

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

New York Independent System Operator, Inc. and PJM Interconnection, L.L.C.	) ) ) )	Docket No. ER17-905-000
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**ANSWER OF  
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC. AND  
PJM INTERCONNECTION, L.L.C.**

Pursuant to Rule 213 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure,<sup>1</sup> PJM Interconnection, L.L.C. (“PJM”) and the New York Independent System Operator, Inc. (“NYISO”) (collectively, the “Joint Filing Parties”) submit this answer to the Motion to Intervene Out-of-Time and Comments of Linden VFT, LLC (“Linden”) (“Linden Motion”)<sup>2</sup> concerning their joint filing in the above-captioned proceeding.<sup>3</sup>

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<sup>1</sup> 18 C.F.R. § 385.213.

<sup>2</sup> To the extent that the Commission views any part of this pleading as an answer to a protest, the Joint Filing Parties seek leave to file this answer. The Commission regularly allows answers for such purposes. *See, e.g., Sw. Power Pool, Inc.*, 152 FERC ¶ 61,225, at P 25 (2015) (“We will accept [the] answers because they have provided information that assisted us in our decision-making process.”); *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,059, at P 17 (2013) (“We accept the answers . . . because they have provided information that assisted us in our decision-making process.”), *order on reh’g & compliance*, 149 FERC ¶ 61,048, at P 20 (2014) (“We will accept SPP’s answer filed in this proceeding because it has provided information that assisted us in our decision-making process.”), *order on reh’g & compliance*, 151 FERC ¶ 61,045 (2015), *petition for review denied sub nom. Okla. Gas & Elec. Co. v. FERC*, 827 F.3d 75 (D.C. Cir. 2016); *S. Natural Gas Co.*, 121 FERC ¶ 61,118, at P 5 n.5 (2007) (accepting answer to protest because “it will not delay the proceeding, may assist the Commission in understanding the issues raised, and will ensure a complete record”); *Morgan Stanley Capital Grp., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 93 FERC ¶ 61,017, at 61,036 (2000) (accepting answer as “helpful in the development of the record”).

<sup>3</sup> Proposed Revisions to Joint Operating Agreement Addressing Interchange Scheduling and Market-to-Market Coordination on the ABC Interface and JK Interface After the 1,000 MW Wheel Concludes of New York Independent System Operator, Inc. and PJM Interconnection, L.L.C., Docket No. ER17-905-000 (Jan. 31, 2017) (“Joint Filing”).

For the reasons stated below, the Commission should deny or in the alternative disregard the Linden Motion<sup>4</sup> and the comments set forth therein and accept, without modification, the Joint Filing.

**I. THE COMMISSION SHOULD REJECT LINDEN’S OUT-OF-TIME MOTION TO INTERVENE AND COMMENTS**

Linden has not demonstrated that good cause exists for the Commission to accept its substantially late intervention in this proceeding.<sup>5</sup> Linden submitted its comments over four weeks after the deadline properly noticed by the Commission,<sup>6</sup> and just days before the conclusion of the sixty day statutory period for Commission action in this proceeding.

Linden argues that “[g]ood cause exists to allow [it] to submit these comments, as they will help resolve issues relating to the linkage between this proceeding and the BLC Cost Reallocation Docket, which will allow the Commission to make a reasoned decision in both proceedings.”<sup>7</sup> However, as detailed in Part II below, such good cause does not exist because the issues in the two proceedings are different, and thus there is no “linkage” between the BLC Reallocation Docket and this proceeding.

Linden asserts that it did not originally intend to provide comments, but was compelled to do so to address the alleged linkage of the proceedings, which were raised by “numerous parties

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<sup>4</sup> Motion to Intervene Out-of-Time and Comments of Linden VFT, LLC, Docket No. ER17-905-000 (Mar. 24, 2017).

<sup>5</sup> The Commission considers several factors in determining whether to permit a late intervention, including: (i) whether the late-intervening party had good cause for failing to file within the prescribed time period; (ii) whether the intervention would result in any disruption to the proceeding; (iii) whether the late-intervening party’s interest is not adequately represented by other parties in the proceeding; and (iv) whether any prejudice to, or additional burdens upon, the existing parties could result from permitting the intervention. 18 C.F.R. § 385.214(d)(1).

<sup>6</sup> See Combined Notice of Filing #2 (Jan. 31, 2017).

