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

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| **New Jersey Board of Public Utilities** | ) | |
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| **Complainant** | ) | |
| | ) | |
| **v.** | ) | **Docket No. EL18-54-000** |
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| **PJM Interconnection, LLC, New York Independent System Operator, Inc., Consolidated Edison Company of New York, Inc., Linden VFT, LLC, Hudson Transmission Partners, LLC, and New York Power Authority** | ) | |
| | ) | |
| **Respondents** | ) | |

**ANSWER OF THE**
**NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

In accordance with Rule 213 of the Federal Energy Regulatory Commission's ("Commission's") Rules of Practice and Procedure and the December 26, 2017 *Notice of Complaint*, the New York Independent System Operator, Inc. ("NYISO") respectfully submits this "Answer" to the complaint that the New Jersey Board of Public Utilities ("NJBPU") filed in this proceeding (the "Complaint"). The Complaint should be denied because it wholly fails to satisfy the requirements of Section 206 and 309 of the Federal Power Act ("FPA") and the Commission's complaint regulations.

The Complaint does not identify any "action or inaction" by the NYISO that violates "applicable statutory standards or regulatory requirements."[1] Nor does it "explain how the

[1] 18 C.F.R. §385.206(b)(1).

action or inaction violates applicable statutory standards or regulatory requirements."[2] Complainants must make a *prima facie* evidentiary showing to be entitled to relief.[3] The Complaint fails to do so. It does not show that the NYISO has violated any filed tariff or agreement, or that any NYISO tariff, agreement or other arrangement is unjust, unreasonable, or unduly discriminatory.[4]

Section I.A. of this Answer demonstrates that the Complaint is an impermissible collateral attack on numerous Commission precedents and improperly raises issues that the NJBPU has acknowledged are already being addressed in other, ongoing Commission proceedings. The Commission should reject the Complaint's request to use this docket to address issues raised elsewhere in a "coordinated fashion." The NJBPU should not be allowed to waste the Commission's, or the respondents', resources by relitigating issues that have previously been settled, or are already being litigated, elsewhere.

Section I.B explains that the relief the Complaint seeks (the involuntary allocation of an unspecified portion of the costs of the PJM Interconnection, LLC's ("PJM's") Bergen-Linden Corridor ("BLC") transmission projects to New York ratepayers) is prohibited by Commission precedent. The Complaint wrongly asserts that the NYISO's and PJM's Commission-accepted revisions to the Joint Operating Agreement (the "JOA") among and between them[5] are somehow

[2] 18 C.F.R. §385.206(b)(2).

[3] *See, e.g., Alterna Springerville LLC, et. al. v. Tucson Electric Power Co.*, 153 FERC ¶ 61,215 (2015) at P 16, n. 35.

[4] The scope of this Answer is generally confined to addressing allegations in the Complaint (i) that are directed against the NYISO, or (ii) that allege New York is inappropriately benefitting at the expense of New Jersey, or (iii) that relate to the implementation of the Joint Operating Agreement Among and Between NYISO and PJM Interconnection, L.L.C.

[5] *See generally* NYISO OATT §§ 31 *et seq.* and 35 *et seq.*

"contrary to the principles of Order 1000 ....."[6] But the Complaint is actually asking for costs to be allocated to New York in a manner that is unambiguously barred by Order No. 1000 and by the express language of Commission-accepted NYISO and PJM tariffs, agreements, and the inter-regional protocol implementing Order No. 1000's requirements.

Section I.C refutes the claim that NYISO and PJM have failed to comply with the "Mutual Benefits" provision of the JOA among and between them. The NJBPU's argument is premised on a proposed interpretation of the JOA's Mutual Benefits provision that is impossibly strained and at odds with the nature and history of actual inter-regional operations. Section I.C.3 describes valuable benefits that New Jersey (as part of PJM) receives *because* the PJM Balancing Authority Area is synchronously interconnected to the New York Control Area ("NYCA").

The Complaint contains many other inaccurate assertions. The NYISO responds to several of them in Section I.D in order to ensure an accurate record. In particular, the NYISO explains that: (i) the Complaint's discussion of the Operational Base Flow ("OBF") under the JOA omits material facts; (ii) contrary to the Complaint's claims, the BLC project was designed, selected, and constructed to address transmission issues in Northern New Jersey, not to benefit New York; and (iii) the NJBPU has misconstrued and mischaracterized the modeling practices that underlie, and findings of, the New York State Reliability Council's ("NYSRC's") Installed Reserve Margin ("IRM") Study and the NYISO's Reliability Needs Assessment ("RNA") report. The NYISO has not attempted to address all of the Complaints erroneous or misleading statements, other than by formally denying them in Attachment I.[7]

[6] Complaint at 51.

[7] The NYISO's silence with respect to other statements in the Complaint should not be construed as agreement with the NJBPU.

Finally, Section I.E of this Answer identifies a fundamental legal flaw in the Complaint's request for refunds, which appears to include a request for retroactive refunds, based on a misreading of the scope of Section 309 of the FPA. The Complaint has failed to demonstrate that any form of relief is warranted, but there is clearly no legal basis whatsoever for any kind of retroactive remedy.

The Commission should deny the Complaint and take no further action in this proceeding. The Complaint has not met its burden of proof, is comprised almost entirely of arguments that are impermissible collateral attacks, seeks relief that is inconsistent with directly applicable precedents and tariffs, is predicated on mischaracterizations and misstatements, and raises no genuine issue of material fact that would require settlement or hearing judge procedures to resolve.

## I. ANSWER

### A. The Complaint Makes Impermissible Collateral Attacks on Numerous Commission Determinations

The Complaint should be denied because it makes numerous impermissible collateral attacks on prior rulings and rehashes issues that are already pending in other proceedings. The Commission has a well-established policy against unnecessary relitigation that is based upon,[8] but is ultimately broader than, judicial preclusion doctrines such as collateral estoppel and *res judicata*.[9] The Commission has repeatedly held that "[c]ollateral attacks on final orders and

[8] *See, e.g., Pacific Gas & Electric Co*., 121 FERC ¶ 61,065 (2007) at P 39 ("Both the courts and the Commission have previously found that, to the extent that "new evidence" is not presented or "changed circumstances" are not demonstrated, preclusion doctrines such as collateral estoppel apply to administrative rate cases.")

[9] *Id*. at P 40 ("In *Alamito Co.*, the Commission expressly 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

relitigation of applicable precedent by parties that were active in the earlier cases thwart the finality and repose that are essential to administrative (and judicial) efficiency; for these reasons, collateral attacks and relitigation are strongly discouraged."[10] "[I]n the absence of new or changed circumstances requiring a different result, it is contrary to sound administrative practice and a waste of resources to relitigate issues in succeeding cases once those issues have been finally determined."[11]

The Commission has frequently enforced its policy against unnecessary relitigation in complaint proceedings. It has rejected arguments, or denied complaints in their entirety, as impermissible collateral attacks if they seek to relitigate issues without providing new evidence or demonstrating changed circumstances.[12] The Commission most often invokes the collateral attack doctrine when parties attempt to relitigate issues that were decided in earlier "final" orders, *i.e.,* in proceedings where a rehearing order has been issued and judicial review is complete. But the Commission has also rejected collateral attacks against orders that were still pending on rehearing.[13] The Commission has further invoked collateral attack principles to

party to the previous case - an element that would have been required by federal courts. Nevertheless, the Commission responded that its "long standing" policy against relitigation of issues disposed of the dispute.

[10] *See, e.g., San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services,* 134 FERC ¶ 61,229 at P 15 (2011); *Southern Co. Servs., Inc.*, 129 FERC ¶ 61,253, at P 37 (2009); *Entergy Nuclear Operations, Inc. v. Consolidated Edison Co.,* 112 FERC ¶ 61,117, at P 12 (2005).

[11] *Alamito Co.*, 43 FERC ¶ 61,274, at 61,753 (1988); *see also Central Kansas Power Co.*, 5 FERC ¶ 61,291, at 61,621 (1978)).

[12] *See, e.g., Sage Grouse Energy Project, LLC v. Pacificorp*, 154 FERC ¶ 61,223 at P 29 (2016)*; EPIC Merchant Energy NJ/PA, L.P. v. PJM Interconnection, L.L.C.*, 131 FERC ¶ 61,130 (2010) (dismissing as an impermissible collateral attack a complaint that sought to relitigate the same issues as raised in the prior case citing no new evidence or changed circumstances); *order on reh'g*, 136 FERC ¶ 61,041 at P 14 (2011).

[13] *See Central Maine Power Co.*, 125 FERC ¶ 61,079 at P 45 (2008) (rejecting argument as a collateral attack on a Commission order that was the subject of pending rehearing requests); *order on reh'g,* 135 FERC ¶ 61,136 at P 27 and n. 31 (2011) ("Public Parties incorrectly argue that *Northeast Utilities* was not valid precedent while rehearing was pending. Orders are effective in accordance with their terms;

prevent parties from raising arguments that are already pending in other ongoing proceedings.[14] In other cases, the Commission has not rejected complaints that address pending issues outright, but has instead held them in abeyance,[15] pursuant to its authority to efficiently manage its own caseload.[16]

The Complaint clearly violates the Commission's policy against relitigation. It makes many arguments that rehash points that have already been addressed, or are being addressed, in

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rehearing does not by itself operate to stay an order or, while it is pending, diminish the underlying order's precedential value.") *citing Midwest Hydraulics*, *Inc*., 120 FERC ¶ 61,247, at P 8 (2007) ("[Energie] is confusing the finality of a Commission order with its effectiveness. Section 313(c) of the Federal Power Act expressly provides that the filing of a request for rehearing or a petition for judicial review does not operate as a stay of the order of which rehearing or judicial review is sought.") These determinations are consistent with judicial precedent holding that exhaustion of appellate review is not a prerequisite for collateral estoppel. *See, e.g., Lummus Co. v. Commonwealth Oil Refining Co.*, 297 F.2d 80, 89 (2d Cir.1961) (Friendly, J.).

[14] *Pacific Gas and Electric Co. v. Delta Energy Center, LLC, et. al.*, 116 FERC ¶ 61,004 at P 35 ("PG&E's complaint is thus no more than a collateral attack on, and circumvention of, the ongoing rate proceeding.") and n. 21 ("While that ongoing rate proceeding has not yet reached a conclusion, the Commission sees no reason to consider the just and reasonable rate in both this proceeding and that one.")

[15] *See, e.g., Northern Indiana Public Service Co. v. Midcontinent Independent System Operator, Inc. and PJM Interconnection, L.L.C*., 145 FERC ¶ 61,256 (2013) at P 21 **(**holding complaint in abeyance because it would have been premature to address its arguments while related issues were pending in multiple other dockets. The Commission stated, "We agree with MISO and PJM that the complaint raises issues that overlap with the MISO-PJM Order No. 1000 interregional compliance filings, which are currently pending before the Commission. In addition, the complaint raises issues that are under consideration by the Commission in other proceedings, including: Docket No. AD12-16-000 (relating to capacity delivery across the MISO-PJM seam), Docket No. AD14-3-000 (relating to coordination across the PJM/MISO seam), and Docket No. EL13-75-000 (relating to MISO-PJM JOA market-to-market issues). Determinations on these matters may materially affect certain elements of the complaint.") (footnotes omitted). *See also Con Edison Energy, Inc. v. ISO New England, Inc. and New England Power Pool*, 111 FERC ¶ 61,001 (2005) (holding complaint in abeyance because it raised issues already pending in a different New England capacity market design docket); 126 FERC ¶ 61,124 (2009) (dismissing complaint as moot).

[16] *See, e.g., Northern Indiana Public Service Co. v. Midcontinent Independent System Operator, Inc. and PJM Interconnection, L.L.C*., 145 FERC ¶ 61,256 (2013) at n. 50 ("The Commission has discretion to determine the best procedures to address the issues before it. *See, e.g., Tennessee Gas Pipeline Co. v. FERC*, 972 F.2d 376, 381 (D.C. Cir. 1992) ("The agency is entitled to make reasonable decisions about when and in what type of proceeding it will deal with an actual problem."); *Nader v. FCC*, 520 F.2d 182, 195 (D.C. Cir. 1975) ("[T]his court has upheld in the strongest terms the discretion of regulatory agencies to control the disposition of their caseload.").

other proceedings. The NJBPU itself has admitted in recent filings that it has made the Complaint's core arguments in "repeated filings in numerous related dockets."[17] The NJBPU has not presented new evidence or demonstrated changed circumstances that would justify giving it a second bite at the issues in the Complaint that have already been addressed in proceedings before the Commission.

In several instances, the NJBPU is attempting to re-open matters that have been conclusively settled for years. First, the Complaint argues that the elimination of PJM Regional Transmission Expansion Plan ("RTEP") cost allocations to New York entities related to the BLC project is somehow inconsistent with Order No. 1000.[18] The Complaint "asks that the Commission find that Amendment of the JOA and Interconnection Service Agreements ("ISAs"), discussed below, is contrary to Order 1000 . . ."[19] because "it allows parties to contract away their obligation to pay for the benefits received and results in unduly discriminatory rates for load in PJM and preferential rates for load in NYISO."[20] The NJBPU's claims are a clear collateral attack on Order No. 1000 itself, the various NYISO and PJM compliance orders accepting tariff language implementing Order No. 1000's requirements and, as noted further

[17] *See, e.g., Protest of the New Jersey Board of Public Utilities*, Docket No. ER18-680-000 at 1-2 (February 9, 2018) ("The Board's repeated filings in numerous related dockets have shown that the elimination of cost allocation is: (1) the product of an unjust and unreasonable operation of the PJM Tariff; (2) will result in unduly burdensome costs on PJM customers, particularly in northern New Jersey, at a preference to New York load; and (3) is particularly egregious in light of the benefits retained by New York load regardless of the character of HTP's and Linden's transmission rights."); and at 2 ("The PJM Tariff revisions in the instant filing embody the precise unjust, unreasonable, and preferential results that the Board has been raising to the Commission for the better part of the past year.")

[18] Complaint at PP 121-127.

[19] Complaint at 2.

[20] Complaint at P 149.

below, Commission orders accepting the JOA and ISA amendments that the NJBPU has disputed or settled in multiple other proceedings.

Specifically, as discussed in more detail in Section I.B of this Answer, Order No. 1000 is absolutely clear that the costs of a regional transmission project selected in a regional transmission plan must be allocated solely to entities within the relevant region unless other regions, or entities within those other regions, have expressly agreed to pay a portion of those costs.[21] In their Order No. 1000 compliance filings, both the NYISO and PJM expressly incorporated this principle, one of the hallmarks of Order No. 1000, into their tariffs, which were accepted by the Commission.[22] Accordingly, NYISO's and PJM's Commission-accepted tariff provisions and protocols governing cost allocation for both regional and interregional transmission projects clearly preclude the cost allocation that the Complaint seeks. Order No. 1000 and its implementing orders, including the orders on the NYISO and PJM Order No. 1000 compliance filings, are all final and non-appealable and the Complaint makes no effort to demonstrate that changed circumstances or new evidence justify overturning them. The NJBPU participated in the rulemaking proceeding that culminated in the issuance of Order No. 1000 but did not challenge the cost allocation principles that it is belatedly disputing now in its comments or on rehearing.[23] The Complaint is thus an impermissible effort to relitigate cost allocation decisions that have long been settled as a result of the robust Order No. 1000 implementation process.

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[21] Order No. 1000 at P 657.

[22] *See New York Independent System Operator, Inc.*, 143 FERC ¶ 61,059 at P 310 (2013); *New York Independent System Operator, Inc.*, 148 FERC ¶ 61,044 at PP 296-297 (2014).

[23] *See Comments of the New Jersey Board of Public Utilities*, Docket No. RM10-23-000, filed September 29, 2010; *Reply Comments of the New Jersey Board of Public Utilities*, Docket No. RM190230999, filed November 12, 2010; *Request for Clarification or, in the Alternative, Rehearing of the New Jersey Board of Public Utilities*, Docket No. RM10-23-001, filed September 12, 2011.

