

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

**Independent Power Producers of
New York, Inc.**

v.

**New York Independent System
Operator, Inc.**

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Docket No. EL18-189-000

ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

In accordance with Rule 213 of the Commission’s Rules of Practice and Procedure¹ and the Commission’s August 1 *Notice of Complaint*, the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this answer to the *Complaint Requesting Fast Track Processing* in this proceeding (“Complaint”). The Independent Power Producers of New York, Inc. (“IPPNY”) argue that the NYISO should be compelled to “prohibit resources in the PJM Interconnection, L.L.C. (“PJM”) market from scheduling installed capacity (“ICAP”) withdrawals to the NYISO’s Load Zone J across certain Merchant Transmission Facilities (“MTFs”) that have elected to convert their Firm Transmission Withdrawal Rights (“Firm TWRs”) into Non-Firm Transmission Withdrawal Rights (“Non-Firm TWRs”).”² The MTFs that IPPNY references are the facilities owned by the Linden VFT, LLC (“Linden VFT”) and Hudson Transmission Partners, LLC (“HTP”) (together, the “Zone J MTFs”). IPPNY claims

¹ 18 C.F.R. § 385.213 (2018).

² Complaint at 1-2, and n. 3. Footnote 3 of the Complaint states the capitalized terms used therein have the meaning given in the PJM Open Access Transmission Tariff (the “PJM OATT”) and the NYISO’s Market Administration and Control Area Services Tariff (the “Services Tariff”). Similarly, the NYISO’s references to “MTFs,” “Firm TWRs,” and “Non-Firm TWRs” in this answer have the meanings specified in the PJM OATT. Other capitalized and undefined terms used in this pleading shall have the meaning specified in the Services Tariff.

that because the Zone J MTFs have converted to Non-Firm TWRs (the “TWR Conversions”) it must necessarily follow that capacity exports over the MTFs are impermissible under the NYISO’s tariffs,³ as well as the PJM OATT.⁴

The Complaint should be denied because it wrongly assumes that transactions across the Zone J MTFs would be subject to curtailment on the same basis as non-firm service within PJM. As discussed below, and in the attached affidavits of Aaron Markham (the “Markham Affidavit”) and Joshua Boles (the “Boles Affidavit”),⁵ the NYISO’s understanding is that whether the Zone J MTFs have Firm TWRs or Non-Firm TWRs makes no practical difference for curtailment purposes. It was therefore reasonable for the NYISO to conclude that the TWR Conversions do not impact the deliverability of transfers across the Zone J MTFs.

All Reliability Coordinators in the Eastern Interconnection, including PJM, follow the North American Electric Reliability Corporation’s (“NERC”) Transmission Loading Relief (“TLR”) Procedure and apply it using NERC’s Interchange Distribution Calculator (“IDC”). Under the TLR Procedure, the curtailment priority of transactions across the Zone J MTFs, consistent with industry standards, is based solely on whether an exporter to New York has firm Point-to-Point Transmission Service from points within PJM to the bus where an MTF connects

³ See Complaint at 13-14.

⁴ See *Id.* at 2, 17. In an earlier proceeding, IPPNY claimed that PJM would be violating the PJM OATT if capacity exports were permitted over the Zone J MTFs after the TWR Conversions. See Complaint at 8 and n. 27; citing *Comments of Independent Power Producers of New York, Inc.* Docket No. EL18-54-000 (Feb. 23, 2018). In this proceeding, IPPNY also suggests that allowing capacity exports over the Zone J MTFs would violate the PJM OATT, Complaint at 17, Affidavit of Thomas Piascik (Piascik Affidavit at P 6, but has chosen not to name PJM as a respondent. See, e.g., Complaint at n.7, Piascik Affidavit at P 20. As the NYISO is not responsible for administering the PJM OATT, this answer solely expresses the NYISO’s views concerning the administration of its markets and Services Tariff in light of the other rules and procedures described herein and their actual operation. The NYISO does not purport to speak for PJM.

⁵ The Markham Affidavit is Attachment II and the Boles Affidavit is Attachment III.

to PJM. Curtailments determined using the IDC are not affected by whether Zone J MTF TWRs are firm or non-firm.

The Markham Affidavit describes NERC documentation showing that the Zone J MTF “facility service” (*i.e.*, the portion of the transmission path over the MTF itself) has no impact on any system constraints. It is therefore not considered when PJM follows the TLR Procedure. It is appropriate for the path over the Zone J MTFs not to be considered in the procedure because the TLR Procedure is based on the impacts on the transmission system. Thus, there is no need for the TLR Procedure to consider the level of firmness of “facility service” in the IDC for interchange transactions scheduled over the Zone J MTFs. From a technical perspective, the “out service” covers power transfers across the PJM system.

