind the NYISO. Nor should such a ruling by the Commission result in the Commission granting the Complaint given that the NYISO Answer alone provides a more than sufficient basis for the Commission to deny the Complaint.

¹⁵ IPPNY Answer at 7.

¹⁶ *New Jersey Board of Public Utilities v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,139 (2018) (“NJPBU Order”).

2. The NJBPU Order Cannot Possibly Preclude the NYISO from Making Arguments that Were Expressly Beyond its Scope

IPPNY also claims that the Commission’s statement at Paragraph 59 of the NJBPU Order somehow has preclusive effect on the NYISO. The Commission said that “the Linden and Hudson conversion of Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights means that PJM can curtail or interrupt the withdrawal service for reliability and economic reasons, irrespective of the priority of any upstream firm transmission service.” The NYISO Answer already explained that this statement was *dicta* and was made without the benefit of “a factual record demonstrating the fact that the firmness of the TWRs would not be taken into account when PJM evaluates transactions across the Zone J MTFs under the NERC TLR Procedure.”¹⁷

IPPNY’s efforts to convert a statement in the NJBPU Order regarding an issue that was outside the scope of the proceedings in Docket No. EL18-54-000 have no merit. IPPNY wrongly claims that it was somehow the NYISO’s responsibility to develop such a record in Docket No. EL18-54. But the NYISO argued in that case that IPPNY’s claim was outside the scope of that proceeding and the Commission agreed (as IPPNY has acknowledged).¹⁸ The Commission explicitly stated, “[w]hether parties holding upstream firm transmission service and Non-Firm Transmission Withdrawal Rights can receive capacity payments from the NYISO can be determined only by examination of the NYISO tariff and is outside the scope of this complaint.”¹⁹

¹⁷ NYISO Answer at 20.

¹⁸ See NYISO Answer at n. 48, citing Complaint at 8 (“the Commission found that IPPNY’s comments were outside the scope of the proceeding.”)

¹⁹ NJBPU Order at P 59.

It is absurd for IPPNY to suggest that the NYISO was precluded from arguing that the Zone J MTFs may still be used to support capacity transactions on this basis. IPPNY is arguing that the NJBPU Order, which explicitly did not address the interpretation of Section 5.12.2.1 of the Services Tariff, somehow prevents the NYISO from defending its tariff interpretation in this proceeding. IPPNY's argument is simply not credible. It is impossible to make a collateral attack on a determination that the Commission has never made, and clearly left open to be addressed in a future proceeding.

Moreover, IPPNY is trying to use a collateral estoppel argument to override the explicit language of NERC TLR Procedure established under Commission-approved reliability standards. Collateral estoppel rulings can have binding and preclusive effects on legal questions or the interpretation of ambiguous tariff provisions. They cannot plausibly be used to re-write the NERC TLR Procedure. The fact remains that the NYISO correctly understands how the TLR Procedure operates as described in the NYISO Answer. The NYISO's interpretation of Section 5.2.12.1 is therefore reasonable and correct notwithstanding earlier Commission statements that were made without reference to the Services Tariff or the TLR Procedure.

Even if the Commission's statement in Paragraph 59 of the NJBPU Order were not *dicta* the Commission could not, and presumably would not attempt, to revise the NERC TLR Procedure and the application of the IDC tool via informal pronouncements in individual orders. After all, the NERC TLR Procedure is followed not just by PJM but by all Reliability Coordinators in the Eastern Interconnection. Instead, it seems that if the Commission had intended in earlier orders to prevent the Zone J MTFs from being used to support capacity imports or change how the TLR Procedure operates it would have said so clearly and communicated its determination to NERC. Nor did these purportedly preclusive earlier

proceedings involve the issue of PJM's application of the NERC TLR Procedures or the PJM-NYISO joint Local Operating Procedures for each of the Zone J MTFs.