Second, the Complaint objects to the fact that the Commission has allowed Consolidated Edison Company of New York, Inc. ("Con Edison") to eliminate its BLC-related RTEP cost allocations by terminating the Con Edison Wheel.[24] It claims that "[t]he facts presented also show ConEd's admission that termination of the ConEd Wheel would not eliminate the need for the BLC, but only result in reallocation of ConEd's portion of the costs of the BLC project to other entities, and away from ConEd's New York customers."[25] The NJBPU's arguments are an impermissible collateral attack on the 2009 Settlement concerning implementation arrangements for the Con Edison Wheel, as well as more recent orders addressing the wheel's termination (which are discussed below). The NJBPU complains that the 2009 Settlement included "a provision wherein ConEd accepted the assignment of cost responsibility for upgrades included in the RTEP."[26] But the Complaint ignores the fact that the very same 2009 Settlement, which the NJBPU itself executed, also expressly provided that Con Edison would have no liability for RTEP charges if the transmission service agreements implemented thereunder were terminated.[27] In an order issued in October 2017 in Docket No. ER17-950 accepting the revisions to the JOA that accommodate the termination of the Con Edison Wheel, the Commission allowed Con Edison to terminate its RTEP allocation precisely because this provision was included in the 2009 Settlement.[28] No alterations have been made to the 2009 Settlement in subsequent years. The NJBPU does not attempt to argue otherwise. The Complaint is thus an impermissible

[24] *See* Complaint at PP 92-94, 127-128.

[25] Complaint at P 91.

[26] Complaint at P 34. *See also,* Complaint at P 128 ("In the 2009 Settlement Agreement, ConEd agreed to accept cost responsibility for RTEP projects within PJM that support the ConEd Wheel and NYISO.")

[27] *See* 2009 Settlement Agreement P 20. *See also* Schedule 12, section (xi) of the PJM Tariff.

[28] *See New York Independent System Operator, Inc., et al.*, 161 FERC ¶ 61,033 at P 50 (2017).

collateral attack on the Commission's 2010 order accepting the 2009 Settlement.[29] If the NJBPU wished to deny Con Edison the ability to avoid future RTEP cost allocations by ceasing to take the Con Edison 1,000 MW Wheel transmission service from PJM it should have never become a party to the settlement and should have instead sought rehearing in 2010. It did not do so then and should not be permitted to relitigate a long resolved issue now.

The Complaint makes several other attempts to reargue points that have been, or that are being, addressed in other pending dockets in which the NJBPU is an active participant. The NJBPU asserts that these arguments are "inextricably linked" to six ongoing proceedings, *i.e.,* Docket Nos. EL17-84, EL17-90, EL17-94, ER17-725, ER17-905 and ER17-950.[30] The NJBPU has submitted comments, protests, and/or rehearing requests in five of these dockets[31] each of which raised issues that it is trying to revisit here. Subsequent to filing the Complaint, the NJBPU has recited its principal arguments yet again in three newly established dockets concerning PJM compliance filings responding to orders in Docket Nos. EL17-84, EL17-90, and EL17-94.[32]

The NJBPU should not be permitted to raise previously-litigated issues regarding the implications of Con Edison's termination of the Con Edison Wheel.[33] As is referenced above,

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[29] *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,221 (2010); *order denying reh'g*, 135 FERC ¶ 61,018 (2011).

[30] Complaint a 2, 51.

[31] The NJBPU has not made any filings in Docket No. ER17-725, which is one of several dockets addressing earlier challenges by HTP, Linden VFT, NYPA and Con Edison to their original RTEP cost allocations for the BLC project.

[32] *See Protest of the New Jersey Board of Public Utilities*, Docket No. ER18-680-000 at 5 (February 9, 2018); *Protest of the New Jersey Board of Public Utilities*, Docket No. ER18-608-000 at 5-6 (January 25, 2018); *Protest of the New Jersey Board of Public Utilities*, Docket No. ER18-507-000 at 4-5 (January 12, 2018).

[33] *See PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,262 (2017) (addressing Docket No. EL17-84); *Linden VFT, LLC v. Public Service Electric and Gas Company, et al.*, 161 FERC ¶ 61,264 (2017) (addressing Docket No. EL17-90); *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,218 (2017) (addressing

and discussed in more detail below in Section I.D of this Answer, questions concerning the impact of the wheel's termination on interchange scheduling at the NYISO-PJM interfaces, including the application of the offset for Operational Baseflow ("OBF") on the ABC and JK interfaces, were decided by the Commission's order accepting JOA amendments in Docket No. ER17-905.[34] The NJBPU was a participant in that proceeding and has sought rehearing of the Commission's October 6, 2017 order. On rehearing it has argued that the Commission erred by not permitting cost allocations to New York parties supposedly receiving benefits from the OBF without paying compensation.[35] The Complaint makes the same argument when it contends that the "effect of the zero cost allocation to Con Edison is that load served in New York receives an unreasonably preferential rate by benefiting twice through its reliance on the PJM system, without any cost responsibility."[36] The NJBPU's attempt to relitigate that issue in this proceeding is thus a collateral attack on the order in Docket No. ER17-905. [37]

Similarly, the Complaint objects to Hudson Transmission Partners, LLC's ("HTP's") and Linden VFT, LLC's ("Linden's") conversion of their Firm TWRs into Non-Firm TWRs under their interconnection service agreements with Public Service Electric and Gas ("PSEG") and

Docket No. ER17-725); *New York Independent System Operator, Inc., et al.*, 161 FERC ¶ 61,033 (2017) (addressing Docket No. ER17-905); *PJM Interconnection, L.L.C.*, 159 FERC ¶ 62,310 (2017) (addressing Docket No. ER17-950).

[34] *See New York Independent System Operator, Inc., et al.*, 161 FERC ¶ 61,033 at P 22 (2017).

[35] NJBPU Rehearing in ER17-905 at 5-7.

[36] Complaint at P 142.

[37] The Complaint also attempts to relitigate cost allocation issues that are already pending in Docket No. ER17-950. In that proceeding, PJM filed proposed revisions to the allocation of certain RTEP costs in Schedule 12 of its Open Access Transmission Tariff to reflect the termination of the firm transmission service arrangements under the Con Edison Wheel. The NJBPU protested PJM's filing, expressing concerns that "the reassignment of cost responsibility is not just and reasonable in light of the proposed operational base flow, detailed in the related Docket No. ER17-905." *Protest of the New Jersey Board of Public Utilities*, Docket No. ER17-950-000 at 7 (March 16, 2017).

PJM. It complains that this has resulted in Linden and HTP escaping "cost allocations by terminating contracts or otherwise amending contracts . . . to downgrade Firm Transmission Withdrawal Rights ("FTWRs") to non-Firm Transmission Withdrawal Rights ("non-FTWRs"), under a faulty interpretation of Section 232.2 and Schedule 12 of the PJM Open Access Transmission Tariff."[38] The Complaint argues that this is unjust and unreasonable because New York and New York entities allegedly continue to derive uncompensated benefits from the BLC project.[39] The same issues have already been litigated in Docket Nos. EL17-84 and ER17-2073 (with respect to HTP's rights), and EL17-90 (with respect to Linden's). The NJBPU filed comments in both Docket Nos. EL17-84 and EL17-90 objecting to HTP's and Linden's proposals. It has filed rehearing requests in both proceedings. In Docket No. EL17-84, it argued on rehearing that the Commission failed to consider the impact of HTP's reduction in transmission rights on RTEP cost allocations and the "preferential rate" supposedly paid by New York loads as a result of benefits allegedly received by New York without RTEP payments.[40] It raised the very same points in a nearly identical rehearing of the Commission's order in Docket No. EL17-90.[41] The Complaint is thus an impermissible collateral attack on the orders in Docket Nos. EL17-84 and EL17-90. Rehashing these issues here would be a waste of the Commission's and the parties' resources.

Docket No. EL17-94 concerns a pending September 2017 complaint by the New York Power Authority ("NYPA") contending that continued invoicing of NYPA for RTEP charges associated with the HTP line, after HTP converted its FTWRs to non-FTWRs, is in violation of

[38] Complaint at 2; *see also* Complaint at 43-46.

[39] *See* Complaint at 41, 48.

[40] NJBPU Rehearing in EL17-84 at 5.

[41] NJBPU Rehearing in EL17-90 at 5.

the PJM Tariff and is unjust and unreasonable. The NJBPU filed comments which urged "the Commission to consider the unjustness and unreasonableness associated with the impact of granting the relief NYPA requests. The effect of their request is to cause New Jersey ratepayers to subsidize New York. The New York Public Service Commission and NYISO have both stated the benefits that flow to New York via the HTP line, which connects to New Jersey and the PJM system. It is plainly unjust and unreasonable for them to receive those benefits without any share in the cost allocation—which is precisely the effect sought by NYPA and HTP."[42] The Commission has not yet issued in order in Docket No. EL17-94. Nevertheless, it would be inefficient and inconsistent with the Commission's policy against relitigation to permit the NJBPU to make the same argument again in this docket.

Finally, the Complaint asks that the Commission "take the necessary procedural steps to dispose of all related issue[s] in a coordinated fashion, . . ." which it asserts would advance "the public interest as well as administrative efficiency."[43] In reality, allowing the NJBPU to relitigate issues that are already being addressed in other open dockets would waste the Commission's, as well as the NYISO's and other respondents', time and resources. Administrative efficiency would be best served by rejecting the Complaint and confining the NJBPU to litigating pending issues in the existing dockets where they are all already being considered.[44]

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[42] *Comments of the New Jersey Board of Public Utilities*, Docket No. EL17-94-000 at 5-6 (October 8, 2017).

[43] Complaint at 2, 51. The NJBPU has made nearly identical statements in other recent filings. *See, e.g., Protest of the New Jersey Board of Public Utilities*, Docket No. ER18-680-000 at 2 (February 9, 2018) ("The Board further requests that the Commission take the necessary procedural steps to dispose of this matter in a coordinated fashion with the Board's Complaint in Docket No. EL18-54, thereby advancing the public interest, as well as administrative efficiency.")

[44] The NJBPU has not specified what "procedural steps" the Commission should take to address the issues it has raised across multiple dockets in a "coordinated fashion." It has not requested that the

In the alternative, to the extent that the Commission chooses not to deny the Complaint on collateral attack or other grounds, it should hold the Complaint in abeyance until final action has been taken in the proceedings that the NJBPU asserts are "inextricably linked" to it. Such an action would be consistent with Commission precedent[45] and would preserve the Commission's and the parties' time and resources. Assuming that the Commission ultimately upholds its rulings in those proceedings regarding the termination of the Con Edison Wheel, modifications to the JOA, and the elimination of RTEP cost allocations to Con Edison, HTP, and Linden it would then have a clear basis to deny the Complaint on mootness grounds.

### B. The Complaint's Attempt to Allocate Costs to New York Violates Order No. 1000 and the NYISO and PJM Tariffs, Agreements and the Interregional Transmission Planning Protocol Approved by the Commission Thereunder

The NJBPU asks the Commission to direct NYISO and PJM to amend their tariffs to allocate an unspecified portion of the costs of PJM's BLC transmission project to NYISO. It asserts that New York has caused electrical impacts in northern New Jersey that are addressed by the BLC project. The Commission should deny the Complaint because it previously determined that no region can impose any portion of the costs of a regional transmission project on another region without the latter region's voluntary agreement. The regional cost allocation principles in

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Commission consolidate the other dockets with this proceeding and has not made the showings required to justify consolidation. The Commission certainly should not consolidate this proceeding with any of the dockets that the NJBPU states are "inextricably linked" to it. Those other dockets are at a much more advanced procedural stage than this proceeding, with rehearing requests pending in most of them, and consolidation would not serve a "useful purpose" or promote administrative efficiency. . *See Southern California Edison Company, et al.*, 134 FERC ¶ 61,059 at P 28 (2011) (rejecting motion to consolidate, even though proceedings involved overlapping issues, on the ground that "administrative efficiency would not be served by consolidation"; the Commission expressed concern that consolidation would "unreasonably truncate and complicate" the Commission's review in the other proceedings); *United Gas Pipeline*, 34 FERC ¶ 61,282 at 61,503 (1986) (rejecting motion to consolidate where consolidation was not required to resolve the pending proceeding, would not serve any other useful purpose, and would delay the resolution of important issues in the pending proceeding). Instead, the Commission should deny the Complaint and resolve each of the other dockets on its own merits.

[45] *See* n.15.

the Commission's Order No. 1000 clearly state that each region must allocate the costs of a regional transmission project selected in its regional transmission plan solely to entities within its own region unless it has the voluntary agreement of other regions or entities to pay a portion of those costs.[46] Moreover, the interregional cost allocation principles in Order No. 1000 provide that each region is not required to accept allocation of the costs of an interregional project between regions unless the project is physically located in both regions, and both regions have included the interregional project in their respective regional transmission plans for the purpose of cost allocation.[47]

As detailed below, the NYISO's and PJM's tariffs, agreements and protocols have been accepted by the Commission as fully compliant with Order No. 1000's regional and interregional cost allocation principles. Consistent with Order No. 1000, these tariffs, agreements, and protocols only provide for cost allocation to another region in specific instances in which PJM and the NYISO voluntarily agree to be responsible for such costs. Pursuant to these requirements, the NYISO and PJM: (1) do not voluntarily agree to pay for regional transmission projects in the other's region, (2) only agree to pay for interregional projects if they are physically located in both regions and each region includes that project in its regional transmission plan for purposes of cost allocation, and (3) do not agree to pay for the costs of upgrades the need for which is caused by the other region.

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[46] *See Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61, 051 at PP 657-65 (2011) ("Order No. 1000), *order on reh'g and clarification*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012) ("Order No. 1000-A), *order on reh'g and clarification*, 141 FERC ¶ 61, 044 (2012)("Order No. 1000-B"). For convenience, unless otherwise specified, references in this filing or "Order No. 1000" should be understood to encompass Order Nos. 1000, 1000-A, and 1000-B.

[47] *Id.*

The BLC project does not satisfy the requirements for the allocation of the costs of a regional or interregional project to another region. The BLC project is located - geographically and electrically - solely within the PJM region. PJM included the project in its RTEP for its regional planning purposes and for regional cost allocation. The NYISO has not voluntarily agreed to pay for a portion of the BLC project costs. Further, the BLC project does not satisfy the requirements for an Interregional Transmission Project that is eligible for interregional cost allocation. It is not physically located in both New York and PJM, and it has not been included in both regions' regional transmission plans. Included as Attachment III to this Answer is the Affidavit of Zachary G. Smith, the NYISO's Vice President of System and Resource Planning. Mr. Smith's Affidavit attests to the facts asserted in Section I.B of this Answer.

For the reasons explained below, the NJBPU's claim for cost allocation of the BLC project to the NYISO violates Order No. 1000 and the related requirements adopted by the NYISO and PJM as approved by the Commission. The Complaint should be denied.

### 1. Costs of the PJM Regional BLC Project Cannot be Allocated to the NYISO as a Regional Transmission Project because Order No. 1000's Regional Planning Principles Preclude Involuntary Cost Allocation

The obligations of public utility transmission providers[48] with respect to transmission planning and cost allocation of transmission facilities through their tariffs have been specified in a series of landmark Commission Orders. Outside of compliance with these orders, public utility transmission providers have no obligation to pay for the costs of new transmission built by another public utility. In Order No. 890,[49] the Commission required public utility transmission

[48] The New York Independent System Operator, Inc. and PJM Interconnection, LLC are public utility transmission providers.

[49] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g,* Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B,

providers to establish coordinated, open and transparent planning processes within their regions, including cost allocation for new transmission projects to load serving entities within their own footprint.

In Order No. 1000,[50] the Commission required each public utility transmission provider to participate in a regional transmission planning process that satisfied the planning principles of Order Nos. 890 and 1000 and produces a regional plan. Each regional transmission planning process must have a regional cost allocation method for new transmission facilities selected in the regional transmission plan for purposes of cost allocation to that region. Order No. 1000 requires the cost allocation method to comply with six principles, which "apply to, and only to, a cost allocation method or methods for new regional transmission facilities selected in a regional transmission plan for purposes of cost allocation."[51]

Regional Cost Allocation Principle 4 states that "[t]he allocation method for the cost of a transmission facility selected in a regional transmission plan **must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs.**"[52] As the Commission determined, "[w]ith respect to cost allocation for a proposed transmission facility located entirely within one public utility transmission owner's service territory, we find that a public utility transmission owner may not unilaterally apply the regional cost allocation

73 FR 39092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 74 FR 12540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 74 FR 61511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009).

[50] *See* Order No. 1000, *supra* n.46.

[51] Order No. 1000 at ¶ 604.