Thus, it is the NYISO’s understanding that, to the extent that transactions using the Zone J MTFs are supported by Long Term Firm Point to Point (“LTFPTP”) service from a capacity resource to the MTF bus in PJM, the portion of the transfer that PJM refers to as “out service,” such service will only be curtailed by PJM on the same terms as other LTFPTP reservations. That is, PJM, acting in accordance with the NERC TLR Procedure, would only cut such transactions in response to a TLR Level 5 event, which is the curtailment priority afforded to long-term firm transmission reservations, and not at TLR Level 3 (which is when non-firm transactions may be curtailed). The fact that the transfer across the Zone J MTF facility itself is associated with Non-Firm TWRs has no bearing on the curtailment priority determined by the IDC. This is consistent with the IDC’s modeling of a Transmission Distribution Factor of zero for controllable MTFs in the IDC. As discussed below, the NYISO’s conclusion is based on a diligent review of the NERC TLR Procedure, including the NYISO’s own independent testing using the IDC model. The NYISO has examined the relevant NYISO-PJM operating protocols

pertaining to the Zone J MTFs and had multiple discussions with PJM concerning the issues raised by the Complaint. To date, PJM has confirmed, consistent with industry modeling and requirements, that the NYISO correctly understands that the curtailment analysis for the Zone J MTFs would focus solely on the firmness of “out service,” and not of “facility service.”

Under Section 5.12.2.1 of the Services Tariff, Unforced Capacity Deliverability Rights (“UDRs”) rightsholders may qualify as Installed Capacity Suppliers in New York if they demonstrate “to the satisfaction of the ISO” that their capacity is deliverable to the New York Control Area (“NYCA”) interface associated with an MTF. The NYISO is satisfied, given its understanding of how the TLR Procedure applies to the Zone J MTFs, that capacity imports to the NYCA across the Zone J MTFs continue to be permissible, if they are supported by long term firm “out service,” notwithstanding the TWR Conversions.

The NYISO’s determination was based on a diligent and thorough review. As an Independent System Operator, Reliability Coordinator, and Balancing Authority, the NYISO has the responsibility, and is accountable, for ensuring that there is adequate supply, operating the system in real time, and complying with mandatory NERC, Northeast Power Coordinating Council (“NPCC”), and New York State Reliability Council (“NYSRC”) reliability standards.

IPPNY has not shown that capacity imports over the Zone J MTFs are no longer deliverable to the NYCA. The determination the NYISO makes under Section 5.12.2.1 is fundamentally about reliability: *i.e.*, whether capacity will in fact be delivered to the NYCA and under what circumstances it would be curtailed by the External Control Area. The determination, therefore, requires answering the question of what will occur between control areas in actual operations. There is no legitimate reason to prohibit capacity imports that successfully demonstrate that they are deliverable to the NYCA. Doing so would inappropriately

increase capacity prices in New York to the detriment of consumers. It would also eliminate hundreds of MW of deliverable supply currently available for the NYCA, and New York City in particular. As demonstrated in this Answer, the NYISO's determination that a Zone J MTF with non-firm TWRs and with LTFFTP service is deliverable to the NYCA interface is well-founded and reasonable. Therefore, the Commission should reject IPPNY's attempt to substitute its commercially motivated views, intended to drive a particular market outcome, for the NYISO's independent reliability-based evaluation and determination.

IPPNY has not met its burden of proof and the Complaint must be denied.⁶ The Complaint invokes both Section 206 and 306 of the Federal Power Act but only implicates Section 306 because it is not seeking tariff changes.⁷ The Commission's complaint rule specifies that a complainant must "[c]learly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements," and must "[e]xplain how the action or inaction violates applicable statutory standards or regulatory requirements."⁸ IPPNY has not met these requirements because it has failed to show that the NYISO has acted in contravention of its tariffs.

⁶ To be clear, the NYISO's position in this proceeding is that it has properly understood how PJM would apply the NERC TLR Procedure to the Zone J MTFs with LTFFTP service, and the operation of the Local Operating Procedures, and that allowing capacity exports across the Zone J MTFs would be reasonable under Section 5.12.2.1 of the Services Tariff in light of that understanding.

⁷ See, e.g., *Richard Blumenthal, Att'y Gen. for the State of Connecticut v. ISO New England Inc.*, 128 FERC 61,182 at P 55 (2009) (explaining that Section 206 "applies to rate changes for public utility tariffs" whereas Section 306 "permits the filing of complaints regarding any violation of the FPA.")

⁸ 18 C.F.R. 385.206(b)(1) and (2) (2018)

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II. BACKGROUND

A. Relevant NYISO Tariff and Manual Provisions

The Services Tariff defines UDRs, in relevant part, as “rights, as measured in MWs, associated with (i) new incremental controllable transmission projects, and (ii) new projects to increase the capability of existing controllable transmission projects that have UDRs, that provide a transmission interface to a Locality.”⁹ The definition provides further that “[w]hen combined with Unforced Capacity which is located in an External Control Area or non-constrained NYCA region either by contract or ownership, and which is deliverable to the NYCA interface in the Locality in which the UDR transmission facility is electrically located, UDRs allow such Unforced Capacity to be treated as if it were located in the Locality, thereby contributing to an LSE’s Locational Minimum Installed Capacity Requirement.”