If, notwithstanding the foregoing, the Commission nevertheless considers applying collateral attack or collateral estoppel principles to the NYISO it should conclude that the NYISO's arguments were not precluded by them. Commission precedent is clear that its policy against unnecessary re-litigation does not apply if a party in a subsequent proceeding presents new evidence.²⁰ The NYISO Answer's explanation of the NYISO's understanding of the NERC TLR Procedure, and its significance for the permissibility of capacity imports over the Zone J MTFs, is new evidence that was outside the scope of Docket No. EL18-54-000 and thus could only have been presented in this proceeding.²¹

In short, IPPNY's claim that the NYISO has "flouted" three Commission orders could not be further from the truth. Commission statements in two cases where the NYISO was not a party and a statement in one case that explicitly did not address the issues in dispute in this docket cannot possibly add up to a valid collateral attack or estoppel claim. Nor can IPPNY make the Commission's earlier statements binding and preclusive by referring to them collectively as a "Non-Firm Service Subject to Curtailment Ruling."²² Inventing a new capitalized term cannot conjure up a dispositive ruling.

²⁰ See, e.g., *Pacific Gas & Electric Co.*, 121 FERC ¶ 61,065 (2007) at P 42 ("Under the applicable authorities, the preclusive effect of collateral estoppel ends when a party presents new evidence or a change in circumstances that warrants reopening the issue.").

²¹ Similarly, to the extent that the Commission believes that collateral attack or collateral estoppel principles might apply to the NYISO with respect to the TWR Conversion dockets it should conclude that they do not apply because the NYISO Answer provides new evidence.

²² See IPPNY Answer at 3, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 29 and 33.

B. IPPNY Fails to Show that the NYISO’s Interpretation of Section 5.12.2.1 Was Wrong

1. The NYISO Answer Correctly Described and the NYISO Correctly Understands All Applicable NERC Requirements and Procedures

IPPNY claims that the NYISO was wrong to conclude that Firm TWRs are unnecessary to import capacity from PJM across the Zone J MTFs.²³ The IPPNY Answer asserts that the NYISO (and others) “misinterpret the NERC standards as well as the NERC documents specific to the Linden VFT MTF...”²⁴ Similarly, Mr. Piascik argues at some length that the relevant NERC eTags and change orders indicate that the firmness of TWRs is relevant for curtailment purposes under the NERC TLRs.²⁵ Based on these claims, he continues to insist that imports using the Zone J MTFs are curtailable at TLR Level 3a or b, *i.e.*, on the same grounds as non-firm transactions.

IPPNY and Mr. Piascik are both mistaken. In particular, Mr. Piascik does not accurately describe the application of NERC TLR Procedures, and related NERC documentation, to the Zone J MTFs. The NYISO was aware of all of the sources referenced by Mr. Piascik when it made its determination regarding the Zone J MTFs under Section 5.12.2.1 of the Services Tariff. Mr. Markham was likewise aware of them when he prepared the Markham Affidavit. His affidavit continues to be correct and his independent test results continue to be valid. By contrast, Mr. Piascik’s assertions are inconsistent with the NYISO’s, and presumably PJM’s, understanding of the NERC TLR Procedure.

²³ See IPPNY Answer at 29-30.

²⁴ IPPNY Answer at 31.

²⁵ See Second Piascik Affidavit at P 15 (“It is clear from the following Change Orders that the NERC eTags associated with transactions across the Linden VFT MTF recognize the separate and distinct [point of receipt] POR and [point of delivery] PODs on either side of the MTF.”).

Specifically, Mr. Piascik claims that it is clear from certain NERC Change Orders that “the NERC eTags associated with transactions across the Linden VFT MTF recognize the separate and distinct POR and PODs on either side of the MTF.²⁶ He goes on to claim that NERC requirements applicable to phase shifters and DC ties dictate that applicable eTags be broken into three segments each of which would be considered in the IDC with the entire tag to be curtailed if any of the segments are impacted by a TLR.²⁷ He then leaps to his conclusion that “PJM is operating the Linden VFT MTF in a manner that corresponds to the IDC modeling for Neptune as originally described in NERC Change Order #240 and modified in Change Order #289, its approach conflicts with (i) the specific provisions of the PJM OATT, including Schedule 16; (ii) NERC requirements for phase-shifting transformers; and (iii) the express provisions of NERC Change Order #302.”²⁸