[52] Order No. 1000 at ¶ 657 (emphasis supplied).

method or methods developed pursuant to this Final Rule."[53] The Commission specifically considered and rejected arguments that it should adopt involuntary interregional cost allocation of regional transmission projects and "modify Principle 4 to allow cost allocation by the public utility transmission providers in one transmission planning region to beneficiaries in another transmission planning region."[54]

As the NYISO has not voluntarily agreed to pay for the BLC regional project, cost allocation of the BLC project to New York would violate Order No. 1000, and the Complaint should be denied.

### 2. NYISO and PJM Tariffs and Agreements Preclude the Allocation of Regional Transmission Projects to Each Other.

The NYISO incorporated the regional cost allocation principles into its tariff, including:

> **Regional Cost Allocation Principle 4:** The ISO's allocation method for the cost of a transmission facility selected pursuant to the process in the CSPP shall allocate costs solely within the ISO's transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume a portion of those costs. * * * Costs cannot be assigned involuntarily to another region. The ISO shall not bear the costs of required upgrades in another region.[55]

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[53] Order No. 1000 at ¶ 564.

[54] Order No. 1000 at ¶ 660 The Commission explained that requiring entities in other regions to participate and monitor other regions' planning processes would be too burdensome, and that it was not requiring transmission planning or cost allocation across the entire Eastern Interconnection. *Id.* In particular, the Commission stated: "we find that allowing one region to allocate costs unilaterally to entities in another region would impose too heavy a burden on stakeholders to actively monitor transmission planning processes in numerous other regions, from which they could be identified as beneficiaries and be subject to cost allocation. Indeed, if the Commission expected such participation, the resulting regional transmission planning processes would amount to interconnectionwide transmission planning with corresponding cost allocation, albeit conducted in a highly inefficient manner. The Commission is not requiring either interconnectionwide planning or interconnectionwide cost allocation." *Id.* The Commission reaffirmed its position rejecting involuntary cost allocation between regions in Order No. 1000-A. *See* Order No. 1000-A at 707-711.

[55] NYISO OATT §31.5.2.1. The Commission has approved the NYISO's regional cost allocation methodology and principles. *See New York Independent System Operator, Inc.*, 143 FERC ¶ 61,059 at P 310 (2013) (accepting regional cost allocation methodology for reliability projects in large measure and directing compliance revision concerning Regional Cost Allocation Principle 4); *New York Independent*

In parallel, PJM's OATT provides that costs of a PJM regional transmission project will only be allocated to another region pursuant to an agreement with that region to do so. Hence, the PJM tariff states "where costs of a Required Transmission Enhancement are allocated to a region other than PJM **pursuant to an agreement** set forth in Schedule 12 - Appendix B, Responsible Customers for such costs shall be customers in such region" (emphasis supplied).[56]

The BLC project is a PJM regional transmission project. As the Commission determined:

> Regarding the allocation of the cost of a transmission facility that is located entirely within one transmission planning region and that is intended to export electric energy from that transmission planning region to another transmission planning region**, the public utility transmission providers in the exporting transmission planning region may not have a regional cost allocation method or methods pursuant to this Final Rule that assigns some or all of the cost of that transmission facility to beneficiaries in another transmission planning region without reaching an agreement with those beneficiaries.**[57]

The NYISO has not voluntarily agreed to assume a portion of the BLC project's costs. Therefore, the NJBPU's claim for such cost allocation of the BLC project plainly contradicts Order No. 1000 and the PJM and NYISO tariffs implementing Regional Planning Principle 4, and the Complaint should be denied.

### 3. The Costs of the BLC Project Cannot be Allocated to the NYISO as an Interregional Transmission Project.

Order No. 1000 requires public utility transmission providers in each pair of neighboring transmission planning regions to coordinate their planning with each other, share information

*System Operator, Inc.*, 148 FERC ¶ 61,044 at PP 296-297 (2014) (accepting NYISO and PJM agreement not to bear costs of upgrades in each others' regions as in compliance with directive concerning Regional Cost Allocation Principle 4).

[56] PJM OATT, Schedule 12, Appendix B.

[57] Order No. 1000 at ¶ 658 (emphasis supplied).

regarding their needs and potential solutions, and determine whether there is an interregional transmission planning project located in both of their regions that would satisfy their mutual transmission needs more efficiently or cost effectively than separate regional transmission projects.[58] If each region agrees to build an interregional transmission project in both regions, costs may be allocated to each region using a cost allocation methodology that is roughly commensurate to the benefits to each region.[59] After including the interregional project in its regional transmission plans, each region allocates its share of the Interregional Transmission Project to its own customers using a Commission-approved regional cost allocation methodology.[60]

**a. The BLC Project Does Not Qualify as an Interregional Transmission Project Subject to Cost Allocation to the NYISO Because No Portion of the Project Is Located in the NYISO.**

Interregional Cost Allocation Principle 4 states that: "[c]osts allocated for an interregional transmission facility must be assigned only to transmission planning regions in which the transmission facility is located." As a corollary, Principle 4 further states that "[c]osts cannot be assigned involuntarily under this rule to a transmission planning region in which that transmission facility is not located."

The NYISO incorporated Interregional Cost Allocation Principle No. 4 in its tariffs, stating "[t]he ISO's allocation of costs for an Interregional Transmission Project shall be assigned only to regions in which the Interregional Transmission Project is located. The ISO shall not assign costs involuntarily to a region in which that Interregional Transmission Project is

[58] Order No. 1000 at ¶ 393-396. The Commission did not address cross-border allocation of the costs of new transmission projects in Order No. 890, stating that such proposals "are best addressed in the context of a particular proposal." Order 890-A, at ¶ 253.

[59] Order No. 1000 at ¶ 578.

[60] Order No. 1000 at ¶ 582.

not located."[61] PJM and the NYISO also amended the JOA to provide that in order for such a project to eligible for cost allocation, it "must be planned for construction in both the PJM region and the NYISO Region."[62]

The BLC project is a regional PJM transmission project that is located entirely in PJM. No portion of the BLC project is physically or electrically located in the NYCA. Consequently, no portion of the BLC project cost may be allocated to the NYISO as an Interregional Transmission Project, and the Complaint should be denied.

**b. The BLC Project Does Not Qualify as an Interregional Project Subject to Cost Allocation to the NYISO Because It was Not Selected Pursuant to the Interregional Planning Procedures of the NYISO and PJM and is Not Contained in a NYISO Regional Transmission Plan.**

Order No. 1000 requires that an Interregional Transmission Project be selected pursuant to the interregional planning procedures of adjoining regions and incorporated in each region's regional transmission plan for purposes of cost allocation. To comply with the interregional planning coordination requirements of Order No. 1000, PJM, the NYISO, and ISO-New England amended their joint Northeastern ISO/RTO Planning Coordination Protocol ("Protocol").[63] The

[61] OATT § 31.5.2.2. The NYISO OATT defines "Interregional Transmission Project" as "A transmission facility **located in two or more regions** that is evaluated under the Interregional Planning Protocol and proposed to address an identified Reliability Need, congestion identified in the CARIS, or a transmission need driven by a Public Policy Requirement pursuant to Order No. 100 and the provisions of this Attachment Y" (emphasis supplied). OATT §31.1.1.

[62] JOA § 35.10.6, *Consequences to Other Regions from Regional or Interregional Transmission Projects*.

[63] *See Amended and Restated Northeastern ISO/RTO Planning Coordination Protocol* (July 13, 2015) ("Protocol"), *available at*: http://www.nyiso.com/public/webdocs/markets_operations/services/planning/ipsac/Northeast_Planning_Protocol_FINAL_SIGNED_VERSION.pdf. The Commission approved the interregional planning process compliance filings of NYISO, PJM and ISO-NE, including the revised NYISO-PJM JOA, Interregional Planning Protocol, and related tariff provisions for each region. *See ISO New England Inc., et al.*, 151 FERC ¶ 61,133 (2015) (conditionally accepting interregional compliance filings by NYISO, PJM, and ISO-NE and directing certain compliance revisions); *ISO New England Inc., et al.,* Letter Order, Docket Nos. ER13-1957-001, *et al.* (November 19, 2015) (accepting interregional compliance filings by NYISO, PJM, and ISO-NE).

Protocol calls for the Joint Interregional Planning Committee ("JIPC") that includes PJM, ISO-New England and the NYISO to review needs identified by two or more regions and to "analyze whether any proposed Interregional Transmission Project may be more efficient or cost-effective than the separate regional transmission projects, and shall post results on the interregional pages of websites of the regions."[64] If such a project is identified, each region with a need that would be addressed by the project will consider it in its regional planning process. The Protocol states that

> [i]f the proposed Interregional Transmission Project is approved in each region by including it in the respective regional transmission plans in accordance with the procedures for each Party's reliability, economic and/or public policy transmission planning processes, the corresponding existing regional transmission projects shall be displaced, and the costs of the Interregional Transmission Project shall be allocated as described in Section 9 hereof.[65]

Similarly, in order for an Interregional Transmission Project identified under the Protocol to be cost allocated between PJM and the NYISO, the JOA between the regions requires that it be included in the regional transmission plans of each region. The JOA states: "[t]o be eligible for interregional cost allocation pursuant to this Section 35.10.2, an Interregional Transmission Project must be selected in both the PJM and NYISO regional transmission plans for purposes of cost allocation pursuant to agreements and tariffs on file at FERC for each Region, and must be planned for construction in both the PJM region and the NYISO Region."[66] As the Commission determined, "[t]he cost of a transmission facility that is not selected in a regional transmission plan for purposes of cost allocation, whether proposed by an incumbent or by a nonincumbent

[64] Protocol at §7.3.

[65] Protocol at §7.4. Section 9 of the Protocol and the JOA between PJM and the NYISO provide for allocation of Interregional Transmission Projects between the two regions based upon the ratio of the avoided costs of the displaced regional transmission projects to each other. JOA at §35.10.2(b).

[66] JOA at §35.102(a).

transmission provider, may not be recovered through a transmission planning region's method or methods.[67] The provisions in the Protocol and JOA adhere to the planning and cost allocation principles of Order No. 1000 that no region should be forced to accept an interregional project in its transmission plan,[68] and that such acceptance must be documented in the region's regional transmission plan to ensure alignment between both regions that agree to undertake the project between their regions.[69]

The BLC project was not identified as a potential Interregional Transmission Project by PJM and the NYISO via the Joint Interregional Planning Committee that meets regularly pursuant to the Protocol. Nor has the NYISO included the BLC project in any of its regional transmission plans for purposes of cost allocation. Accordingly, the BLC project is not eligible for cost allocation to the NYISO as an Interregional Transmission Project under the Protocol, and the Complaint should be denied.

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[67] Order No. 1000 at ¶ 332.

[68] Order No. 1000 at ¶ 480 ("We agree with commenters that interregional transmission coordination should be structured in such a way that no public utility transmission provider in a transmission planning region should be permitted to force transmission projects or costs onto another region contrary to the agreed upon interregional transmission coordination procedures incorporated into the relevant public utility transmission providers' OATTs pursuant to this Final Rule").

[69] Order No. 1000 at ¶ 582 ("Additionally, a central underpinning to our reforms in this Final Rule is the closer alignment of transmission planning and cost allocation. As we discuss above in the section on interregional transmission coordination, [449] an interregional transmission facility must be selected in both of the relevant regional transmission planning processes for purposes of cost allocation in order to be eligible for interregional cost allocation pursuant to a cost allocation method required under this Final Rule. This is designed, among other things, to allow for adequate stakeholder review of the interregional transmission facility before the relevant portion of the facility is in a regional transmission plan.[450] This process could be undermined if a transmission facility that is located and reviewed only within one regional transmission planning process, could nevertheless have its costs allocated to potential beneficiaries in another region that may not have had an adequate opportunity to review the need for the transmission facility and make the resulting beneficiary determinations").

### 4. The Costs of the BLC Project Cannot Be Allocated to the NYISO as a Transmission Upgrade in PJM.

Order No. 1000 provides that each public utility transmission provider must consider and state in its tariffs whether it will voluntarily agree to bear the costs of upgrades that its projects may cause in other planning regions. As Section I.D.3 of this Answer explains, PJM developed the BLC Project to address its own transmission needs in Northern New Jersey. The NYISO did not identify the BLC Project as a necessary upgrade in PJM as a consequence of a regional or interregional transmission facility in New York. Order No. 1000's Regional Cost Allocation Principle 4 states that:

> the transmission planning process in the original region must identify consequences for other transmission planning regions, such as upgrades that may be required in another region and, if the original region agrees to bear costs associated with such upgrades, then the original region's cost allocation method or methods must include provisions for allocating the costs of upgrades among the beneficiaries in the original region.[70]

Even if the NYISO had identified the BLC as such an upgrade, Order No. 1000 and applicable tariffs explicitly prohibit the allocation of such costs to the other region (in this case, the NYISO). Consistent with Order No. 1000, the NYISO's tariff states that "[t]he ISO shall not bear the costs of required upgrades in another region."[71] Concomitantly, the NYISO's tariff states that its "[c]osts cannot be assigned involuntarily to another region."[72]

The mutual agreement between NYISO and PJM not to compensate each other for upgrades is made even more explicit in the JOA. In conjunction with their Order No. 1000 regional planning compliance filings, PJM and the NYISO amended their JOA to address

[70] Order No. 1000 at ¶ 657.

[71] NYISO OATT Section 31.5.2.1.

[72] *Id.*

Regional Cost Allocation Principle 4 to expressly agree that each region will not compensate each other for upgrades in the other region from regional or interregional transmission projects. Specifically, the JOA provides:

> **35.10.6 Consequences to Other Regions from Regional or Interregional Transmission Projects**
>
> Except as provided herein in sections 35.10.2 and 35.10.3 of this Agreement, or where cost responsibility is expressly assumed by NYISO or PJM in other documents, agreements or tariffs on file with FERC, **neither the NYISO Region nor the PJM Region shall be responsible for compensating another region or each other for required upgrades or for any other consequences in another planning region associated with regional or interregional transmission facilities**….[73]

Finally, the JOA further provides that "[o]ther than agreed to mitigation or operational alternatives, each region is responsible for costs of addressing impacts to its own system."[74] In sum, as provided for in the NYISO tariff, PJM tariff, and the JOA between the regions, there is no basis for cost allocation of the BLC project to the NYISO as a transmission upgrade.

### C. The Complaint Fails to Show that Any Entity Has Violated the "Mutual Benefits" Provisions of the JOA

The NJBPU attempts to achieve two inconsistent goals in its Complaint. On the one hand, the NJBPU attempts to expand the categories of benefits that qualify as "Mutual Benefits" under the JOA to include two specific types of benefits that the Complaint alleges accrue to New York but are not shared by New Jersey. They are: (1) capacity price reductions resulting from reflecting emergency assistance from the neighboring Balancing Authority Area in studies that

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[73] Joint Operating Agreement Among and Between New York Independent System Operator Inc. and PJM Interconnection, L.L.C. ("JOA"), Attachment CC of NYISO OATT, at§ 35.10.6, *Consequences to Other Regions from Regional or Interregional Transmission Projects] See ISO New England Inc., et al.*, 151 FERC ¶ 61,133 at P 178 (2015) (accepting JOA Section 35.10.6 agreement not to bear costs of upgrades in other regions as compliant with Interregional Cost Allocation Principle 4).

[74] JOA §35.10.7.5. *See ISO New England Inc., et al.*, 151 FERC ¶ 61,133 at P 112 (2015) (accepting JOA Section 35.10.7).

are performed to determine capacity requirements,[75] and (2) other benefits the NJBPU asserts the BLC project transmission facilities will provide to New York.[76] On the other hand, the NJBPU steadfastly refuses to admit that PJM and New Jersey receive a variety of benefits because PJM is part of a synchronously interconnected system,[77] and that the BLC project was constructed because it benefits New Jersey.[78]

The Complaint argues that the two purportedly unequally shared benefits enumerated above are "Mutual Benefits" under the JOA. The NJBPU then offers an impossibly strained interpretation of Section 35.4.1 of the JOA that is designed to sidestep the JOA's joint planning provisions and other Order No. 1000-based joint system planning requirements that bar the NJBPU's requested relief.[79]

The scope of "Mutual Benefits" is defined in Section 35.2.1 of the JOA. As the attached affidavit of Emilie Nelson, the NYISO's Vice President of Market Operations, explains,[80] the defined term addresses a limited set of benefits that the NYISO and PJM provide to each other in

[75] In Section I.D.4 of this Answer the NYISO explains why the NJBPU's arguments that compare the studies and assumptions used in studies establishing capacity requirements for the NYISO and PJM are not apples-to-apples comparisons, are inaccurate or unsupported, and do not present a valid basis for any allocation of costs to the NYISO.