Each of the Zone J MTFs has been awarded UDRs by the NYISO. Capacity resources in PJM that are associated with an ICAP Supplier that is a UDR rightsholder may use the Zone J

⁹ See Section 2.21 of the Services Tariff.

MTF to import capacity into New York City (Load Zone J) if the UDR rightsholder meets the Services Tariff requirements applicable to Installed Capacity Suppliers. MTFs themselves are not Installed Capacity Suppliers.

Under Section 5.12.2.1 of the Services Tariff, “External Generators, External System Resources, and Control Area System Resources qualify as Installed Capacity Suppliers if they demonstrate *to the satisfaction of the NYISO* that the Installed Capacity Equivalent of their Unforced Capacity is deliverable to the NYCA or, in the case of an entity using a UDR to meet a Locational Minimum Installed Capacity Requirement, to the NYCA interface associated with that UDR transmission facility and will not be recalled or curtailed by an External Control Area to satisfy its own Control Area Loads” (Emphasis added).

Sections 4.9.1 and 4.9.3 of the NYISO’s Installed Capacity Manual provide additional detail on the nature of the showing that the External Generator must make to the NYISO in order to qualify as an Installed Capacity Supplier. Section 4.9.1 states that the External Generator must demonstrate that the External Control Area “[w]ill not recall or curtail, for the purposes of satisfying its own Control Area Loads, exports from that External Control Area to the NYCA of an amount of Energy equal to the Installed Capacity Equivalent of the amount of Unforced Capacity that Resource is supplying to the NYCA” Section 4.9.3, in turn, provides that “Energy must be deliverable to the NYCA border or, when using UDRs, to the NYCA interface with the UDR transmission facility using the transmission service rules of the External Control Area” and that “[f]or External Installed Capacity associated with UDRs, [an Installed Capacity Supplier must] demonstrate delivery of such Energy to the NYCA interface with the UDR transmission facility for the time the Energy may be scheduled in the DAM, included in the HAM, or pursuant to an SRE, as applicable.”

B. The Zone J MTFs, the TWR Conversions, and Prior Commission Proceedings

The Linden VFT is a 330 MW controllable MTF that possesses 315 MW of Capacity Resource Interconnection Service (“CRIS”).¹⁰ The HTP is 660 MW controllable MTF that possesses 660 MW of CRIS. Entities holding UDRs associated with either MTF may offer capacity in New York, provided that they satisfy all of the requirements of Section 5.12.2.1 of the Services Tariff.¹¹

The Interconnection Service Agreement (“ISA”) between Linden VFT, PJM, and Public Service Electric & Gas Company (“PSE&G”) originally stated that Linden VFT had Firm TWRs. In 2017, Linden VFT sought and, ultimately obtained, permission to convert those Firm TWRs to Non-Firm TWRs.¹² HTP made a similar conversion at roughly the same time.¹³ The conversions were prompted by the Zone J MTFs’ desire to avoid certain Regional Transmission Expansion Plan (“RTEP”) cost allocation in PJM.¹⁴

Subsequent to the conversion, the Linden VFT’s owner obtained LTFPTP “out service” for the potential benefit of its customers (*i.e.*, in the NYISO-administered market, UDR rightsholders). This service enables Linden VFT to allocate firm point-to-point transmission

¹⁰ See NYISO Open Access Transmission Tariff at Section 32.

¹¹ This Affidavit does not discuss the elections that each UDR facility in the NYISO’s market is eligible to make by August 1 each year. See Section 4.14.3 of the *Installed Capacity Manual*.

¹² See *Linden VFT, LLC v. Pub. Serv. Elec. & Gas Co., et al.*, 161 FERC ¶ 61,264 (2017) (“Linden VFT Order”).

¹³ See *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,262 (2017) (“HTP Order”).

¹⁴ The Commission recently initiated settlement proceedings to explore whether “changed circumstances” of matters in dockets including those regarding the TWR Conversions, created an opportunity for parties to resolve disputes over earlier RTEP allocations for the Bergen Linden Corridor project. *Linden VFT, LLC v. PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,034 (2018). The NYISO is not an active participant in those proceeding but notes that it seems possible that a settlement in them might affect the issues raised by IPPNY here.

service rights to its UDR rightsholders for service from any PJM generator to the Linden VFT bus. In December 2017, in Docket No. EL18-54-000, the New Jersey Board of Public Utilities (“NJBP”) filed a complaint (“NJBP Complaint”) with the Commission arguing, among other things, that the costs of certain PJM RTEP projects should be allocated to MTFs and to customers using transmission lines that connect PJM to NYISO.