<sup>7</sup> Linden Motion at 5-6. The “BLC Cost Reallocation Docket” is Docket No. ER17-950-000.

in their protests, comments, and answers.”<sup>8</sup> However, the protests and comments referenced by Linden were submitted on February 21, 2017, over a month before Linden submitted its comments.<sup>9</sup> Linden’s decision to wait to submit comments until just days prior to required Commission action is disruptive to the proceeding. As the Commission has previously explained when faced with similar circumstances:

The Intervenors argue that they each stated good cause to support the acceptance of their late protests and they assert that no party has been harmed because no Commission order had been issued. We disagree. The deliberative process that leads to a reasoned decision cannot be instantaneous, and the Commission must exercise control over its administrative schedule. The logical conclusion of the Intervenors’ assertion that no party has been harmed because no Commission order had issued would be to allow any pleadings up to the time a decision is issued. Such a practice would make reasoned decision-making untenable.<sup>10</sup>

Notwithstanding the fast approaching sixty day deadline, Linden argues that its late intervention will not cause delay or undue prejudice in this case “given that the Commission is currently without a quorum.”<sup>11</sup> The Commission, however, should not permit Linden to use the absence of a quorum as an excuse to flout its statutory and regulatory requirements with which all other parties to this proceeding complied in order to raise untimely arguments that the other parties must now review and address on short notice.

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<sup>8</sup> Linden Motion at 5. As the Commission has stated: “[T]he party bears the responsibility for determining when a proceeding is relevant to its interests, such that it should file a motion to intervene. When [it] fails to intervene in a timely fashion, it assumes the risk that the case will be settled in a manner that is not to its liking.” *Cal. Dep’t of Water Res.*, 120 FERC ¶ 61,057, at P 13, *reh’g denied*, 120 FERC ¶ 61,248 (2007), *petition for review denied sub nom. Cal. Trout v. FERC*, 572 F.3d 1003 (9th Cir. 2009).

<sup>9</sup> Linden Motion at 5-6. Linden attempts to muddle this timeframe by only referencing the dates of the subsequent answers in the proceeding (“the last of which was filed on March 10, 2017”). *Id.*

<sup>10</sup> *Niagara Mohawk Holdings, Inc.*, 96 FERC ¶ 61,144, at 61,622 (2001) (footnote omitted).

<sup>11</sup> Linden Motion at 6.

For all of the above reasons, the Commission should reject Linden’s motion to intervene and comments.

## **II. ANSWER**

If, notwithstanding Linden’s unreasonable delay, the Commission were to consider the Linden Motion, the NYISO and PJM respectfully request that the Commission reject Linden’s comments for the reasons set forth in this Part II.

The focus of Linden’s comments is the cost allocation of the BLC project identified in PJM’s Regional Transmission Expansion Plan (“RTEP”) that are addressed in the BLC Cost Reallocation Docket. The Commission should reject any attempt to conflate or consolidate this proceeding with the BLC Cost Reallocation Docket. The proceedings present discrete issues to the Commission that are properly addressed separately.

In the BLC Reallocation Docket, PJM submitted proposed revisions to Schedule 12-Appendix and Schedule 12-Appendix A of the PJM Open Access Transmission Tariff (“PJM Tariff”) to eliminate cost responsibility assignments to Consolidated Edison Company of New York, Inc. (“Con Edison”) for RTEP projects, effective upon termination of service under the Con Edison Wheel.<sup>12</sup> PJM acted consistently with paragraph 21(b) of the 2009 Settlement Agreement in Docket No. 858-000<sup>13</sup> and Schedule 12(b)(xi) of the PJM Tariff, which provide that Con Edison no longer will be responsible for RTEP costs once the Con Edison Wheel terminates.<sup>14</sup> On the other hand, in the Joint Filing proceeding, PJM and the NYISO proposed

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<sup>12</sup> In the BLC Cost Reallocation Docket, PJM filed cost allocation adjustments not only to the BLC project but to several other RTEP projects for which Con Edison has cost responsibility.

<sup>13</sup> See Settlement Agreement and Offer of Settlement of PJM Interconnection, L.L.C., Docket Nos. ER08-858-000, et al. (Feb. 23, 2009) (“2009 Settlement”).