As confirmed by the Confirming Affidavit of David Mahlmann, the NYISO’s Manager of Operations Engineering,²⁹ Mr. Piascik’s description of the underlying facts is incomplete and overly simplistic, and from it, he draws incorrect conclusions. With respect to his claims concerning the modeling of the Linden VFT, there are similarities, but also material differences, between a variable frequency transformer (“VFT”) and phase shifting transformer. Phase shifting transformers can have non-zero Transmission Distribution Factors (“TDFs”) depending on their controlling status. However, a VFT (such as the Linden VFT), like an HVDC device (such as HTP), is incapable of operating in a non-controlling status. Contrary to Mr. Piascik’s

²⁶ *Id.* at P 15.

²⁷ *Id.* at P 16.

²⁸ *See Id.* at P 21.

²⁹ Mr. Mahlmann’s Confirming Affidavit is Attachment I to this Answer.

characterization, the Zone J MTFs are not, and do not behave like, phase shifting transformers. The most important distinction for purposes of the issues presented in this case are that the power level on the Zone J MTFs is controllable, and to a specified power flow, and is not affected by conditions on the rest of the system. By contrast, power flows over traditional phase shifting transformers react to and are adjusted in steps in relation to system conditions including contingencies, in order to achieve the target power level. Thus, the premise of Mr. Piascik's argument is wrong.

The Linden VFT is not a phase shifting transformer. Its designation as such in the IDC data exchange process is purely for modeling purposes because the IDC does not have a separate VFT option. Further, it is the NYISO's understanding that PJM does not treat VFTs as if they were phase shifting transformers. The NYISO's understanding of PJM's application of the rules for an HVDC to VFT is that it is reasonable because both are continuously controlling devices. Because it is continuously controlling, contrary to Mr. Piascik's claim, Linden VFT is incapable of carrying e-Tag flow or post contingency flows.

Mr. Markham has explained that the facility service portion of a transfer does not impact system constraints which is why it is assigned a TDF of zero in the NERC IDC. Specifically, the TDF for the Linden VFT is zero because the Linden VFT (and HTP) are continuously controlling, similar to a HVDC facility. The zero value results from the physics of the VFT and HTP as continuously controlling tie elements. It therefore reasonably follows from the full precise controllability of the facility service portion of imports over the Zone J MTFs that TWR status on MTFs is not a visible part of, let alone the determining factor for, curtailment decisions, and that the POR and POD are considered in the IDC in making curtailment decisions.

Thus, Mr. Piascik's assertion that the facility service over the Zone J MTFs should be considered for curtailment purposes because it is controllable by PJM³⁰ is based on an incorrect premise and is consequently incorrect itself. Mr. Piascik's premise is that the Zone J MTFs are (and should be) treated like a phase shifter transformer. From a modeling perspective in the IDC, phase shifting transformers have a zero TDF, just like controllable lines, *i.e.*, HVDCs and VFTs. However, unlike phase shifting transformers, it is not physically possible to have a non-controlling HVDC or VFT. Mr. Piascik's disregard of the controllability of the Zone J MTFs, and his consideration of them as phase shifting transformers (where controllability status is significant), leads to his incorrect and unreasonable conclusion that the firmness of facility service over the Zone J MTFs is pertinent to curtailment. What is pertinent in the IDC is the controllability and the POR and POD.

In short, notwithstanding IPPNY's claims, the NYISO Answer accurately described how NERC's curtailment rules apply to transactions across the Zone J MTFs. Nothing in the IPPNY Answer, or the Piascik Affidavit, indicates that the NYISO's application of Section 5.12.2.1 of the Services Tariff was unreasonable.

2. The PJM September 5 Answer Refutes IPPNY's Claims Concerning the PJM OATT

The IPPNY Answer makes a number of arguments concerning Linden VFT's and HTP's interpretations of the PJM OATT.³¹ It also contends that the PJM OATT requires that transactions using the Zone J MTFs be curtailed on a non-firm basis.³²

³⁰ Second Piascik Affidavit at P 24.