IPPNY and others argued in that proceeding that the Commission “should determine in its ruling on the Complaint that the PJM and NYISO tariffs, past Commission orders, and the core distinction between firm and non-firm transmission service prohibit Linden VFT and HTP from continuing to supply installed capacity (‘ICAP’) . . .” over the Zone J MTFs after the TWR Conversions. The NYISO opposed the NJBP Complaint. It also explained that the issues interjected by IPPNY were outside the scope of the proceeding. In addition, the NYISO emphasized that it had told its stakeholders, and continued to believe, that “[b]ased on the NYISO’s current understanding and its discussions with PJM, External ICAP that procures Long Term Firm Point-to-Point Out Service with receipt at the source of the External ICAP (or equivalent) and delivered to the UDR Point of Interconnection within PJM is eligible to satisfy the NYISO UDR deliverability provisions of [Services Tariff Section] 5.12.2.1.”¹⁵

In its response to IPPNY in that proceeding, PJM explained that “if Linden secured long-term firm Point-to-Point transmission out service to deliver energy to the receipt of the Linden VFT Facility, that firm service could be subject to Transmission Loading Relief (‘TLR’) level 5

¹⁵ See Answer to Comments of New York Independent System Operator, Inc., *New Jersey Board of Public Utilities v. PJM Interconnection, L.L.C., et al.*, Docket No. EL18-54-000, filed March 12, 2018, at 5 (“NYISO Answer to Comments”).

curtailment priority, which is consistent with the treatment of other firm transmission service reservations.”¹⁶

The Commission rejected the NJBPU Complaint on May 24 (“NJBPU Order”).¹⁷ Rehearing is pending.¹⁸ The Commission expressly did not grant the relief sought by IPPNY. It held that “[w]hether parties holding upstream firm transmission service and Non-Firm Transmission Withdrawal Rights can receive capacity payments from the NYISO can be determined only by examination of the NYISO tariff and is outside the scope of this complaint.”¹⁹ Thus, the Commission has not previously decided the issues raised by IPPNY in this proceeding.

C. The NYISO’s Statements Concerning the Continuing Eligibility of UDR Rightsholders to Use the Zone J MTFs to Import Capacity from PJM After the TWR Conversions

Whether or not individual UDR rightsholders have offered, or whether offers have been selected, to supply Installed Capacity in the NYCA is confidential information that the NYISO does not publicly disclose. Accordingly, this answer does not acknowledge or deny IPPNY’s assumptions that: (i) the NYISO has continued to allow Linden VFT UDR rightsholders to sell capacity in New York;²⁰ and (ii) that HTP’s UDRs have not been used to sell capacity for HTP-specific reasons.²¹ The NYISO acknowledges that it is publicly known that Linden VFT has

¹⁶ See Limited Response of PJM Interconnection, L.L.C., *New Jersey Board of Public Utilities v. PJM Interconnection, L.L.C.*, Docket No. EL18-54-000, filed March 12, 2018, at 2 (“PJM Limited Response”).

¹⁷ See *New Jersey Board of Public Utilities v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,139 (2018) (“NJPBU Order”).

¹⁸ See Order Granting Rehearing for Further Consideration, *New Jersey Board of Public Utilities v. PJM Interconnection, L.L.C.*, Docket No. EL18-54-000, issued July 20, 2018.

¹⁹ NJBPU Order at P 50.

²⁰ See Complaint at 16.

²¹ See Complaint at n. 10.

obtained long-term firm “out service,” *i.e.*, LTFPTP, from resources in PJM to the interface between PJM and the Linden VFT.²²

The NYISO has consistently and publicly stated its position that the TWR Conversions would not prevent the Zone J MTFs from being used to import capacity into New York. The NYISO articulated this view in a September 18, 2017 presentation to its Installed Capacity Working Group. This presentation was made before the Commission approved the TWR Conversions later in 2017.²³ The NYISO explained that, based on its “current understanding and its discussions with PJM, External ICAP that procures Long Term Firm Point-to-Point Out Service with receipt at the source of the External ICAP (or equivalent) and delivered to the UDR Point of Interconnection within PJM is eligible to satisfy the NYISO UDR deliverability provisions of [Services Tariff Section] 5.12.2.1.”²⁴ The NYISO added that, “[i]f at any point the NYISO determines that capacity and energy associated with UDRs that was sold into the NYISO’s market does not have such firm transmission service reservation, the NYISO will take actions under its tariff and will evaluate eligibility to engage in future offers of capacity associated with the UDRs.”²⁵

²² *See Id.* at 5.

²³ *See* Linden VFT Order and HTP Order.

²⁴ Zachary T. Smith, *Discussion of UDR Deliverability Requirements*, NYISO (Sept. 18, 2017), at 8, available at: http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_icapwg/meeting_materials/2017-09-18/UDR%20Deliverability%20Requirements.pdf.

²⁵ *Id.*

The NYISO reiterated this position at the January 17, 2018 meeting of its Business Issues Committee²⁶ and, as noted above, in its *Answer to Comments* in Docket No. EL18-54-000.²⁷

The NYISO continues to hold this position today. Section III below demonstrates why the NYISO's position is well-founded and the Complaint should be denied.