<sup>14</sup> The Commission accepted the termination of the transmission service agreements that facilitated the Con Edison Wheel by letter order on March 22, 2017, in Docket No.

revisions to the Joint Operating Agreement between the NYISO and PJM<sup>15</sup> primarily addressing interchange scheduling and Market-to-Market (“M2M”) coordination at the ABC and JK Interfaces upon the termination of the Con Edison Wheel. Notably, the BLC Reallocation Docket does not address the proposed JOA protocols, and the Joint Filing does not address the adjustments to cost allocations in Schedule 12-Appendix and Schedule 12-Appendix A of the PJM Tariff that are required by the 2009 Settlement and Schedule 12 of the PJM Tariff. Linden admits as much in its comments when it indicates that the Joint Filing does not “tackle” the “cost allocation for the BLC.”<sup>16</sup> Simply put, Linden’s arguments in its comments regarding the alleged flawed nature of the BLC cost allocations to Linden are outside the scope of this proceeding and are totally irrelevant to the justness and reasonableness of the JOA protocol procedures filed in this proceeding.<sup>17</sup>

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ER17-994-000. *PJM Interconnection, L.L.C.*, Letter Order, Docket No. ER17-994-000 (Mar. 22, 2017). Thus, ConEd no longer will be a transmission service customer responsible for RTEP cost allocations under the PJM Tariff.

<sup>15</sup> NYISO Open Access Transmission Tariff, Attachment CC – Joint Operating Agreement Among and Between New York Independent System Operator Inc. and PJM Interconnection, L.L.C. (“JOA”).

<sup>16</sup> Linden Motion at 9.

<sup>17</sup> To the extent that Linden may be suggesting consolidation of the two proceeding, consolidation would be inappropriate as the standard for consolidation is not met. “The Commission’s policy is to consolidate matters only if a trial-type evidentiary hearing is required to resolve common issues of law and fact and consolidation will ultimately result in greater administrative efficiency.” *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,059, at P 18. There are no common issues of law or fact the resolution of which would warrant consolidation. The issues in the BLC Reallocation Docket address the justness and reasonableness of adjustments to PJM RTEP cost allocations required as a result of the termination of the Con Edison Wheel, while the issues in this proceeding relate to revisions to JOA protocols necessary to manage the NYISO-PJM interfaces upon the termination of the Con Edison Wheel.

Linden inappropriately attempts to equate the BLC project with the initial Operational Base Flow (“OBF”) proposed in the Joint Filing.<sup>18</sup> The OBF and BLC project are distinct, were proposed in different processes, and serve different purposes. The purpose of the initial 400 MW OBF is operational to maintain historical interface transfer limits for the near term in light of the termination of the Con Edison Wheel.<sup>19</sup> PJM requested the initial 400 MW OBF, and the NYISO and PJM worked together to propose JOA revisions, including the OBF, that achieve the greatest interregional efficiency while considering the identified short-term reliability issues in Northern New Jersey.<sup>20</sup> In contrast, the BLC project was developed and included in the PJM RTEP to address reliability issues on the PJM transmission system.

Finally, Linden’s request that the Commission “direct PJM to quantify all of the benefits and identify all of the beneficiaries of BLC, including all of the benefits which are cited by NYISO and PJM in the Joint Filing”<sup>21</sup> should be rejected. As explained above, the cost allocations for the BLC project are beyond the scope of this proceeding and thus identifying the beneficiaries of the BLC – a PJM RTEP project – has no relevance to this proceeding. In addition, the benefits of the BLC that Linden asserts the NYISO and PJM cited in the Joint Filing submitted on January 31, 2017, are not benefits of the BLC,<sup>22</sup> but rather are the critical factors that PJM and the NYISO considered in developing the revisions to the JOA protocols necessary “to provide open access transmission service between the two areas, and how to best utilize the ABC and JK Interfaces in a reliable and efficient manner that serves the public interest,” upon

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<sup>18</sup> See Linden Motion at 3-4.

<sup>19</sup> See Joint Filing at 8.

<sup>20</sup> See *id.* at 6-11.

<sup>21</sup> Linden Motion at 9.

<sup>22</sup> *Id.* at 9 n.20.

the termination of the Con Edison Wheel.<sup>23</sup> Linden presents no basis for the Commission to require PJM to provide information that is irrelevant to this proceeding and that would result in unnecessary delay.

### III. CONCLUSION

For the reasons stated above, the Commission should deny or in the alternative disregard the Linden Motion and the comments set forth therein and accept without modification the Joint Filing.

Respectfully submitted,

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March 29, 2017

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<sup>23</sup> See Joint Filing, Attachment VII at 3.

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 29th day of March, 2017.

/s/ Carrie L. Bumgarner  
Carrie L. Bumgarner