[76] *See* Complaint at pp. 2-4 and PP 61-76, 89-100, 103-109 and 114-118.

[77] Benefits that PJM and New Jersey receive because PJM is part of a synchronously interconnected system include: (a) capacity price reductions resulting from reflecting emergency assistance from the neighboring Balancing Authority Area in studies that are performed to determine PJM's capacity requirements, (b) primary and secondary frequency response, (c) voltage and reactive support, (d) the ability to schedule economic interchange, (e) the ability to request Emergency Energy from the NYCA and other areas, and (f) the ability to request that the Ramapo, Waldwick and A, B, C PARs be operated to provide relief in an emergency.

[78] The NYISO addresses the reasons PJM indicated that it selected the BLC project in Section I.D.3 of this Answer.

[79] The NYISO explains why the Complaint is barred by the joint system planning rules that the NYISO and PJM adopted in response to Order No. 1000 in Section I.B of this Answer.

[80] Attachment II to this Answer is the Affidavit of Emilie Nelson, the NYISO's Vice President of Market Operations. Ms. Nelson's Affidavit attests to the facts asserted in Section I.C of this Answer.

the real-time operating horizon by virtue of being synchronously interconnected. The benefits that the NJBPU focuses on in its Complaint are not the types of real-time operating benefits that qualify as "Mutual Benefits" under the JOA.

The NYISO addresses the definition of "Mutual Benefits" under the JOA and explains that the NJBPU's interpretation of Section 35.4.1 of the JOA is inconsistent with the plain language of the JOA in Sections I.C.1 and I.C.2 of this Answer. In Section I.C.3 of this Answer the NYISO identifies a few of the benefits of interconnected operation that accrue to both the NYISO and PJM that the Complaint ignores. The NYISO provides three examples of instances when NYCA resources were used to help PJM provide reliable service to its New Jersey (and other) load.

### 1. The Complaint Attempts to Use the Mutual Benefits Provisions of the JOA to Sidestep Order No. 1000 Cost Allocation Requirements

Consistent with the definition set forth in Section 35.2.1 of the JOA, "Mutual Benefits" are limited to transient and steady-state support that the NYISO and PJM provide to each other inherently by virtue of being synchronously interconnected. Mutual Benefits are provided in the near-term operations timeframe. Mutual Benefits do not include market products that are sold across the NYCA/PJM interface, or Emergency Energy for which compensation is paid. The Complaint attempts to expand the scope and purpose of the Mutual Benefits provisions of the JOA: (a) to include within its scope benefits that the NYCA might incidentally derive from new or upgraded PJM regional transmission facilities that are selected and developed in PJM's regional planning process; and (b) to override the Order No. 1000 cost allocation rules in Section 35.10 of the JOA and in the NYISO and PJM tariffs in order to permit the cost of transmission facilities that were constructed in PJM's regional planning process to be imposed on New York

ratepayers.[81] The Commission must reject the NJBPU's transparent attempt to significantly expand the scope and purpose of the Mutual Benefits provision of the JOA in order to sidestep the Commission-accepted planning requirements[82] that must be satisfied for the cost of the BLC transmission facilities to be allocated to New York ratepayers.

**a. Scope and Purpose of JOA Defined Term "Mutual Benefits"**

Under Section 35.2.1 of the JOA "Mutual Benefits" (a defined term) are limited to "the transient and steady-state support that the integrated generation and Transmission Systems in PJM and New York provide to each other inherently by virtue of being interconnected as described in Section 35.4 of this Agreement." Paragraphs 96, 99-100, 105-109 and 114-119 of the complaint attempt to stretch the definition of Mutual Benefits that appears in Section 35.2.1 of the JOA to include within its scope (a) the possible availability of emergency assistance from a neighboring Balancing Authority Area in planning studies that are performed outside the real-time operating horizon, and (b) benefits resulting from the construction of new transmission facilities for which there is already a Commission-accepted cost allocation process in the JOA and in the NYISO and PJM tariffs. The purported benefits that the Complaint describes are not Mutual Benefits under the JOA.

As the attached affidavit of Ms. Emilie Nelson explains, Mutual Benefits are grid reliability benefits that are realized by virtue of being synchronously interconnected in real-time operations. Mutual Benefits include (a) governor and steady state frequency bias response, as expected by NERC Standard BAL-003, and (b) voltage and reactive support provided using the two regions' interconnections. The NYISO and PJM do not charge each other to provide these

[81] *See* Complaint at PP 105-120.

[82] *See, e.g.,* Section I.B. of this Answer and Section 35.10 of the JOA.

services in real-time operations. The practices reflected in the Mutual Benefit provisions of the JOA are consistent with standard industry practice in the Eastern Interconnection.

A key example of a Mutual Benefit of synchronously interconnected operation is frequency response. When power systems experience frequency deviations, synchronously interconnected generators automatically respond without regard to the location of the boundaries between Balancing Authority Areas. When a frequency disturbance occurs in PJM, generators in New York and the rest of the Eastern Interconnection respond.

As the Commission explained in Order No. 794,[83] system frequency reflects the instantaneous balance between generation and load. Reliable operation of a power system depends on maintaining frequency within predetermined boundaries above and below a scheduled value, which is 60 Hertz (Hz) in the Eastern Interconnection. Sufficient frequency response is necessary to stabilize frequency within an Interconnection immediately following the sudden loss of generation or load. Failure to maintain frequency can disrupt the operation of equipment and initiate disconnection of power plant equipment, which could lead to blackouts. Primary frequency response and control involves the autonomous, automatic, and rapid action of generators, or other resources, to change their output (within seconds) to rapidly dampen large changes in frequency. The ability of a synchronously interconnected power system to withstand a sudden loss of generation or load depends on the presence and adequacy of resources capable of providing rapid incremental power changes to counterbalance the disturbance and arrest a frequency deviation. Secondary frequency response, also known as automatic generation control ("AGC"), is a function performed by the NYISO, PJM and other Eastern Interconnection

[83] Order No. 794, 146 FERC ¶ 61,024 (2014).

Balancing Authorities. AGC balances generation, interchange and demand by managing the response of available resources within minutes.[84]

PJM and the NYISO depend on each other's resources (and other resources in the Eastern Interconnection) to provide primary and secondary frequency response when a disturbance occurs. Consistent with both standard industry practice and the Mutual Benefits provisions of their JOA, the NYISO and PJM do not charge each other for providing frequency response service to each other, given that frequency response is an inherent attribute of being part of an interconnected grid.

When PJM unexpectedly loses a large generator in real-time operations, other PJM generators, NYCA generators and generators located elsewhere in the Eastern Interconnection automatically and immediately respond and produce the energy that is needed to make up for PJM's loss. In other words, they provide primary frequency response. The NYISO and other synchronously interconnected Balancing Authority Areas then continue to provide secondary frequency support to PJM until it recovers and restores its Area Control Error ("ACE") to within applicable criteria. The Mutual Benefits provisions of the JOA make clear that the NYISO and PJM would not charge each other for the primary or secondary frequency support service that they provided in this example.[85] These rules are consistent with the standard practice for interconnected Balancing Areas in the United States.

The Commission should deny the Complaint because the Mutual Benefits provision in Section 35.2.1 of the JOA only applies to "the transient and steady-state support that the integrated generation and Transmission Systems in PJM and New York provide to each other

[84] *Id*. at PP 6-9.

[85] *See* Section 35.4.1 of the JOA. The MWh provided by PJM's neighbors will be included in the inadvertent energy calculation and PJM may be expected to return them in-kind at a later date.

inherently by virtue of being interconnected," which occurs in real-time operations. The Commission must reject the NJBPU's attempt to stretch the JOA's definition of Mutual Benefits to include (a) the possible availability of emergency assistance from a neighboring Balancing Authority Area in planning studies that are performed outside the real-time operating horizon, or (b) benefits resulting from the construction of new transmission facilities for which there is already a Commission-accepted cost allocation process in the JOA and NYISO and PJM tariffs. The purported benefits that the Complaint focuses on are not Mutual Benefits, as that term is defined in the JOA.

### 2. The NJBPU's Proposal for NYISO and PJM to be Required to Pay Each Other Whenever Mutual Benefits are not Equal is Contrary to the Plain Language of Section 35.4.1 of the JOA

Following the NJBPU's attempt to impermissibly expand the range of benefits that are Mutual Benefits under the JOA, Paragraphs 12 and 112 of the Complaint next propose an "implicit" interpretation of the intent behind Section 35.4.1 of the JOA that would require payments to be made whenever Mutual Benefits are not equal between the NYCA and PJM. The NJBPU's "implicit" interpretation of the JOA contradicts the plain language of Section 35.4.1 of the JOA, which states that PJM and the NYISO "shall not" charge each other for Mutual Benefits.

Section 35.2.1 of the JOA defines Mutual Benefits as follows:

> "Mutual Benefits" shall mean the transient and steady-state support that the integrated generation and Transmission Systems in PJM and New York provide to each other inherently by virtue of being interconnected as described in Section 35.4 of this Agreement.

Section 35.4 of the JOA contains the following provisions addressing Mutual Benefits:

> **35.4.1 No Charge for Mutual Benefits of Interconnection**
>
> The PJM Transmission System and the New York Transmission System, by virtue of being connected with a much larger Interconnection, share Mutual Benefits such as

transient and steady-state support. PJM and NYISO shall not charge one another for such Mutual Benefits [Highlighting Added.]

**35.4.2 Maintenance of Mutual Benefits.**

The Parties shall endeavor to operate or direct the operation of the Interconnection Facilities to realize the Mutual Benefits. The Parties recognize circumstances beyond their control, such as a result of operating configurations, contingencies, maintenance, or actions by third parties, may result in a reduction of Mutual Benefits.

Despite the clear prohibition against PJM and NYISO charging each other for Mutual Benefits in Section 35.4.1 of the JOA, Paragraph 112 of the Complaint baldly states "Implicit in [Section 35.4.1 of the JOA] is the reasonable expectation that, when both share the benefits of interconnection, both PJM and NYISO will equally pay their respective share of those benefits, such that there is no need to charge one another." The NJBPU's proposal to impose payment obligations for Mutual Benefits is inconsistent with the plain language of Section 35.4.1 of the JOA which is titled, "No Charge for Mutual Benefits of Interconnection" and states "PJM and NYISO shall not charge one another for such Mutual Benefits." The NJBPU seeks to turn a JOA provision that expressly *precludes* the assessment of cross-border charges for Mutual Benefits into a provision that would *require* cross-border payments to be tendered whenever the Mutual Benefits received by New York and PJM are perceived to be not equal. The Commission should reject the NJBPU's unsupported "implicit" addition to Section 35.4.1 and instead determine that the statement "PJM and NYISO shall not charge one another for such Mutual Benefits" means exactly what it says.

If the Commission were to agree with the NJBPU that Section 35.4.1 of the JOA implicitly requires PJM and NYISO to "equally pay their respective share of those benefits, such that there is no need to charge one another," the result would be endless litigation before the Commission and the courts about how much each region "benefits" from the interconnection whenever circumstances change. Such a result would dramatically undercut one of the core

pillars of Order No. 1000. In its explanation of the need for the cost allocation principles adopted in Order No. 1000, the Commission noted that "[w]ithin RTO or ISO regions, particularly those that encompass several states, the allocation of transmission costs is often contentious and prone to litigation because it is difficult to reach an allocation of costs that is perceived by all stakeholders as reflecting a fair distribution of benefits."[86] The cost allocation principles adopted in Order No. 1000 were intended specifically to reduce these disputes by identifying and allocating cost responsibility on an *ex ante* basis. The NJBPU's argument is at odds with that core principle of Order No. 1000.

### 3. Other Benefits of Synchronously Interconnected Operation that New Jersey Receives

The Complaint repeatedly suggests that the NYCA benefits from its interconnection with PJM, but is no longer providing benefits to PJM in return.[87] As demonstrated in this Answer, the NJBPU's claims present no basis for cost allocation to the NYISO and are patently untrue. In fact, PJM has benefitted significantly over the years from its interconnections with the NYCA. Set forth below are three examples of benefits of interconnected operation that the NJBPU's complaint does not recognize, and of instances when the NYISO and NYCA generation and transmission resources were employed to assist PJM.

#### a. Emergency Energy

At times when sufficient energy is not available for purchase[88] and PJM or the NYISO require assistance to either avoid or mitigate an emergency, Section 35.6 of the JOA gives each

[86] Order No. 1000 at P 498.

[87] *See* Complaint at pp. 2-4 and PP 61-76, 89-100, 103-109 and 114-118.

[88] Section 35.6.1 of the JOA states that, in avoiding or mitigating an Emergency, PJM and NYISO "shall strive to allow for commercial remedies" and request Emergency Energy when commercial remedies are not "successful or practical." In all but a very few cases, commercial remedies have proven sufficient at the NYISO's border with PJM.

entity the right to request that Emergency Energy be made available, and imposes an obligation on the responding region to provide Emergency Energy if it is able to do so.[89] Any Emergency Energy provided is paid for by the requesting ISO/RTO in accordance with the Commission-Accepted NYISO-PJM Inter Control Area Transactions Agreement.[90] Because Emergency Energy is a paid-for service, it does not qualify as a Mutual Benefit of interconnected operation under the JOA.

The NYISO reviewed its records back to 2007 to determine when NYISO and PJM have provided Emergency Energy to each other. The instances are rare. On October 8, 2007, the NYISO purchased 300 MW of Emergency Energy from PJM for one hour. On October 29, 2012, the NYISO purchased 100 MW of Emergency Energy from PJM for one hour for delivery over the Neptune Scheduled Line.[91] The final instance the NYISO identified was a wheel of Emergency Energy across the NYCA that sourced in ISO-New England and sunk in PJM during the 2014 Polar Vortex. The NYISO provides an account of this event below.

### b. Example of Benefit to PJM #1—NYISO Wheel of Emergency Energy to PJM During the 2014 Polar Vortex

The following background information is excerpted from page 124 of the PJM Market Monitoring Unit's May 15, 2014 State of the Market Report.

> Extreme cold weather conditions in January [2014] resulted in record PJM winter peak loads. The high demand combined with high forced outage rates, and supply interruptions for natural gas fueled generation resulted in low

[89] Section 35.6.3 of the JOA states "Each Party shall, to the maximum extent it deems consistent with the safe and proper operation of its respective Transmission System, provide Emergency Energy to the other Party in accordance with the provisions of the Inter Control Area Transactions Agreement."

[90] The NYISO/PJM Inter Control Area Transactions Agreement is posted on the NYISO's web site at the following location:
http://www.nyiso.com/public/webdocs/markets_operations/documents/Legal_and_Regulatory/Agreements/Interconnection/pjm_intercontrolarea_agree.pdf

[91] The Neptune Scheduled Line tripped, so PJM was only able to deliver 33 MWh of Emergency Energy to New York.

> reserve margins and associated shortage pricing events, and high uplift payments….
>
> On January 6 [2014], at 1125, PJM issued a maximum emergency generation alert for the RTO for January 7 [2014]. At 0055 on January 7, a primary reserve warning was issued for the RTO. On January 7 at 0153, PJM issued a request to purchase emergency energy for delivery between 0600 and 1100. At 0251, PJM declared a voltage reduction warning and reduction of non-critical plant load for the RTO. At 0430, PJM declared a maximum emergency generation action for the RTO. Also at 0430, PJM issued emergency mandatory load management for both short lead and long lead demand resources for the RTO. Shortage pricing was triggered at 0725. It ended at 1220 when primary and synchronized reserves increased to greater than the required levels. The primary reserve warning, voltage reduction warning and the maximum emergency generation action were cancelled at 1214.
>
> At 1330, PJM issued another request to purchase emergency energy for delivery between 1700 and 2100 EPT. At 1500, PJM declared another maximum emergency action and issued emergency mandatory load management for both short and long lead demand resources for the RTO. Shortage pricing was in effect between 1755 and 1810. The request for emergency energy purchase as well as maximum energy generation action was called off at 1816. [Footnote omitted.]