III. ANSWER

A. **The Complaint Should Be Denied Because the NYISO Reasonably Determined Under Section 5.12.2.1 of the Services Tariff that Imports from PJM to NYISO Across the Zone J MTFs that Are Supported by Firm “Out Service” Are Deliverable Regardless of Whether they Have Firm TWRs**

The Complaint claims that the NYISO has violated Section 5.12.2.1 of its Services Tariff. IPPNY incorrectly assumes that because the owners of the Zone J MTFs converted their Firm TWRs to Non-Firm TWRs it must necessarily mean that transactions using UDRs associated with the MTFs do not have firm curtailment priority and thus cannot qualify as capacity in New York.²⁸ The Complaint recites PJM OATT provisions and Commission precedents that distinguish, as a general matter, between firm and non-firm service for curtailment purposes.²⁹ It highlights the traditional distinction between firm and non-firm transmission service, *i.e.*, that non-firm transactions may be cut before firm transactions for economic or reliability reasons and that PJM need not plan or develop its system to support non-interruptible service for non-firm transactions.³⁰

²⁶ Zachary T. Smith, *Proposed ICAP Manual Revisions Regarding Deliverability Requirements for Capacity Imports from PJM*, NYISO (January 17, 2018), at 2, available at: <http://www.nyiso.com/public/webdocs/markets_operations/committees/bic/meeting_materials/2018-01-17/5%20Import%20Right%20Deliverability%20Requirements%20final.pdf>.

²⁷ See NYISO Answer to Comments at 5.

²⁸ See Complaint at 14-15.

²⁹ *Id.* at 11-13.

³⁰ *Id.* at 3.

IPPNY also alleges that Section 5.12.2.1 of the Services Tariff “requires that external resources that seek to use MTFs to deliver ICAP from PJM to Zone J must demonstrate deliverability of the ICAP from the generator’s location in PJM to the MTF’s interconnection point in PJM (Path 1) and from that point to the New York interface (Path 2), i.e., both Path 1 and Path 2 must be satisfied to be deliverable and meet the eligibility requirements.”³¹ Based on this inaccurate interpretation, IPPNY wrongly asserts that “there is no legitimate basis on which the NYISO could conclude that [ICAP associated with the Zone J MTFs] ‘will not be recalled by an External Control Area to satisfy its own Control Area Loads.’”³²

IPPNY’s “two path” requirement is found nowhere in the Services Tariff. Section 5.12.2.1 is broadly written to allow external resources to be Installed Capacity Suppliers if the NYISO is “satisfied” that they will be deliverable to the NYCA. The provision does not require firm service over “two paths” if having firm service over one is in fact sufficient to ensure deliverability to the NYCA. With respect to exports from PJM over the Zone J MTFs the NYISO is satisfied for purposes of Section 5.12.2.1 that firm “out service” is sufficient to ensure deliverability based on its understanding that whether an MTF has Firm TWRs has no bearing on the analysis under NERC’s TLR rules.

As discussed in more detail in the Markham Affidavit, the NERC TLR Procedure allows PJM and other Reliability Coordinators to mitigate potential or actual operating security limit violations, *i.e.*, System Operating Limit (“SOLs”) and Interconnection Reliability Operating Limit (“IROLs”), while respecting transmission service reservation priorities. TLR determinations are made using NERC’s IDC. TLR “levels” range from zero to six and define

³¹ *Id.* at 9-10.

³² *Id.* at 4.

when transactions may be curtailed. Firm transactions are only subject to curtailment at Level 5; non-firm transactions may be cut at Level 3 (or 4).³³ Under the IDC approach, TLR Procedures are implemented by first cutting non-firm transmission schedules, then by cutting firm schedules.

The NYISO's understanding is that the TLR Procedure and IDC look only to "out service" not to "facility service" in PJM when deciding which transactions to cut. In the nomenclature of the Complaint, the firmness of the "Path 1" reservation is controlling but the firmness of "Path 2" is not considered.

For example, it is publicly known that the out service rights held by Linden VFT under its transmission service agreement with PJM are for a term of five years (with roll-over rights). They are LTFPTP transmission service rights and the last to be curtailed under the IDC method, *i.e.*, they have TLR Level 5 curtailment priority like any other LTFPTP reservation, not Level 3 priority. The NYISO's understanding is thus that PJM would only curtail exports transactions across the Linden VFT on the same terms as other firm service that is used to support capacity exports to the NYISO. The same would be true with respect to HTP to the extent that a HTP UDR rightsholder has LTFPTP "out service" within PJM.

Similarly, the Complaint is wrong that capacity-backed energy exports using the Zone J MTFs would necessarily be treated as "non-Firm Exports," and thus curtailed before firm transmission service, under the emergency procedures in PJM Manual 13.³⁴ If PJM's emergency procedures were triggered, the NYISO understands that capacity-backed exports over a Zone J MTF would be curtailed based on the firmness level of the MTF's "out service," not based on the firmness of its "facility service." Thus, capacity exports over the Zone J MTFs that were backed

³³ See NERC's explanation of TLR Levels, available at: <https://www.nerc.com/pa/rrm/TLR/Pages/TLR-Levels.aspx>.

³⁴ See Complaint at 13, Younger Affidavit at P 16.

by LTFPTP “out service” would only be subject to curtailment under the same circumstances as other transactions with firm transmission service. The NYISO sees no conflict between PJM Manual 13 and the NYISO’s determination that UDR rightsholders using the Zone J MTFs remain eligible to be NYCA Installed Capacity Suppliers.