³¹ See IPPNY Answer at 5, 29-36.

³² *Id.* at 5 ("curtailment priority over an MTF with Non-Firm TWRs is equivalent to curtailment priority of Non-Firm Point-to-Point Service.")

The NYISO Answer noted that the NYISO does not administer the PJM OATT and that it was not addressing PJM tariff interpretation questions.³³ The NYISO is once again not addressing PJM OATT questions in this pleading other than to confirm that it agrees with the September 5, *Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C.* (“PJM September 5 Answer”). In that filing, PJM clearly explained that the firmness of TWRs only establishes the priority of rights among transmission rightholders on an MTF. The NYISO understands the PJM September 5 Answer to be consistent with prior NYISO-PJM discussions and with the common NYISO-PJM understanding that the firmness of TWRs is irrelevant under the NERC TLR Procedure. The PJM September 5 Answer also indicates, again consistent with NYISO’s understanding, that firm transmission service from points within PJM to PJM’s interfaces with the Zone J MTFs would have the same curtailment priority as native load in PJM.³⁴ This treatment is consistent with the NYISO’s determination that the Zone J MTFs continue to be eligible to support capacity imports to the NYCA.

C. IPPNY’s Continues to Make the Inaccurate and Self-Interested Claim that Allowing Capacity Imports Across the Zone J MTFs Would Harm Reliability

The IPPNY Answer repeats inaccurate claims from the Complaint regarding the alleged threats to reliability resulting from the NYISO’s interpretation of Section 5.12.2.1.³⁵ For example, IPPNY wrongly states that there is “ample record evidence of the ongoing substantial harm to reliability . . . from continued ineligible sales” of capacity from PJM to New York.³⁶

³³ See NYISO Answer at n. 4.

³⁴ See PJM September 5 Answer at 4 (quoted above at n. 8.)

³⁵ The Complaint also made groundless claims regarding the supposed impacts on capacity market prices and resilience of the NYISO’s interpretation of Section 5.12.2.1. The NYISO Answer rebutted these assertions and the IPPNY Answer does not repeat them. (See NYISO August 20 Answer at Section III.D).

³⁶ IPPNY Answer at 2. See also IPPNY Answer at 7-8, 29.

The NYISO Answer explained that its application of Section 5.12.2.1 was informed by its perspective as a NERC Reliability Coordinator and Balancing Area Authority and Commission-approved Independent System Operator and its obligations under applicable NERC, NPCC, and NYSRC standards. It was further informed by the PJM-NYISO Joint Operating Agreement for each of the Zone J MTFs. IPPNY does not have these obligations or the NYISO's perspective. The NYISO Answer explained that IPPNY should not be allowed to override the NYISO's independent operational judgment.

There is no risk to reliability from the NYISO's continued decision to allow capacity imports over the Zone J MTFs. This is because transactions using those facilities unquestionably have the exact same curtailment priority as other firm transactions, assuming that they have long-term firm point to point out service in PJM. It is IPPNY's baseless claims that the NYISO should reject capacity that truly is available on a firm basis that could potentially jeopardize reliability. IPPNY's requested relief would also inflate capacity prices. Simply stated, no parties are harmed by allowing eligible and qualifying capacity transactions over the Zone J MTFs. The only parties who would benefit from preventing them are IPPNY's members who would shield themselves from competition by artificially impeding imports from PJM.

D. The Commission Should Not Consolidate Docket No. EL18-54-000 with Other Proceedings

The PJM September 10 Answer takes issue with another party's suggestion that the Zone J MTFs are currently subject to RTEP costs under Schedule 12 of the PJM OATT.³⁷ PJM states that "neither HTP nor [Linden VFT] are currently subject to RTEP costs since converting all of

³⁷ PJM September 10 Answer at 2 -3 (responding to the *Reply of Hudson Transmission Partners, LLC to Comments of New Jersey Board of Public Utilities and the Independent Market Monitor for PJM*, Docket No. EL18-189-000 (Sept. 4, 2018)).