Like PJM, the NYISO was experiencing extreme winter conditions on January 7, 2014. The NYCA achieved its all-time winter peak of 25,738 MW on that day. Nevertheless, the NYISO exported energy to PJM every hour from HB7 to HB22 on January 7, 2014.[92] In HB19 and HB20 the NYISO exported more than 1,000 MWh of needed energy to PJM. During the evening, when the NYCA was running low on resources that it could provide to assist PJM, the NYISO facilitated a wheel of Emergency Energy sourcing from ISO New England and traversing the NYCA to serve load in PJM. The NYISO's wheel of Emergency Energy occurred from HB15 through HB22 on January 7, 2014. On a day when both regions faced significant adversity, PJM benefitted from being interconnected to the NYCA.

[92] The NYISO's settlement records indicate that, on average, the NYISO delivered 558 MWh/hour of energy to PJM over the 16 hour period.

### c. Use of Phase Angle Regulators to Alleviate Emergency Conditions

The Market-to-Market Coordination Rules ("M2M") that PJM and the NYISO have implemented use the Ramapo, Waldwick and A, B, C phase angle regulators ("PARs") to deliver scheduled interchange, serve PJM's Rockland Electric load in New Jersey, and provide cost-effective congestion management.[93] The JOA also permits the PARs at the PJM/NYISO border to be used to address emergency conditions. Section 35.6.5 of the currently effective JOA provides as follows:

> If an emergency condition exists in either the NYCA or PJM, the NYISO operator or PJM dispatcher may request that the NY/PJM Interconnection Facilities be adjusted to assist directing power flows between the NYCA and PJM to alleviate the emergency condition. The taps on the ABC PARs, Ramapo PARs, and Waldwick PARs may be moved either in tandem or individually as needed to mitigate the emergency condition.
>
> The NYISO and/or PJM shall implement the appropriate emergency procedures of either the NYISO or PJM, as appropriate, during system emergencies experienced on either the NYISO or PJM system. The NYISO and PJM shall have the authority to implement their respective emergency procedures in any order required to ensure overall system reliability.

Before the Con Edison 1,000 MW Wheel ended in April of 2017, Schedule C to the JOA addressed its implementation. Schedule C included provisions authorizing the use of the A, B, C and Waldwick PARs to mitigate emergency conditions that are very similar to the language that is currently in Section 35.6.5 of the JOA. Section 1.3 of Schedule C to the JOA provided, in pertinent part, as follows:

> 1.3 During system emergencies, the appropriate emergency procedures of the NYISO and PJM, if necessary, shall take priority over the provisions of this Operating Protocol. The NYISO and PJM shall have the authority to implement their respective emergency procedures in whatever order is required to ensure overall system reliability.

[93] *See New York System Operator, Inc. and PJM Interconnection*, L.L.C., 161 FERC ¶ 61,033 at P 8 (2017).

…

In addition, if PJM declares an emergency condition that arises from outages on the PSE&G system, the NYISO and PJM may agree to deliver up to 400 MW to Goethals for re-delivery to Hudson via the NYISO's system. Such emergency re-deliveries shall not be considered in the calculation of the Real-Time Market Desired Flow under Appendices 1 and 3 of this Operating Protocol.

Appendix 5 to Schedule C to the JOA also addressed the use of the A, B, C and Waldwick PARs to mitigate emergency conditions. It provided, in pertinent part, as follows:

**Emergency Operations**

If an emergency condition exists in either the NYISO or PJM, the NYISO dispatcher or PJM dispatcher may request that the ties between New York and New Jersey be adjusted to assist directing power flows in the respective areas to alleviate the emergency situation. The taps on the PARs at Waldwick, Goethals, and Farragut may be moved either in tandem or individually as needed to mitigate the emergency condition. Responding to emergency conditions in either the NYISO or PJM overrides any requirements of this Operating Protocol and the appendices hereto.

The rules in Section 35.6.5 of the currently effective JOA are more expansive than the rules that were included in Appendix C because they permit the Ramapo PARs to be used in addition to the Waldwick PARs and A, B, C PARs to mitigate an emergency condition in PJM or New York. Unless it would place NYCA reliability at risk, the NYISO will instruct Con Edison to operate the Ramapo and A, B, C PARs[94] to assist PJM in an emergency.

An example of a circumstance in which PJM used the Waldwick PARs and the New York State Transmission System to serve its New Jersey load in the aftermath of Superstorm Sandy in 2012 is set forth below.

[94] NYISO has operational control and Con Edison has physical control of the Ramapo and A, B, C PARs. PJM has operational control and PSEG has physical control of the E, F and O PARs.

### d. Example of Benefit to PJM #2—Use of the New York State Transmission System and E and F PARs to Serve New Jersey Load in the Aftermath of Superstorm Sandy

Paragraph 67 of the Complaint states "NYISO represents that the HTP line improves NYISO's ability to manage severe weather events, because "[h]aving additional interconnections . . . provides the NYISO with operational flexibility." As is the case throughout the Complaint, the NJBPU avoids admitting the reciprocal fact that PJM's many interconnections to the NYCA provide PJM additional operational flexibility. However, actual operations following Superstorm Sandy illustrate an instance when PJM gained "operational flexibility" benefits from its interconnections with the NYCA that PJM used to serve its New Jersey load.

Superstorm Sandy made landfall in New York on October 29, 2012. The storm caused significant coastal flooding in New York City and Northern New Jersey. PSEG's Sewaren Substation and the A, B and C lines that link Northern New Jersey to New York City were some of the many transmission and generation facilities that were damaged and suffered forced outages due to Superstorm Sandy.

From 22:06 on October 29, 2012 until 00:30 on November 4, 2012, PJM utilized the remaining NYISO-PJM interconnections and the E and F PARs to pull electricity out of PJM and into New York, transfer it across the New York State Transmission System, and inject it into Northern New Jersey over the J and K transmission lines to serve PJM's New Jersey load. During this five-day period PJM relied on components of the New York State Transmission System to serve a portion of its New Jersey load. From HB13 on November 2, 2012 until the end of the day on November 3, 2012, PJM transferred, on average, 810 MW/hour of energy out of PJM, through New York, and back into PJM's Northern New Jersey territory using the E and F PARs located on the J and K transmission lines.

The NYISO allowed PJM to use the New York State Transmission System to serve PJM's Northern New Jersey load due to the substantial facility and load outages that the region experienced as a result of Superstorm Sandy. The inherent value of an interconnected power system is being able to provide enhanced grid resilience and to rely on regional support during extreme conditions. Actions taken in compliance with Section 35.6.5 of the NYISO's currently effective JOA with PJM would enable the same remedy to be effectuated in an emergency today.

**e. Economic Interchange**

A more typical circumstance in which the interconnection between NYISO and PJM provide benefits to both regions is the scheduling of economic interchange, which reduces the total cost to serve load in the receiving Balancing Area.

From 2014 to 2017 (inclusive), net hourly interchange schedules at the NYISO's Keystone Proxy Generator Bus[95] have been to the NYCA in 59% of hours and to PJM in 41% of hours.

The data the NYISO reviewed indicates that NYCA is most likely to be exporting energy to PJM during "shoulder months" (particularly in May), when PJM and NYISO schedule transmission and generator outages to permit maintenance to be performed.

**f. Example of Benefit to PJM #3—July 30, 2015 Heat Wave**

The NYISO exported energy to PJM during a heat wave that PJM experienced in July of 2015. This example does not involve sales of Emergency Energy, or the operation of the PJM/NYCA border PARs to address an emergency. Instead, it illustrates how the day-to-day

[95] The Keystone Proxy Generator Bus aggregates Bids and Schedules on the 5018 Line, the A, B, C Lines, the J, K Lines and the PJM-NY Western Ties (that interconnect Pennsylvania and New York).

scheduling of interchange (commercial transactions) between the NYCA and PJM can benefit both regions.

On July 30, 2015 PJM issued Hot Weather Alerts for its region. During the late afternoon heat it proved economic for PJM to import energy from the NYCA. This was true even though the NYISO experienced a peak load in excess of 31,000 MW that day. From HB 13 to HB 21 the NYISO exported 380 MW/hour, on average, to PJM.

The economic export of energy from the NYISO to PJM on July 30, 2015 provided benefits to PJM during the heat wave PJM's Balancing Authority Area was experiencing.

### D. The NJBPU Complaint Contains Multiple Factual Misstatements that Must Be Corrected

Because this Section of the NYISO's Answer addresses a broad variety of allegations, the affidavits of both Ms. Nelson and Mr. Smith (Attachments II and III to this Answer) are provided to support the factual assertions set forth below. Each of the attached affidavits specifies the sub-Sections it covers.

#### 1. The Complaint Omits Important Facts from its Discussion of the OBF

On January 31, 2017, the NYISO and PJM jointly submitted a filing in Docket No. ER17-905 proposing revisions to their JOA to implement new rules governing the A/C interconnections that are included in the NYISO's Keystone Proxy Generator Bus when the 1,000 MW Con Edison Wheel expired on April 31, 2017 (the "RTO Filing"). The RTO Filing included a proposal to temporarily implement an OBF that PJM proposed and the NYISO agreed to implement at PJM's request.[96] The RTO Filing described the reason for the OBF as follows:

[96] *See* NYISO's *Motion for Leave to Answer and Answer* in FERC Docket No. ER17-905 at 2 (December 1, 2017).

> The proposed initial 400 MW OBF is necessary to address the short-term reliability issues in Northern New Jersey described above and to maintain historical interface transfer limits. The RTOs propose to apply an initial OBF of 400 MW in interface flows until transmission upgrades are completed in Northern New Jersey. Absent the OBF, the TTC between the two areas would have to be reduced.[97]

Paragraph 38 of the Complaint cites page seven of a White Paper that was included as Attachment VII to the RTO Filing. PJM and the NYISO developed the White Paper to explain their market design and implementation decisions. Based on selective quotes from page seven of the White Paper the NJBPU argues that the OBF was implemented to address "the potential for severe thermal violations in northern New Jersey under the high load and high transfer to New York scenario (termed the 'high export assumption')." However, the text of the White Paper and the PJM study results indicate that the OBF is needed to protect reliability and allow for operational flexibility both when PJM is exporting large quantities of power to the NYCA and when PJM is *importing* large quantities of power from the NYCA.

Page seven of the White Paper states "The OBF is necessary **to address short-term reliability issues in Northern New Jersey**, and therefore is expected to be reduced within the next five (5) years once system conditions permit such a reduction." [Emphasis added.] Pages eight through ten of the White Paper set forth the results of several study case scenarios PJM performed that informed the RTOs' decision to implement the OBF: the June 1, 2016 PJM EMS Case, the July 25, 2016 PJM EMS Case and the PJM Summer Operations Analysis Task Force ("OATF") Case. Each case identified reliability concerns when NYISO was *exporting* 1,500 MW of energy *to PJM*. In two of the three NYCA to PJM export cases PJM's studies identified "thermal overloads in PS North system" and stated that the RTOs were unable to achieve the

[97] RTO Filing at 8.

desired flow on the JK Interface into PJM (under delivering) even though the study exhausted the available PAR taps attempting to achieve the scheduled delivery. PJM's Summer OATF Case presented a different reliability concern when NYISO was exporting 1,500 MW to PJM. In that study PJM found that the RTOs were "unable to control desired flow on the JK Interface into PJM (over delivering), PAR Tap adjustments exhausted." Regardless of whether PJM was importing energy from the NYCA or exporting energy to the NYCA, all three of PJM's study cases identified reliability concerns.

### 2. The Commission Considered and Rejected the NJBPU's Arguments Opposing the OBF in Docket No. ER17-905

The NJBPU filed a protest opposing the implementation of the OBF in Docket No. ER17-905 on February 21, 2017. A protest against the OBF that raised many of the same arguments that appeared in the NJBPU protest was filed by PSEG in that docket. The NYISO and PJM jointly responded to the protests on March 10, 2017. In its October 6, 2017 Order Accepting Tariff Revisions and Denying Requests for Rehearing and Clarification, the Commission ruled as follows:

> 22. We find that the proposed JOA revisions represent a just and reasonable solution to address the expiration of the wheeling arrangement, and therefore we accept the RTOs' proposal, effective May 1, 2017. The proposal will manage congestion and enable efficient economic interchange between the Northern New Jersey and Southeastern New York areas through the implementation of interface pricing based on an aggregate PJM-NY AC Proxy Bus and M2M coordination at the ABC and JK Interfaces. In addition, the proposal will also address short-term reliability issues in Northern New Jersey. Without the proposed revisions, historical congestion issues would be exacerbated and reliability concerns would force the RTOs to significantly reduce the economic transfer capability between the RTOs. We expect the RTOs to abide by their commitment to review the OBF MW value at least annually to determine if modification is appropriate….
>
> 29. However, when the RTOs conducted scenario analyses involving the flow of power between the regions, they identified reliability issues in Northern New Jersey and delivery limitations **when importing and exporting power** on the JK and ABC Interfaces. Given these constraints, the RTOs worked with stakeholders

> to identify the initial 400 MW OBF as a crucial aspect of their proposal to resolve short-term reliability issues and to maintain historical interface transfer limits. Additionally, the proposed OBF will enable efficient economic interchange between the relatively congested Northern New Jersey and Southeastern New York areas. Because the OBF is necessary to support the RTOs' goal of effectuating aggregate interchange schedules across the PJM-NY AC Proxy Bus, and managing regional congestion, we find that the OBF is just and reasonable.
>
> 30. We do not agree with PSEG's assertion that the RTOs inappropriately based the proposed OBF on extreme system conditions and extremely high levels of non-firm deliveries to NYISO from PJM. Rather, we find that the RTOs appropriately considered historical flows during 2016 summer peak conditions. Further, the RTOs sufficiently supported their decision to use a net interchange value of 2,500 MW as a historic transfer limit that could occur. We find that the RTOs have properly demonstrated the need for the proposed OBF through the use of actual historical flows and a reasonable net interchange value. [Emphasis added to paragraph 29, footnotes omitted.]

On November 6, 2017 the NJBPU and PSEG filed requests for rehearing of the Commission's October 6, 2017 Order in Docket No. ER17-905. The NJBPU's pending rehearing request addresses many of the same issues the NJBPU raised in its Protest. For example, the NJBPU's rehearing request complains that the Commission did not "adequately distinguish the OBF and the terms and protocols of the ConEd Wheel, or to explain why these benefits would be commensurate with no cost allocation to ConEd."[98] Similarly, in the Complaint, the NJBPU asserts that the "effect of the zero cost allocation to ConEd is that load served in New York receives an unreasonably preferential rate by benefiting twice through its reliance on the PJM system, without any cost responsibility."[99]

The NYISO responded to the NJBPU's rehearing assertions in Docket No. ER17-905 by informing the Commission that the "OBF is not required to protect the reliable operation of the New York State Transmission System" and that the "NYISO recently agreed to PJM's request to

[98] Request for Rehearing of the Board of Public Utilities, *New York Independent System Operator, Inc., et al.*, Docket Nos. ER17-905-000 and ER17-905-001, filed November 6, 2017 at 10.

[99] Complaint at P 142.

reduce the initial 400 MW OBF to zero as of October 31, 2019."[100] The Commission should dismiss this Complaint and reject the NJBPU's rehearing request in Docket No. ER17-905 for the reasons it has expressed in that Docket.

### 3. The BLC was Designed, Selected and Constructed as the Effective Solution to PJM Transmission Issues in Northern New Jersey. It was Not Constructed to Benefit New York

The BLC upgrades are being constructed to address fault current issues on the Northern New Jersey transmission system and to address thermal issues that PJM identified in its 2013 RTEP.[101] PJM selected the BLC project as the effective solution to short circuit and other reliability issues that PJM was facing in Northern New Jersey, in part because its construction obviated the need for a number of other projects in PJM. On pages seven through nine of the PJM Staff Whitepaper PJM staff explained:

> The double circuit 345 kV conversion project was found to be most effective at reducing the available fault currents on the PSE&G system to below 80 kA. In addition, the project would eliminate the need for a number of previously approved baseline projects and a supplemental project. The total cost of the previously approved baseline projects is $325.5 M. The cost of the supplemental project is $150 M. In addition to obviating the need for these previously approved projects, the double circuit 345 kV conversion project also addresses a number of new thermal problems that were identified as part of the 2013 RTEP…. The estimated cost of the baseline projects that would be needed if the double circuit 345 kV alternative were not built is $565 M.
>
> …
>
> The cost of the double circuit 345 kV solution alternative is estimated to be $1,200.3 M. However, as noted above, the avoided cost of the double circuit 345 kV alternative is $1040.42 M. As a result the total net project cost impact to the RTEP for the double circuit 345 kV alternative is $159.88 M….