The Markham Affidavit discusses relevant NERC documentation that describes the modeling of the Linden VFT and HTP facilities in the IDC.³⁵ For interchange transactions scheduled over the Zone J MTFs, the portion between the MTF’s PJM bus and its interface with the NYCA, *i.e.*, the “facility service” portion, is assigned a Transmission Distribution Factor of zero. Mr. Markham explains that this means that the MTF “facility service” portion of the transmission path has no impact on any system constraints and is not considered when a Reliability Coordinator (PJM in this case) follows the TLR Procedure. Thus, the NERC documentation confirmed that the firmness of transmission service to the Zone J MTF buses within the PJM system alone accurately reflects the impact of MTF interchange transactions for TLR curtailment purposes. That is the reason that it is “not necessary for the TLR Procedure to consider the level of firmness for MTF ‘facility service’ in the IDC for interchange transactions scheduled over the MTFs.”³⁶

Accordingly, the NYISO concluded to its satisfaction for purposes of Section 5.12.2.1 of the Services Tariff that capacity transactions using either of the Zone J MTFs that are supported by LTFPTP service in PJM will not be recalled or curtailed by PJM to satisfy its own Control Area Load. The NYISO therefore determined, and continues to hold, that UDR rightsholders using the Zone J MTFs are qualified to be Installed Capacity Suppliers in New York (provided

³⁵ Markham Affidavit at P. 16.

³⁶ See Markham Affidavit at P 21.

that they satisfy all other applicable Services Tariff requirements).³⁷ The Complaint should therefore be denied.

B. The NYISO Has Exercised Due Diligence to Confirm that it Correctly Understands PJM’s Application of the NERC TLR Procedures to the Zone J MTFs and the Implications Under Section 5.12.2.1 of the Services Tariff

The Complaint erroneously suggests that the NYISO relied “solely on PJM’s purported assurances . . .” that deliveries over the Zone J MTFs “will not be curtailed” and claims that this violates the NYISO Services Tariff, Commission precedent, and Good Utility Practice”³⁸ It wrongly accuses the NYISO of failing to fulfill its “independent obligation to administer its Services Tariff and ensure the requirements of its tariffs are met.”³⁹

In fact, the NYISO’s position that the TWR Conversion did not make UDR rightsholders on the Zone J MTFs ineligible to import Installed Capacity is based on its own careful analysis. Part of that analysis is the fact that the NYISO coordinates with PJM as a neighboring Balancing Authority.

The NYISO first considered this question more than a year ago and, as noted above in Section II.C, discussed it with stakeholders in September 2017. For the reasons set forth herein, the NYISO concluded that UDR rightsholders can be eligible to import capacity over the Zone J MTFs. The NYISO would be contravening Section 5.12.2.1 of the Services Tariff, and failing to act in accordance with Good Utility Practice, if it prohibited capacity imports over the Zone J MTFs as if they were subject to curtailment at TLR Level 3 when they are not.

³⁷ This Answer does not describe the other Services Tariff requirements to qualify as Installed Capacity because they are not at issue in the Complaint.

³⁸ Complaint at 16.

³⁹ *Id.* at 18.

The Markham Affidavit explains that Mr. Markham verified the NYISO's conclusions by using the NERC IDC to test his understanding of when transactions across the Zone J MTFs could be cut under the NERC IDC procedures. The testing confirmed the NYISO's understanding that transactions over the Zone J MTFs with LTFPTP "out service" from PJM to the MTF bus and Non-Firm TWRs would only be cut at TLR Level 5, not TLR Level 3. Mr. Markham describes that his findings confirm his understanding that the NERC IDC would not consider, or make "visible" in the curtailment list used by the PJM operators, any impact of "facility service" transactions across the Zone J MTFs at all. Mr. Markham also reviewed the joint Local Operating Procedures that PJM and the NYISO follow to manage scheduling and curtailment over the Zone J MTFs and the backstop procedure that would apply in the event of a physical reduction to the capacity of the Zone J MTFs. This review further reinforced his understanding of the how transfers across the Zone J MTFs would be treated.

In addition, the Boles Affidavit describes the "checkout" process that the NYISO and PJM follow to ensure that both agree on whether inter-regional transactions qualify to supply capacity. The checkout process applies to exports over the Zone J MTFs and would alert the NYISO if PJM believed that exports over them were not subject to curtailment on the same basis as other firm reservations.

The NYISO's review was supplemented and corroborated by numerous discussions with PJM, including direct communications between operators. As discussed in both the Markham and Boles Affidavits, PJM has indicated in all of these exchanges that the NYISO's understanding of the NERC TLR Procedures is accurate. PJM has confirmed that the curtailment priority for exports from PJM across the Zone J MTFs is determined solely based on the firmness of the "out service" to the MTF. PJM has consistently reiterated what it said in

Docket No. EL18-54-000. That is, that it had informed “the NYISO that if Linden secured long-term firm Point-to-Point transmission out service to deliver energy to the receipt of the Linden VFT Facility, that firm service could be subject to [TLR Level 5] curtailment priority, which is consistent with the treatment of other firm transmission service reservations.”⁴⁰ PJM has also confirmed the NYISO’s understanding of PJM Manual 13 and the Local Operating Procedures for the Linden VFT and HTP.