the transmission withdrawal rights on their respective merchant transmission facilities from firm transmission withdrawal rights to non-firm transmission withdrawal rights.” PJM expressed concern that its existing RTEP allocation rules could result in inequities between different classes of PJM transmission customers. Specifically, “load in New Jersey receiving capacity from a resource located in New Jersey is subject to RTEP cost allocation under the PJM Tariff; however, load in New York receiving capacity from that same resource in New Jersey would not be assigned RTEP cost responsibility for that same service.”³⁸ PJM therefore suggests that, “the Commission include this issue in the settlement proceedings established by the Commission to address various outstanding RTEP cost allocation issues”³⁹ PJM is referring to the recently initiated settlement discussions concerning RTEP cost allocations in Docket No. EL15-67, *et. al.* (the “PJM Cost Allocation Settlement Proceedings”).⁴⁰ It asks that the Commission “add the complaint filed by the NJBPU in Docket No. EL18-54-000 to the settlement proceedings”⁴¹

Subsequently, on September 14, the New Jersey Board of Public Utilities and New Jersey Division of Rate Counsel filed a motion to consolidate Docket No. EL18-54-000 with the PJM Cost Allocation Settlement Proceedings (“NJBPU Motion”). The NYISO intends to file an answer opposing the NJBPU Motion. The NYISO assumes that the Commission will address the request for consolidation in the dockets implicated by the NJBPU Motion, and not in response to PJM’s informal request in this proceeding. Nevertheless, the NYISO notes here that consolidation would be improper. There are substantial differences in the relevant law and facts,

³⁸ *Id.* at 3.

³⁹ *Id.*

⁴⁰ *See Linden VFT, LLC v. PJM Interconnection, L.L.C., et al.*, 164 FERC ¶ 61,034 (2018).

⁴¹ PJM September 10 Answer at 3 (internal footnote omitted). The referenced “settlement proceedings” are the PJM Cost Allocation Settlement Proceedings.

in the identity of the parties, and in the stage of the proceedings between Docket No. EL18-54-000 and the PJM Cost Allocation Settlement Proceedings.

Specifically, the PJM Cost Allocation Settlement Proceedings involve various disputes over the allocation of RTEP costs to PJM customers, such as the Zone J MTFs (as well as to former PJM customers). Docket No. EL18-54-000 involved an attempt to overturn core holdings of Order No. 1000 and to re-write the requirements of the NYISO and PJM tariffs that implement it. In Docket No. EL18-54-000, the NJBPU asked the Commission to compel the NYISO's transmission customers and New York loads to pay for transmission facilities planned by PJM, and constructed solely in PJM's Balancing Authority Area, without the NYISO's participation in the PJM planning process, or prior consent to the proposed allocation of costs to New York. The NJBPU also raised issues regarding the NYISO's administration of its Services Tariff which have nothing to do with the allocation of RTEP costs to PJM transmission customers. Consolidating Docket No. EL18-54-000 with the PJM Cost Allocation Settlement Proceedings would be inconsistent with the Commission's practice and would not serve administrative efficiency.⁴² Instead, it would permit the NJBPU to revive arguments that the Commission has firmly rejected⁴³ on issues that the NYISO is not prepared to negotiate. Consolidation of issues that extend beyond what PJM transmission customers pay for their transmission service is not appropriate and should be denied.

⁴² See, e.g., *Midcontinent Express Pipeline, LLC*, 124 FERC ¶ 61,089, at P 27 (2008) (“The Commission formally consolidates matters only if a trial-type evidentiary hearing is required to resolve common issues of law and fact, and if consolidation will ultimately result in greater administrative efficiency.”); *Startrans IO, LLC*, 122 FERC ¶ 61,253 (2008) (finding formal consolidation inappropriate where a trial-type evidentiary hearing is not required to resolve common issues of law and fact and where consolidation will not ultimately result in greater administrative efficiency).

⁴³ See NJBPU Order at PP 1, 51, 53-55, 60.

III. Conclusion

In conclusion, the New York Independent System Operator, Inc. respectfully requests that the Commission accept this pleading and reiterates its request that the Commission deny the Complaint.

Respectfully submitted,

/s/ Gloria Kavanah

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September 20, 2018

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