[100] Motion for Leave to Answer and Answer of the New York Independent System Operator, Inc., *New York Independent System Operator, Inc., et al.*, Docket Nos. ER17-905-000 and ER17-905-001, filed December 2, 2017, at 2-3.

[101] *See* pages 4 and 7 of the *PJM Staff Whitepaper* that set forth the *Transmission Expansion Advisory Committee (TEAC) Recommendations to the PJM Board* (December 2013) ("PJM Staff Whitepaper").

The NJBPU's complaint does not identify a single New York transmission facility that was cancelled because PJM decided to construct the BLC project. The BLC was not proposed, developed, or designed as a solution to a NYCA reliability need, nor was it developed to obviate the need to construct planned NYCA transmission projects. As Order No. 1000 recognized,[102] it would be unjust and unreasonable to allocate to New York ratepayers a portion of the cost of a facility that the NYISO did not ask PJM to build or participate in designing *even if* the NYCA is incrementally better off because it is synchronously interconnected to PJM and the BLC project makes PJM's New Jersey transmission facilities more robust.

PJM designed and decided to build the BLC facility to address its own needs. Were the Commission to agree with the NJBPU and set the proposed low hurdle as the appropriate standard for interregional cost allocation, then litigation seeking to assign the cost of new transmission facilities to neighboring regions that "benefit" from their construction will become common practice.[103]

#### 4. NJBPU Misconstrues the Modeling Practices and Findings of the NYISO's Reliability Needs Assessment and Installed Reserve Margin Study

The NJBPU argues that modeling assumptions the NYISO and the NYSRC make in studies that impact the NYCA Installed Reserve Margin ("IRM") support cost allocation to New York. As the NYISO explains below, the NJBPU fundamentally misconstrues the NYISO's

[102] *See* Order No. 1000 at PP 657-65.

[103] *See* Order No. 1000-A at P 708 ("[A]llowing one region to allocate costs unilaterally to entities in another region would impose too heavy a burden on stakeholders to actively monitor transmission planning processes in numerous other regions, from which they could be identified as beneficiaries and be subject to cost allocation. The Commission noted that if it expected such participation, the resulting regional transmission planning processes could amount to interconnectionwide transmission planning with corresponding cost allocation, albeit conducted in a highly inefficient manner. The Commission further explained that it is not requiring either interconnectionwide transmission planning or interconnectionwide cost allocation.").

modeling practices and study findings. The Complaint does not identify any viable basis for the NJBPU's proposed cost allocation. To the contrary, the Complaint omits relevant facts in an effort to paint an inaccurate picture that New Jersey ratepayers are being treated unfairly.

PJM and the NYSRC each consider emergency assistance in setting the IRMs for their respective Balancing Authority Areas, and the NYSRC and NYISO each limit the assistance the NYCA can receive from PJM in the IRM Study and the RNA in order to protect NYCA reliability. The NYISO is not prepared to comment on any changes that PJM may have made to the assumptions in its Capacity Energy Transfer Limit ("CETL") study in order to ensure continued reliable service to PJM's New Jersey customers. The NYISO remains prepared and able to comply with its obligations to provide Emergency Energy to PJM in accordance with Section 35.6.3 of the JOA, and to operate the Ramapo, Waldwick and A, B, C PARs to assist PJM in an emergency in accordance with Section 35.6.5 of the JOA.

**a. Emergency Energy and Operation of the Ramapo, Waldwick and A, B, C PARs to Provide Emergency Assistance**

The NYISO and PJM have the opportunity to rely on emergency assistance from each other's Balancing Authority Areas because they are each entitled to request Emergency Energy from the other Area under Section 35.6.3 of the JOA. Under the JOA the responding area is expected to provide Emergency Energy "to the maximum extent it deems consistent with the safe and proper operation of its respective Transmission System."[104]

In addition, Section 35.6.5 of the JOA permits the eight PARs at the New York-PJM border to "be adjusted to assist directing power flows between the NYCA and PJM to alleviate the emergency condition."[105] The changes that were made to the JOA when the Con Edison

[104] JOA at 35.6.3.

[105] *Id*. at 35.6.5.

Wheel ended in April of 2017 *do not* prevent the NYCA or PJM from providing Emergency Energy or other forms of emergency assistance to each other. As has always been the case, the NYISO stands ready to provide Emergency Energy to PJM in accordance with the JOA.

### b. Background Information about the NYCA IRM Study and Reliability Needs Assessment Report

The NYCA IRM is the ratio of the amount of additional Installed Capacity required by the NYSRC in order for the NYCA to meet Northeast Power Coordinating Council ("NPCC") reliability criteria to the forecasted NYCA upcoming Capability Year peak Load.[106] The IRM defines the amount of capacity each Load Serving Entity must procure in excess of its customers' forecasted peak summer load to maintain resource adequacy. NPCC criteria define resource adequacy to limit the probability of an unplanned loss of load to no greater than one occurrence in ten years.

The NYCA IRM Study is conducted annually by the NYSRC with assistance from the NYISO. The IRM Study is a probabilistic, forward-looking resource adequacy assessment that develops an IRM base case value and includes the results of several sensitivity cases for the upcoming Capability Year that begins on May 1 and ends on April 30. For example, the IRM Study that the NYSRC issued on December 8, 2017 informed the NYSRC's decision on how to set the IRM for May 2018 through April 2019. The IRM approved by the NYSRC to meet the NYSRC and NPCC reliability criteria of a Loss of Load Expectation ("LOLE") of no greater than 0.1 day/year, affects NYCA capacity prices.

The RNA is the first step of the NYISO reliability planning process. The NYISO documents the Reliability Needs it identifies in the RNA report, which is presented to the

[106] *See* Section 2.14 of the NYISO's Market Administration and Control Area Services Tariff.

NYISO Board of Directors ("NYISO Board") for approval. The RNA report covers a ten year planning horizon and includes both resource adequacy and transmission security assessments. The resource adequacy assessment that the NYISO performs in its RNA report employs a methodology that is very similar to the one-year resource adequacy assessment that the NYSRC performs with the NYISO's assistance to produce the IRM Study.

Following NYISO Board approval of the RNA, the NYISO initiates the next step in the reliability planning process, which starts by requesting Local Transmission Owner Plans updates. As part of this step, the NYISO considers the impact of such updates to Local Transmission Owner Plans on identified Reliability Needs and, if necessary, solicits market-based solutions, regulated backstop solutions, and alternative regulated solutions to the identified Reliability Needs. If market-based solutions are not sufficient to meet the identified Needs, the NYISO then proceeds to assess the viability and sufficiency of each of the proposed regulated solutions, leading to the development of the Comprehensive Reliability Plan ("CRP").

The CRP documents the solutions determined to be viable and sufficient to meet the identified Reliability Needs and, if appropriate, ranks any regulated transmission solutions submitted for the Board to consider for selection of the more efficient or cost effective transmission project. If built, the selected transmission project is eligible for cost allocation and recovery under the NYISO's tariff.

The most recent RNA report and CRP were issued on October 18, 2016 and April 11, 2017, respectively. They assessed the NYCA's reliability needs for the 2017-2026 study period.

PJM performs its Reserve Requirement Study ("PJM RSS") to calculate its IRM for future delivery years.[107] In part because PJM employs a three-year forward capacity market, the

[107] PJM's IRM is used to determine a Forecast Pool Requirement for future delivery years.

PJM RRS covers a much longer (11 year) horizon than the NYSRC's IRM Study. The NYSRC IRM Study and the PJM RRS are used to determine installed reserve requirements in their respective regions.

### c. The NYSRC and the NYISO Conservatively Limit Available Emergency Assistance from PJM in NYCA Resource Adequacy Studies

The resource adequacy assessments included in the IRM and RNA conservatively limit the emergency assistance that the NYCA can receive from PJM in the study models.[108] For example, the most recent IRM Study that the NYSRC issued on December 8, 2017, determined the assistance that might be available from PJM based on a minimum LOLE of 0.14 day/year consistent with the value PJM uses in its own planning studies.[109] In other words, the NYISO and NYSRC studies assume PJM is only meeting its minimum requirements, and do not count on the availability of PJM capacity in excess of those minimum requirements. The IRM Study conservatively assumes that PJM's peak occurs coincident with the NYCA peak (it does not allow load diversity to increase the resources that are available to provide assistance).[110] The IRM Study limits the total emergency assistance available to the NYCA from all neighboring regions to 3,500 MW, which is a conservative limit.[111] The NYISO's "all lines in" summer import capability exceeds 8,000 MW. Furthermore, the IRM Study only includes emergency

[108] The methods used to model emergency assistance from PJM and all external areas are routinely evaluated and refined, as needed, to provide a representation that conservatively but accurately models the neighboring regions.

[109] *Technical Study Report, New York Control Area Installed Capacity Requirement for the Period May 2018 to April 2019* at 17 (December 8, 2017) ("2018/2019 IRM Study"). Link to NYSRC web site: http://www.nysrc.org/NYSRC_NYCA_ICR_Reports.html

[110] 2018/2019 IRM Study Appendices at 13.

[111] 2018/2019 IRM Study at 18-19 and 23, and 2018/2019 IRM Study Appendices at 38-39.

assistance to the extent there is excess power available that is not being used by neighboring regions based on a probabilistic analysis.

The NYSRC determined an 18.2% IRM for the 2018/2019 Capability Year.[112] The NYSRC also performed a sensitivity study to determine the impact, if any, of limiting emergency assistance from PJM over all available interties[113] to 1,500 MW. The sensitivity study did not identify any change to the 2018/2019 IRM as a result of limiting total emergency assistance from PJM to 1,500 MW.[114] Contrary to the NJBPU's arguments in paragraphs 61-76, 105-109 and 114-115 of its complaint, the NYSRC and the NYISO do not over-rely on emergency assistance from PJM in their resource adequacy models. Instead, to protect NYCA reliability the NYSRC and the NYISO necessarily employ conservative modeling assumptions that prevent over-reliance on PJM and other neighboring regions.

**d. The NJBPU Draws Incorrect Conclusions Based on Figure 5-4 in the 2016 RNA Study and Statements in the IRM Studies**

In paragraphs 64 and 73-76 of its complaint the NJBPU attempts to use Figure 5-4 on page 40 of the NYISO's 2016 RNA report and statements that appear in the NYSRC's 2017/2018 and 2018/2019 IRM Studies to support its complaint. Because the NJBPU does not fully understand Figure 5-4, or some of the other statements in the 2016 RNA report and IRM Studies upon which it relies, the NJBPU reaches inaccurate conclusions and unsupported conclusions.

[112] 2018/2019 IRM Study at 2, 2018/2019 IRM Study Appendices at 48 (Case 0). The 2018/2019 IRM was accepted in a Letter Order issued in Docket No. ER18-524-000 on February 16, 2018.

[113] The NYCA interties with PJM are (1) the A/C ties represented by the Keystone Proxy Generator Bus, (2) the Linden Scheduled Line, (3) the HTP Scheduled Line and (4) the Neptune Scheduled Line.

[114] 2018/2019 IRM Study at 23 (Table 7-1, Case 7); 2018/2019 IRM Study Appendices at 49 (Case 7).

Paragraph 64 of the Complaint states in pertinent part "The 2016 RNA at Figure 5-4, shows that the NYISO base case models assume that NYISO will receive up to 660 MW from PJM via the HTP line. The 2016 RNA further models that zero flow will be transmitted from NYISO to PJM via the HTP line." [Footnotes omitted.] However, the numerical values displayed in red text in 2016 RNA report Figure 5-4 are not power flows, they are **limits** on power flows. The figures indicate the maximum amount of energy that may be permitted to flow in a particular direction. It is not possible to use the limits depicted in Figure 5-4 to determine the actual power flows that occurred in a particular study.

Paragraphs 64 and 108 of the Complaint state the 2016 RNA "models that zero flow will be transmitted from NYISO to PJM via the HTP line." The 2016 RNA did not permit power to be transmitted from NYISO to PJM via the HTP line because HTP is a unidirectional transmission facility.[115] It would be inappropriate for NYISO's reliability studies to model a PJM transmission facility as operating in a manner that is inconsistent with both PJMs tariffs and the NYISO's Interconnection Agreement with HTP. Neptune is, similarly, a unidirectional transmission facility.[116]

Figure 5-4 of the 2016 RNA report, which is included for illustrative purposes only, depicts the A, B, C and J, K transmission lines as being ineligible to send power from the NYCA to PJM for a different reason. Because the Con Edison Wheel was ending in early 2017, the NYISO needed to make sure that its resource adequacy model did not transmit energy out of the NYCA, through PJM, and back into the NYCA over the previously authorized, but now

[115] *See Merchant Transmission Facility Interconnection Agreement by and among NYISO, Con Edison and HTP* at Page C-1 (April 20, 2011); Schedule 17 to the PJM OATT at Sections 1.1.1, 1.8, 1.10 and 1.11.

[116] *See* Schedule 14 to the PJM OATT at Sections 1.9 and 1.10.

prohibited, Con Edison Wheel transmission path. This model change, which is referenced in paragraphs 75 and 109 of the Complaint, was implemented to prevent the resource adequacy model the RNA employs from relying on PJM transmission facilities that the NYISO no longer has a right to use.

Paragraph 75 of the Complaint states an incorrect and unsupported assertion that the 2016 RNA "models that the NYISO will receive up to 400 MW via the JK and ABC lines during the ten-year study period." Paragraph 99 of the complaint sets forth a similar, incorrect assertion about the 2016 RNA report. Paragraph 76 of the Complaint indicates that the 400 MW OBF was included in the NYSRC's 2018/2019 IRM Study. In fact, the 400 MW OBF was *not* modeled or included in the 2016 RNA report or the 2018/2019 IRM Study.

Paragraphs 73 of the complaint states that the 2017/2018 IRM Study "premised its analysis on utilizing the Linden VFT line and all of HTP's 660 MW as key input assumptions." The complaint cites Section 5.2.5 on page 15 of the 2017/2018 IRM Study to support this statement. However, the cited provision does not support the NJBPU's statement. While section 5.2.5 of the 2017/2018 IRM Study states that transmission capability on scheduled lines that is not being used to serve capacity contracts "can be used to support emergency assistance" it does not address whether, or the extent to which, the capacity of HTP or Linden VFT were utilized for emergency assistance in the 2017/2018 IRM Study.

The NYISO and the NYSRC utilize the General Electric Multi-Area Reliability Simulation Software Program ("MARS") to conduct their IRM and RNA resource adequacy studies. The MARS program relies on a sequential Monte Carlo simulation to conduct the analysis in a probabilistic manner. The analysis is conducted by reviewing a number of different scenarios that vary, among other things, load level, generator outages, and transmission outages.

As a result of the probabilistic nature of the MARS program it is not appropriate to make a direct comparison of the capability of a facility to deliver flows and how much that facility is actually delivering because the contribution will vary depending on the circumstances presented in each of the millions of Monte Carlo scenarios that are run.

Paragraph 74 of the complaint asserts that the 2016 RNA modeled "the full 660 MW (both firm and non-firm) of the HTP line." Paragraph 108 of the complaint states "the 2016 RNA shows that the NYISO models assume that NYISO will receive 660 MW from PJM via the HTP line." While the limit on flow from the HTP line was 660 MW at the time of the 2016 RNA, the cited provisions of the 2016 RNA report do not address either the flows over HTP that occurred in the RNA studies, or the importance (or lack thereof) of HTP to the NYISO's ability to satisfy the 0.1 days per year LOLE criterion throughout the ten-year study period.

Paragraph 76 of the complaint addresses the NYSRC's 2018/2019 IRM that was issued on December 8, 2017. The complaint again alleges that "[t]he 2018 - 2019 study also relies on the assumption of utilizing the Linden VFT line and all of HTP's 660 MW capacity as key input assumptions" and provides a citation to Section 5.2.5 of the IRM Study as support for this claim. The NJBPU's allegation is not supported by the cited provision of the 2018/2019 IRM Study, which indicates that the NYSRC is allowed (not required) to utilize the unsubscribed capability of the scheduled lines to receive emergency assistance. To the contrary, the 2018/2019 IRM Study included a sensitivity study to determine the impact, if any, of limiting emergency assistance from PJM over all available interties (the A/C facilities represented as the Keystone Proxy Generator Bus, the Linden Scheduled Line, the HTP Scheduled Line and the Neptune

Scheduled Line) to 1,500 MW. The sensitivity study did not identify any change to the 2018/2019 IRM as a result of limiting total emergency assistance from PJM to 1,500 MW.[117]

For the reasons set forth above, the Commission should reject the assertions set forth in the cited paragraphs of the NJBPU's complaint as unsupported or inaccurate.