To be clear, PJM has given no “assurances” to the NYISO “regarding whether Linden or HTP could continue to sell ICAP to New York after the merchant facilities converted their interconnection service from Firm to Non-Firm TWRs.”⁴¹ To the NYISO’s knowledge, PJM has never sought to interpret what the NYISO Services Tariff requires of Installed Capacity Suppliers or tell the NYISO whether it believes that UDR rightsholders to the Zone J MTFs are, or should be, eligible to provide capacity in New York. Instead, PJM has stated, and the NYISO agrees, that “[w]hether a resource qualifies as a NYISO capacity resource or not is a NYISO decision.”⁴² PJM has simply described the transmission service available under its rules and how it applies the NERC TLR Procedure to the Zone J MTFs. The NYISO has evaluated the implications of those procedures under Section 5.12.2.1 of the Services Tariff.

C. The Commission’s Statements in Docket No. EL18-54-000 Concerning Curtailments of Transactions with Non-Firm TWRs Are Not Dispositive in this Proceeding

IPPNY claims that the Commission’s statements in the NJBPU Order and earlier rulings, expressly “prohibit” the use of the Zone J MTFs to support capacity imports.⁴³ The Complaint

⁴⁰ PJM Limited Response at 2.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *See, e.g.,* Complaint at 14.

alleges, in effect, that the Commission has already decreed that UDR rightsholders ceased to be eligible to use the Zone J MTFs to import capacity into New York at the time of the TWR Conversions. As discussed in this subsection, however, the Commission's earlier statements do not resolve the issues in this proceeding.

As noted above in Section II.B, IPPNY and other parties tried to inject the question of the permissibility of capacity imports over the Zone J MTFs into Docket No. EL18-54-000. The NYISO and other parties objected, arguing that the issue was outside the scope of the NJBPU Complaint. The NJBPU Order agreed with the NYISO, holding that “[w]hether parties holding upstream firm transmission service and Non-Firm Transmission Withdrawal Rights can receive capacity payments from the NYISO can be determined only by examination of the NYISO tariff and is outside the scope of this complaint.”⁴⁴

At the same time, the Commission articulated the traditional distinction between firm and non-firm transmission service, *i.e.*, that non-firm service is far more susceptible to curtailment than firm. The NJBPU Order did not agree that “Merchant Transmission Facilities can receive the same service and benefits by subscribing to firm transmission service to the PJM border as they did when they held Firm Transmission Withdrawal Rights, without receiving an RTEP cost allocation.”⁴⁵ The Commission also noted earlier holdings that “the Linden and Hudson conversion of Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights means that PJM can curtail or interrupt the withdrawal service for reliability and economic reasons, irrespective of the priority of any upstream firm transmission service.”⁴⁶

⁴⁴ NJBPU Order at P 59.

⁴⁵ *Id.*

⁴⁶ NJBPU Order at n. 100 (“In finding the Linden Interconnection Service Agreement unjust and unreasonable for preventing Linden from converting its Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights, the Commission stated that once Linden holds Non-Firm

Based on these statements, it appears that the Commission may not have been aware that in the application of NERC's TLR Procedure to the Zone J MTFs it is the firmness of "out service" not "facility service" that is controlling.⁴⁷ The views expressed by the Commission concerning the relationship between TWRs and curtailment priorities did not have the benefit of a factual record demonstrating the fact that the firmness of the TWRs would not be taken into account when PJM evaluates transactions across the Zone J MTFs under the NERC TLR Procedure. The NJBPU Order did not address these details.

In any event, IPPNY admits that these issues were beyond the scope of Docket No. EL18-54.⁴⁸ Accordingly, the Commission's statements on this matter are non-binding and do not "confirm" that "MTFs without Firm TWRs are subject to curtailment by PJM."⁴⁹ The Commission's statements did not alter the actual requirements of the TLR Procedure. While the NYISO certainly considered the Commission's earlier statements, the NYISO concluded that they reflected non-binding *dicta*, and did not impact the application of the TLR Procedure to the Zone J MTFs or the implications under Section 5.12.2.1 of the Services Tariff.

Transmission Withdrawal Rights, 'PJM is no longer required to provide firm service and can curtail non-firm service whenever necessary to preserve reliability.' *Linden VFT, LLC v. Public Service Electric and Gas Company, et al*, 161 FERC ¶ 61,264, at P 32 (2017). *See also, id.* P 25 ('the Linden facility is fully controllable by PJM so that PJM can shut off flows if those flows jeopardize reliability or cause operational problems in New Jersey or elsewhere on the PJM system.')

⁴⁷ *See Id.* at n. 100, where the Commission expressed a belief, without the benefit of the record created by this answer, that "withdrawals scheduled using Non-Firm Transmission Withdrawal Rights have rights similar to those scheduled using non-firm point-to-point transmission service" and thus that while Firm Transmission Withdrawal Rights are subject to TLR level 5 curtailment priority, Non-Firm Transmission Withdrawal Rights are subject to TLR level 3 curtailment priority."