**e. PJM Accounts for Emergency Assistance from New York in Developing its IRM**

Paragraphs 103 and 116 of the complaint argue that it is no longer appropriate for the NYSRC to rely on any emergency assistance[118] whatsoever from PJM in setting the NYCA IRM because in late August of 2017[119] PJM changed the practice it had previously followed and modified its Manual 14 B to no longer consider emergency assistance from New York when determining the CETL values for the PSEG and PSEG North LDAs. Paragraphs 99-103, 105-109 and 115-118 of the Complaint suggest that at the moment PJM decided to change its planning assumptions, the NYSRC's incorporation of emergency assistance into its determination of the NYCA IRM suddenly became impermissible "leaning" on the PJM system.[120]

The complaint inexplicably fails to mention that PJM expressly accounts for 3,500 MW of emergency assistance from New York and three other regions that comprise the "Outside World" when PJM sets its own IRM. Schedule 4 to the PJM Reliability Assurance Agreement[121]

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[117] *See* 2018/2019 IRM Study at 23 (Table 7-1, Case 7); 2018/2019 IRM Study Appendices at 49 (Case 7).

[118] The complaint refers to emergency assistance as "non-firm flows." *See, e.g*, paragraph 115.

[119] *See* PJM's *M14B Updates* presentation to its Special Planning Committee (August 30, 2017) and paragraph 78 of the complaint.

[120] In Docket No. ER17-905 the Commission rejected arguments that the NYISO and PJM are required to employ identical planning criteria. The Commission found that the NYISO and PJM had each adequately explained the reasons for the differing methods they employ. *See* 161 FERC ¶ 61,033 at P 73 (2017).

[121] PJM Rate Schedule FERC No. 44.

permits PJM to rely on a Capacity Benefit Margin ("CBM") of up to 3,500 MW of external assistance when setting the IRM for each required year.[122]

In the 2017 PJM Reserve Requirement Study ("2017 RRS") PJM's IRM was set 1.55% (2,377 MW) lower than it otherwise would have been because PJM relied on emergency assistance from New York and three other neighboring areas. On page 16 of the 2017 RRS, PJM explained "if PJM were not interconnected, it could experience loss of load events roughly twice as often."[123]

### f. PJM's Determination of its Locational Delivery Areas and Capacity Energy Transfer Limits

In paragraphs 77-83 of its complaint the NJBPU questions PJM's decision to change its modeling practices to no longer reflect non-firm flows from New York when determining the CETL values for the PSEG and PSEG North Locational Delivery Areas ("LDAs"). The NYISO does not participate in PJM's determination of CETL values for its LDAs and cannot speak to PJM planning assumptions with regard to expected non-firm flows from the NYCA in the Reliability Pricing Model ("RPM") Base Residual Auction ("BRA") that PJM will conduct in May of 2018. The NYISO remains committed to making Emergency Energy[124] available to PJM consistent with Section 35.6.3 of the JOA, and the NYISO is prepared to use the Ramapo, Waldwick and A, B, C PARs to assist PJM in an emergency consistent with Section 35.6.5 of the JOA. Although PJM decided to change its modeling assumptions, the end of the Con Edison Wheel in May of 2017 did not alter, in any way, the NYISO's commitment to provide

[122] *See* 2017 PJM Reserve Requirement Study at 11 (October 12, 2017). [123] *Id*. at 16.

[124] Defined in Section 35.2.1 of the JOA.

emergency assistance to PJM when needed to preserve reliable electric service to PJM's transmission customers.

The Complaint fails to recognize that in 2015 PJM increased the CETL values for the Public Service and Public Service North LDAs by approximately 18% (1226 MW) and 35% (966 MW), respectively, for its 2018/2019 BRA because PJM expected the BLC facilities would be in service in time for that auction.[125] PJM has already conducted RPM BRAs that incorporated higher CETL values for the Public Service and Public Service North LDAs in part because PJM expects that the BLC facilities will be in service in time for the 2018/2019 delivery year.

### E. There Is No Legal Basis for Refunds Under FPA Section 309 or for Retroactive Commission Action of Any Kind in this Proceeding

The Complaint asks the Commission to "[o]rder, pursuant to Section 309 of the FPA, a refund of the amounts commensurate with those costs not paid by the respondent parties and commensurate to those benefits received by respondent parties due to the above-recited unjust and unreasonable interregional activities."[126] It asserts further that "[t]he Commission is empowered by Section 309 of the FPA to provide a refund to the NJBPU for the financial burden caused by any shift in the BLC cost allocation, and for the unpaid benefits retained by the respondents due to the above-alleged interregional actions—without temporal limitation."[127]

The NJBPU thus invokes Section 309 of the FPA to support a request for retroactive refunds.[128] As discussed throughout this Answer, there is no basis for granting any form of relief

[125] *See* 2018/2019 RPM Base Residual Auction Planning Period Parameters at 4, 5 and 14 (January 30, 2015).

[126] Complaint at 61.

[127] Complaint at P 177.

[128] Complaint at P 185.

to the NJBPU, because its claims fail to meet applicable legal standards and are devoid of merit. However, to the extent that the NJBPU is attempting to use FPA Section 309 to obtain retroactive refunds it is conflating applicable legal standards and its request is defective.

FPA Section 309 gives the Commission the authority to take any action "as it may find necessary or appropriate to carry out the provisions of [the Federal Power Act]."[129] But as the Commission has long recognized, "FPA section 309 is not itself an independent grant of authority" but instead is "designed to fill in gaps where the FPA is silent, not to rewrite the explicit congressional delegations of authority and explicit limitations on that authority."[130] These limits include Section 206's prohibition of retroactive refunds. In light of these provisions, the Commission has limited monetary remedies under FPA Section 309 to restitution of unlawfully-obtained funds, and has restricted this remedy to two separate contexts: (1) where a party violated a filed tariff or rate schedule (*i.e.*, the filed rate doctrine); and (2) where a party, or the Commission itself, violated a statutory requirement other than a filed tariff or rate schedule.[131]

In the absence of such violations or legal errors there is no legal basis for retroactive refunds, and any refunds must be prospective only in accordance with Section 206. As discussed above, the NYISO has not violated any tariff provision or agreement, and the NJBPU has not alleged any other violations of the Federal Power Act. Therefore, FPA Section 309 cannot possibly authorize an order requiring retroactive refunds from the NYISO.[132] In the event that

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[129] 16 U.S.C. 825h.

[130] *People of the State of California, ex rel., Edmund G. Brown, Attorney General v. Powerex Corp., et al.*, 135 FERC ¶ 61,178 at P 76 (2011) ("Powerex"). *See also Pub. Util. Comm'n of the State of Cal. v. FERC*, 462 F.3d 1027, 1047-48 (9th Cir. 2006).

[131] *Powerex*, 135 FERC ¶ 61,178 at P 76.

[132] The NJBPU's claims for refunds expressly invoke FPA Section 309 rather than FPA Section 206)b). However, as explained in more detail above, the NJBPU also has not shown that any existing NYISO

the Commission were to conclude that existing arrangements governing the allocation of RTEP costs are unjust and unreasonable any remedy could only be prospective, consistent with FPA Section 206.

## III. COMPLIANCE WITH COMMISSION RULE 213(c)(2)(i)

Attachment I to this Answer addresses the formal requirements of Commission Rule 213(c)(2) in order to ensure the NYISO's full compliance with them.

## IV. COMMUNICATIONS

Communications and correspondence regarding this Answer should be directed to:


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## V. LIST OF DOCUMENTS SUBMITTED

The NYISO respectfully submits the following documents with this Answer:

1. Admissions and denials consistent with Commission Rule 213(c)(2) (Attachment I);

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tariff provision is unjust or unreasonable. Accordingly, there is also no basis for prospective refunds, or any other action against the NYISO, under Section 206.

[133] Waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3) (2017)) is requested to the extent necessary to permit service on counsel for the NYISO in Rensselaer, NY and Washington, DC.

2. The Affidavit of Ms. Emilie Nelson, the NYISO's Vice President of Market Operations, is submitted to verify the factual statements in Section I.C and subSections I.D.1 and 1.D.4a through f of this Answer (Attachment II); and

3. The Affidavit of Mr. Zachary G. Smith, the NYISO's Vice President of System and Resource Planning, is submitted to verify the factual statements in Section I.B and sub-Sections I.D.1, I.D.3 and I.D.4.a through f of this Answer (Attachment III).

## VI. CONCLUSION

For the reasons specified above, the New York Independent System Operator, Inc. respectfully requests that the Commission deny the NJBPU's complaint and take no further action in response to the NJBPU's claims in this proceeding.

Respectfully submitted,

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

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# Attachment I

# Admissions and Denials

## Admissions and Denials of Material Allegations

## of the New York Independent System Operator, Inc.

Pursuant to Rule 213(c)(2)(i) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(c)(2)(i) (2017), the New York Independent System Operator, Inc. ("NYISO") sets forth the following admissions and denials of material allegations pertaining to the NYISO in the Complaint. To the extent the Commission requires the NYISO to address the Complainant's allegations specific to other entities such as PJM, Con Edison, Linden VFT, Hudson Transmission Partners ("HTP"), the New York Power Authority ("NYPA"), or the New York Public Service Commission ("NYPSC"), NYISO states that it lacks personal knowledge of the allegations and therefore cannot admit or deny such allegations. To the extent the Commission requires an admission or denial from NYISO regarding the Complainant's allegations against such other entities, NYISO denies them. To the extent that any material allegation in the Complaint that pertains to the NYISO is not specifically addressed herein, it is denied.

1. The NYISO denies any and all allegations that the JOA or the NYISO's tariffs are unjust, unreasonable, or unduly discriminatory in violation of FPA Section 206.

2. The NYISO denies any and all allegations that it has violated the JOA, its tariff obligations, or any Commission policy.

3. The NYISO denies the various allegations in the Complaint that it "leans" on PJM, as that undefined term appears to be used in the Complaint. As the NYISO explains in its Answer, (1) both the NYISO and the NYSRC employ conservative modeling assumptions in their development of the IRM and the RNA that are

expressly intended to prevent over-reliance on PJM or any other neighboring system, and (2) NYISO and PJM each permit limited quantities of emergency assistance/non-firm flow to be considered in setting their respective IRMs.

4. The NYISO denies the allegations in paragraphs 5 and 6 of the Complaint to the extent that they suggest that the HTP and Linden facilities are NYISO facilities. The HTP and Linden facilities are PJM transmission facilities.

5. The NYISO denies the contention that "[i]mplicit in that language [in the JOA regarding Mutual Benefits] is the reasonable expectation that, when both share the benefits of interconnection, both PJM and NYISO will pay their respective share of those benefits." Complaint at P 12.

6. The NYISO denies the contentions in paragraphs 13 and 15 of the Complaint to the extent that they purport to list the facilities that interconnect the NYCA and PJM. That list is incomplete.

7. The NYISO denies the assertion that "[f]or the purposes of this Complaint, the relevant transmission system in northern New Jersey is owned by Public Service Electric and Gas Company..... " Complaint at P 16. The Complaint addresses impacts on New Jersey that are not limited to loads served by PSEG and the interconnections between PJM and the NYISO are not limited to transmission lines located in New Jersey.

8. With regard to the assertion in P 20 of the Complaint that "[i]n its 2011 RTEP, PJM identified exports of power to New York City as a factor impacting

reliability in the Mid-Atlantic portion of PJM, particularly New Jersey" the document speaks for itself. However, the NYISO denies that the Complaint accurately characterizes the contents of the 2011 RTEP because it only identifies one of the many factors listed on pages 37-38 of 2011 RTEP Book 3 and because the NJBPU does not address the discussion on pages 147 and 251 of 2011 RTEP Book 5 which suggests that the exports related to existing and proposed merchant transmission facilities.

9. With regard to the assertion in P 21 of the Complaint that in PJM's 2012 RTEP Report, "PJM recognized that, among other things, 'interregional tie-lines to the southeast area of the NYISO system,' in and around New York City, 'contribute[s] to higher fault currents in the [n]orthern New Jersey area.'" the document speaks for itself. However, the NYISO denies that the NJBPU accurately characterizes the contents of the 2012 RTEP because it only identifies one of the many drivers listed on pages 83-85 of 2011 RTEP Book 3 as contributing to higher fault currents.

10. The NYISO denies the assertions in paragraph 22 of the Complaint to the extent that they suggest that mitigating fault current levels was the only reason for selecting the HVDC solution described in that paragraph.

11. The NYISO denies the assertion that "the BLC project upgrades the Linden line, an Interconnected Facility also known as the A tie line to NYISO." Complaint at P 23.

12. The NYISO denies the assertion that the Con Edison Wheel "resulted in the physical transfer of 1,000 MW between NYISO and PJM" and questions the assertion that the facilities underlying the Con Edison Wheel "have, historically, provided an interregional benefit." Complaint at P 31. The Con Edison Wheel provided for, but did not require, the transfer of up to 1,000 MW between New York and New Jersey, and the basis for the historical interregional benefit the NJBPU alleges the Con Edison Wheel provided is not explained in the Complaint.

13. The NYISO denies the description of the 2009 Settlement Agreement in paragraph 34 to the extent that it purports to be a complete description of that agreement. The description of the 2009 Settlement Agreement in paragraph 34 of the Complaint is fundamentally incomplete and misleading.

14. The NYISO denies the characterization of the study scenarios in paragraph 38 of the Complaint because it is incomplete and misleading. The Complaint omits mention that reliability violations were also identified in New Jersey under high load and high transfer to PJM (import) scenarios.

15. The NYISO denies the assertion that the "NYISO and PJM jointly proposed the OBF as necessary to address the short-term reliability issues in northern New Jersey described [in P 38] above and to maintain historical interface transfer limits." Complaint at P 39. The OBF was also proposed to address reliability violations in New Jersey under high load and high transfer to PJM (import) scenarios.

16. The NYISO admits the assertions that the "OBF was proposed until the BLC project was completed in northern New Jersey" and that "[r]eduction [of the OBF] is based on the fact that the BLC project will eliminate the need for the OBF." Complaint at P 39.

17. The NYISO denies that the "2016 RNA, at Figure 5-4, shows that the NYISO base case models assume that NYISO will receive up to 660 MW from PJM via the HTP line." Complaint at P 64.

18. The NYISO admits that the "2016 RNA further models that zero flow will be transmitted from NYISO to PJM via the HTP line" because the HTP line is a unidirectional transmission facility. Complaint at P 64.

19. The NYISO denies the allegations in PP 67, 95, 100 and 173 of the Complaint to the extent that they are inconsistent with any statements made by the NYISO in its July 31, 2017 filing in Docket No. ER17-2073-000.

20. The NYISO admits the allegation in P 73 of the Complaint that the "2017-2018 IRM Study acknowledged that the dissolution of the ConEd Wheel would increase its IRM requirements."

21. The NYISO denies that the "2017-2018 IRM Study "premised its analysis on utilizing the Linden VFT line and all of HTP's 660 MW capacity as key input assumptions." Complaint at P 73.

22. The NYISO denies the assertion that "having modeled for the full 660 MW (both firm and non-firm) of the HTP line, NYISO found that its resource adequacy

studies show that the LOLE for the NYCA does not exceed the criterion of 0.1 days per year throughout the ten-year Study Period." Complaint at P 74.

23. The NYISO denies that the 2016 RNA report states that the NYISO will receive up to 400 MW via the JK and ABC lines during the ten year study period. The NYISO admits that in the 2016 RNA zero flow can be transmitted to PJM over the JK and ABC lines in order to prevent the model from using those facilities to wheel power through PJM to serve New York. The NYISO denies that the NJBPU had demonstrated or can demonstrate that these modeling practices "contributed to NYISO's conclusion that the NYCA does not exceed the criterion of 0.1 days per year." Complaint at P 75.