⁴⁸ *See* Complaint at 8 ("the Commission found that IPPNY's comments were outside the scope of the proceeding.")

⁴⁹ *See Id.* at 7.

D. Continuing to Allow Capacity Transfers Across the Zone J MTFs Would Not Harm Consumers or Result in Artificial Price Suppression But Would Support Reliability and Resilience

IPPNY claims that the continuation of capacity transfers across the MTFs is harming consumers in both the NYISO and PJM as well as the markets themselves.⁵⁰ IPPNY's argument that New York consumers will be harmed is based on its premise that capacity imports over the Zone J MTFs are not authorized. But there is no possible harm to New York consumers⁵¹ from such imports because, for the reasons set forth above, the TWR Conversion did not make UDR rightsholders using the Zone J MTFs ineligible to be Installed Capacity Suppliers in New York. The TWR Conversions had no impact on the deliverability of transfers across the Zone J MTFs and thus are irrelevant for purposes of Section 5.12.2.1 of the Services Tariff. By contrast, New York consumers would be harmed if capacity imports over the Zone J MTFs were not allowed even though they are deliverable. There would be no lawful basis for the NYISO to reject such imports under the Services Tariff. The consequences of doing so would be needlessly higher capacity prices to the detriment of New York consumers, and would only benefit capacity suppliers located within New York.

IPPNY also contends that allegedly impermissible exports over the Linden VFT have “artificially suppressed” and will “continue to artificially suppress” ICAP clearing prices throughout New York.⁵² For the reasons noted above in Section II.C., the NYISO is not addressing the question of whether the UDR rightsholders using the Linden VFT currently are

⁵⁰ *See Id.* at 20.

⁵¹ The NYISO takes no position regarding potential consumer impacts in PJM other than to note that it does not seem possible that lawful, tariff-authorized capacity exports from PJM to New York would somehow result in legally actionable harm to PJM consumers that the Commission would need to redress.

⁵² *See* Complaint at 22; Younger Affidavit at PP 9, 46.

providing capacity in New York. But regardless of whether rightsholders to either of the Zone J MTFs actually sold capacity in the last NYISO monthly capacity auction, the key point is that allowing them to qualify to do so could not possibly cause artificial price suppression. As discussed above, if UDR rightsholders have secured LTFPTP “out service” in PJM their capacity-backed transactions across the Zone J MTFs would only be subject to curtailment under TLR Level 5 conditions regardless of whether they have Firm TWRs. Such rightsholders would thus be Installed Capacity Suppliers in the NYISO (assuming that they possessed all other necessary qualifications.) There would be no economic or legal basis for refusing to accept their capacity. In fact, if the NYISO were to reject capacity imports that are authorized under the Services Tariff on the erroneous grounds advanced by IPPNY, the NYISO would be artificially inflating capacity prices, not preventing artificial price suppression.

The Commission should not allow IPPNY to override the NYISO’s well-founded determination under Section 5.12.2.1 of the Services Tariff. The NYISO has responsibility as an ISO, Reliability Coordinator, and Balancing Authority to protect system reliability and comply with NERC, NPCC, and NYSRC reliability standards. The NYISO made this determination in light of the NYISO’s obligation to reliably operate system under all system conditions, including emergency conditions. IPPNY’s members do not have this obligation or perspective. The NYISO also has an obligation to exercise its independent judgment, without regard to commercial interests, to ensure the reliable operation of the system. If the Commission were to rule in IPPNY’s favor, the NYCA could unnecessarily lose access to hundreds of MW of deliverable capacity that is available to meet NYCA requirements. The Commission should not lightly set aside the NYISO’s well-founded exercise of operational judgment.

Finally, IPPNY makes several vague assertions to the effect that continuing to allow capacity transactions across the Zone J MTFs would undermine resilience.⁵³ The NYISO takes grid resilience concerns very seriously.⁵⁴ As it has previously explained in other proceedings, it is working closely with its stakeholders to explore multiple potential resilience improvements. But it is impossible to credibly claim that allowing valid interregional capacity trading somehow undermines resilience. In reality, interregional connections are inherently good for resilience; they do not undermine it. There is thus no merit to IPPNY's claims on this issue.

IV. COMPLIANCE WITH COMMISSION RULE 213(c)

Attachment I to this Answer addresses the formal requirements of Commission Rule 213(c).

V. CONCLUSION

WHEREFORE, the NYISO respectfully requests that the Commission deny the Complaint for the reasons set forth above.

Respectfully submitted,

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⁵³ See Complaint at 3, 4, 23.

⁵⁴ See Response of the New York Independent System Operator, Inc., *Grid Resilience in Regional Transmission Organizations and Independent System Operators*, Docket No. AD18-7-000 (“*Grid Resilience Docket*”), filed March 9, 2018; Reply Comment of the New York Independent System Operator, Inc., *Grid Resilience Docket*, filed May 9, 2018.

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