24. The NYISO denies the assertion that "in NYSRC's December 8, 2017 technical study for the 2018 - 2019 period, it is clear that NYSRC is relying on the flows into the future stemming from the NYISO and PJM JOA Amendment" and the assertion that the "2018 - 2019 study also relies on the assumption of utilizing the Linden VFT line and all of HTP's 660 MW capacity as key input assumptions." Complaint at P 76.

25. The NYISO denies the assertion that "the facts presented show an understanding on the part of [] NYISO that those reliability issues [prompting the construction of the BLC Project] were driven significantly by transfers to New York." Complaint at P 89.

26. The NYISO denies the assertion that "NYISO [] admitted that northern New Jersey faces reliability issues during periods of high export to New York, but only

until construction of the BLC Project" because it is incomplete and misleading. Northern New Jersey also faces reliability issues during periods of high imports from New York until construction of the BLC Project is complete. Complaint at P 90.

27. The NYISO denies the assertion that the "facts presented also show the benefits that flow to NYISO and New York customers by virtue of continued connection to PJM, and specifically New Jersey." Complaint at P 91.

28. The NYISO denies the assertion that the "NYISO acknowledges benefits to New York associated with the export of electricity out of PJM, regardless of whether HTP (or another party) is required to pay for RTEP projects, like the BLC, that were driven by the export of power to New York." Complaint at P 96

29. The NYISO denies the assertion that the "NYISO modeled its system, in part, utilizing non-firm flows out of PJM, including 340 MW of currently non-firm transmission along the HTP line and 400 MW over the JK/ABC lines" Complaint at P 99.

30. The NYISO denies the assertion that "NYISO leans upon the PJM system, benefiting substantially from the export of power from PJM; in both capacity and reliability, without commensurate compensation." Complaint at P 105.

31. The NYISO denies the assertion that "the 2016 RNA shows that the NYISO models assume that NYISO will receive 660 MW from PJM via the HTP line" but admits the assertion that the "2016 RNA further models that zero flow will be

transmitted from NYISO to PJM via the HTP line" because HTP is a unidirectional transmission facility. Complaint at P 108.

32. The NYISO denies the assertion that "NYISO models assume that NYISO will receive 400 MW via the JK and ABC line" and that the "2016 RNA further models that zero flow will be transmitted from NYISO back to PJM via these lines." Complaint at P 109.

33. The NYISO denies the assertion that "[i]mplicit in this section [on Mutual Benefits] is the reasonable expectation that, when both share the benefits of interconnection, both PJM and NYISO will equally pay their respective share of those benefits, such that there is no need to charge one another." Complaint at P 112.

34. The NYISO denies the assertion that "the no charge provision is premised on the two regions working together to ensure that the Interconnected Facilities are operated to realize mutual benefits." Complaint at P 113.

35. The NYISO denies the assertion that the "NYISO's own models show that NYISO leans upon the PJM system via these Interconnected Facilities, and others, without reciprocation or compensation." Complaint at P 114.

36. The NYISO denies the assertion that the "NYISO relies upon non-firm flows on the JK and ABC lines as well as the HTP line" and the assertion that the "HTP line has only 320 MW of FTWRs, but NYISO relies upon 660 MW in its models" and finally the assertion that "NYISO's models thus reveal its willingness to rely

upon non-firm transfers when modeling its system for reliability." Complaint at P 115.

37. The NYISO denies the assertion that the "2016 RNA confirms that NYISO is relying on the non-firm flows to NYISO without returning any flows to PJM." Complaint at P 116.

38. NYISO denies the assertion that "As set forth above, the facts reveal that NYISO's reliance on the PJM system contributed to the reliability issues in northern New Jersey, which drove the need for the BLC project." Complaint at P 117.

39. The NYISO denies the assertion that "New Jersey ratepayers will have to pay more because of reliability issues driven by energy transfers to New York." Complaint at P 117.

40. The NYISO denies the assertion that "the facts presented show that NYISO receives a capacity benefit from these Interconnection Facilities, but PJM receives no reciprocal capacity benefit, which results in a significant capacity price impact for New Jersey." Complaint at P 118.

41. The NYISO denies the contentions in P 119 of the Complaint.

42. The NYISO denies the allegation in P 124 of the Complaint that PJM's application of its cost allocation methodology to assign BLC costs to the cancelled Con Edison 1,000 MW Wheel and to merchant transmission facilities "demonstrates the benefits received by NYISO participants."

43. The NYISO denies the allegation in P 127 of the Complaint that NYISO has sought to "shield" any entity from paying costs that are roughly commensurate with the benefits it receives.

44. The NYISO denies the contentions in P 128 of the Complaint regarding the 2009 Settlement Agreement. They are misleading because they omit key statements from the 2009 Settlement Agreement.

45. The NYISO denies the assertion that the "BLC . . . was driven by exports to New York, including the ConEd Wheel and merchant transmission lines." Complaint at P 129.

46. The NYISO admits that "JOA section 35.2.1 further defines OBF as an equal and opposite MW offset of power flows over the Waldwick PARs and ABC PARs to account for natural system flows over the JK Interface and the ABC Interface in order to facilitate the reliable operation of the NYISO and/or PJM transmission systems." Complaint at P 134.

47. The NYISO denies the assertion that "NYISO [] acknowledge[s] that the OBF was required because high exports to New York resulted in reliability issues in northern New Jersey." Complaint at P 135.

48. The NYISO denies the assertion that the "NYISO's 2016 RNA shows that NYISO has modeled the flow of 400 MW transferred from PJM into the NYISO system via the JK and ABC lines for the next ten years" and that the "2016 RNA

also articulates that NYISO undisputedly receives a benefit from these transfers." Complaint at P 136.

49. The NYISO denies the contention that the "facts reveal that transfers to New York contributed to reliability issues in northern New Jersey, which were to be resolved by the BLC Project" and the contention that the existing rates are "preferential to New York, discriminatory to New Jersey, unjust, unreasonable and in blatant contradiction to the Commission's intent in Order 1000." Complaint at P 137.

50. The NYISO denies the contentions in P 139 of the Complaint.

51. The NYISO denies the contentions in P 140 of the Complaint.

52. The NYISO denies the contentions in P 141 of the Complaint.

53. The NYISO denies the contentions in P 142 of the Complaint.

54. The NYISO denies the assertion that "Load in PJM, in particular New Jersey, receives unduly discriminatory rates" and the assertion that "Load in PJM pays the cost of RTEP projects that were planned because of the export of power that benefits New York load and load in PJM, in particular New Jersey, will have to pay more for capacity without reciprocation from NYISO" and the assertion that "These results are contrary to Order 1000 and contrary to principles of law and equity." Complaint at P 143.

55. The NYISO denies the assertion that in "the 2016 RNA, NYISO models 660 MW of flow on the HTP line, which benefits New York over the next 10 years." Complaint at P 146.

56. The NYISO denies the contention in P 147 of the Complaint that Order No. 1000 requires New York to pay for transmission upgrades constructed entirely in PJM that make PJM's system more reliable, because New York benefits from the fact that PJM has a more reliable transmission system once the upgrades are completed. The proposed result is inconsistent with Order No. 1000, would be unjust and unreasonable, and would result in endless litigation about cross-border cost allocation.

57. The NYISO denies the contentions in P 149 of the Complaint.

58. The NYISO denies the assertion that "the 2016 RNA shows that NYISO has modeled its 'base case' assuming that NYISO is going to receive 660 MW from PJM via the HTP, notwithstanding FTWRs." Complaint at P 172.

59. The NYISO denies the contention in PP 176 through 185 of the Complaint that Section 309 of the Federal Power Act authorizes the Commission to provide retroactive refunds in this proceeding.

# Attachment II

# Affidavit of Ms. Emilie Nelson

# Vice President of Market Operations for the New York Independent System Operator

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

| | | |
|---|---|---|
| **New Jersey Board of Public Utilities** | ) | |
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| **Complainant** | ) | |
| | ) | |
| **v.** | ) | **Docket No. EL18-54-000** |
| | ) | |
| **PJM Interconnection, LLC, New York Independent System Operator, Inc., Consolidated Edison Company of New York, Inc., Linden VFT, LLC, Hudson Transmission Partners, LLC, and New York Power Authority** | ) | |
| | ) | |
| **Respondents** | ) | |

# AFFIDAVIT OF EMILIE NELSON

Ms. Emilie Nelson declares:

1. I have personal knowledge of the facts and opinions herein and if called to testify could and would testify competently to the facts set forth below.

## I. Purpose of this Affidavit

2. The purpose of this Affidavit is to verify the factual statements set forth in Section I.C of the New York Independent System Operator, Inc.'s ("NYISO's") February 23, 2018 Response to the complaint of the New Jersey Board of Public Utilities ("NJBPU") that address Mutual Benefits and other benefits of synchronously interconnected operation; and to verify the factual statements set forth in sub-Sections I.D.1 and I.D.4.a through f of the NYISO's Response that address the reasons the Operational Base Flow was developed and proposed in Docket No. ER17-905, and the process that the NYISO and the New York State Reliability Council ("NYSRC") follow to develop the Installed Reserve Margin ("IRM") for the New York Control Area ("NYCA"), including the production of the IRM Study.

## II. Qualifications

3. My name is Emilie Nelson. I am the Vice President of Market Operations for the NYISO. My business address is 10 Krey Boulevard, Rensselaer, NY 12144.

4. My responsibilities include overseeing the daily operation of the ISO Day-Ahead and Real-Time Energy Markets, demand response programs, and the operation of the NYISO Installed Capacity markets, including the Resource Adequacy Department that is responsible for supporting the New York State Reliability Council's development of the IRM Study. I also represent the NYISO in its shared-governance process. My duties include improving the efficiency of market outcomes and supporting the development of corporate market design initiatives in collaboration with NYISO personnel, external stakeholders and other Independent System Operators or Regional Transmission Organizations.

5. I managed the NYISO's efforts to work with PJM Interconnection, L.L.C. ("PJM") personnel to develop the Joint Operating Agreement revisions that took effect on May 1, 2017 following the conclusion of the Con Edison 1000 MW Wheel.

6. I have 18 years of experience in electric system operations and have held my current position at the NYISO since January 2014. Prior to holding my current position, I was the NYISO's Director of Operations, and before that the NYISO's Manager of Operations Performance and Analysis. Prior to working for the NYISO, I worked in power generation as an engineer.

7. I hold a Bachelor of Science in Mechanical Engineering from Tufts University and a Master of Business Administration in Financial Management from Pace University.

## III. Affirmation

8. I participated in the development of the NYISO's response to the NJBPU's complaint. In particular I, and NYISO employees who report to me worked at my direction to develop explanations of (a) the NYISO's operations, (b) the implementation of the NYISO's Joint Operating Agreement ("JOA") with PJM Interconnection, L.L.C. ("PJM"), (c) the definition of "Mutual Benefits" under the JOA and the identification of benefits that meet the JOA definition, (d) NYCA interchange with PJM, (e) NYISO market results and

impacts, and (f) the process by which NYISO employees who report to me assist the New York State Reliability Council's efforts to develop the annual IRM Study for the NYCA. This information was developed in support of the NYISO's response to the complaint.

9. The term "Mutual Benefits" is defined in Section 35.2.1 of the JOA as "transient and steady-state support that the integrated generation and Transmission Systems in PJM and New York provide to each other inherently by virtue of being interconnected as described in Section 35.4 of this Agreement."

10. My responsibilities include working with the NYISO's Operations Department and PJM to ensure that the JOA is implemented appropriately and consistently. The NYISO's Operations Department understands Mutual Benefits under the JOA to be grid reliability benefits that are realized by virtue of being synchronously interconnected in real-time operations. Mutual Benefits include (a) governor and steady state frequency bias response, as expected by NERC Standard BAL-003, and (b) voltage and reactive support provided using the two regions' interconnections. The NYISO and PJM do not charge each other to provide these services in real-time operations. It is my understanding and belief that the practices reflected in the Mutual Benefit provisions of the JOA are consistent with standard industry practice in the Eastern Interconnection.

11. I have personal knowledge about the factual assertions set forth in Section I.C and sub-Sections I.D.1 and I.D.4.a through f of the NYISO's Response to the NJBPU's Complaint and I have reviewed those sections of the NYISO's Response. The facts set forth therein are correct to the best of my information, knowledge and belief.

This concludes my Affidavit.

ATTESTATION

I am the witness identified in the foregoing affidavit. I have read the affidavit and am familiar with its contents. The facts set forth therein are true to the best of my knowledge, information, and belief.

Emilie Nelson

Subscribed and sworn to before me
this 16th day of February, 2018.

Diane L. Egan
Notary Public

My commission expires: March 21, 2022

DIANE L. EGAN
Notary Public, State of New York
Qualified in Schenectady County
No. 4924890
Commission Expires March 21, 20 22

# Attachment III

# Affidavit of Mr. Zachary G. Smith

# Vice President of System and Resource Planning for the New York Independent System Operator

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

| | | |
|---|---|---|
| **New Jersey Board of Public Utilities** | ) | |
| | ) | |
| **Complainant** | ) | |
| | ) | |
| **v.** | ) | **Docket No. EL18-54-000** |
| | ) | |
| **PJM Interconnection, LLC, New York Independent System Operator, Inc., Consolidated Edison Company of New York, Inc., Linden VFT, LLC, Hudson Transmission Partners, LLC, and New York Power Authority** | ) | |
| | ) | |
| **Respondents** | ) | |

## AFFIDAVIT OF ZACHARY G. SMITH

Mr. Zachary G. Smith declares:

1. I have personal knowledge of the facts and opinions stated herein.

### A. Purpose of this Affidavit

2. The purpose of this Affidavit is to verify the factual statements set forth in Section I.B and in sub-Sections I.D.1, I.D.3 and I.D.4.a through f of the New York Independent System Operator, Inc.'s ("NYISO's") February 23, 2018 response to the complaint of the New Jersey Board of Public Utilities ("NJBPU").

### B. Qualifications

3. I serve as Vice President of System and Resource Planning for the NYISO. My business address is 10 Krey Boulevard, Rensselaer, New York 12144.

4. I am responsible for ensuring NYISO compliance with all applicable reliability planning standards as well as the oversight and implementation of the reliability planning process, which includes the Reliability Needs Assessment ("RNA"), the economic planning process, and the public policy transmission planning process. I also oversee the interconnection process through which new generation and transmission projects may reliably connect to the New York State electric grid. I represent the NYISO in various stakeholder forums including interregional planning coordination committees such as the Northeast Joint Interregional Planning Committee.

5. I have 15 years of experience in the energy industry and have held my current position at the NYISO since September 2016. Prior to holding my current position, I was the NYISO's Director of Transmission Planning, and before that the NYISO's Manager of Transmission Studies. Through these duties, I managed the NYISO's multi-year effort to revise its tariffs to comply with Order No. 1000, including amendments to the Northeastern ISO/RTO Planning Coordination Protocol.

6. I earned a Bachelor of Science and a Master of Science in Electrical Engineering from Michigan Technological University.

## C. Affirmation

7. I participated in the development of the NYISO's response to the NJBPU's Complaint. In particular I, and NYISO employees who report to me worked at my direction to develop explanations of (a) the NYISO's planning processes (including, but not limited to, the planning processes the NYISO has implemented to comply with the Federal Energy Regulatory Commission's Order No. 1000), (b) the implementation of the Amended and Restated Northeastern ISO/RTO Planning Coordination Protocol, (c) the planning components of the NYISO's Joint Operating Agreement ("JOA") with PJM Interconnection, L.L.C. ("PJM"), (d) the RNA process and the 2016 RNA Final Report, and (e) the determination of the Installed Reserve Margin by the NYSRC. This information was developed to support of the NYISO's response to the NJBPU's complaint.

8. I have personal knowledge about the factual assertions set forth in Section I.B and in sub-Sections I.D.1, I.D.3 and I.D.4.a through f of the NYISO's Response to the NJBPU's complaint and I have reviewed the specific sections of the NYISO's Response. The facts set forth therein are correct to the best of my information, knowledge and belief.

9. This concludes my affidavit.

ATTESTATION

I am the witness identified in the foregoing affidavit. I have read the affidavit and am familiar with its contents. The facts set forth therein are true to the best of my knowledge, information, and belief.

Zachary G. Smith

Subscribed and sworn to before me
this 22nd day of February, 2018.

Notary Public

My commission expires: 2/12/2022

CARL P. PATKA
Notary Public - State of New York
No. 4992208
Qualified in Albany County
My Commission Expires Feb. 12, 2022