

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

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| Linden VFT, LLC v. PJM Interconnection, L.L.C. |) | Docket Nos. EL15-67-003 |
| |) | |
| PJM Interconnection, L.L.C. |) | ER15-2562-002 |
| |) | |
| PJM Interconnection, L.L.C. |) | ER17-950-003 |
| |) | |
| Linden VFT, LLC v. PJM Interconnection, L.L.C. |) | EL17-68-000 |
| |) | |
| PJM Interconnection, L.L.C. |) | EL17-84-001 |
| |) | |
| Linden VFT, LLC v. Public Service Electric and Gas Company and PJM Interconnection, L.L.C. |) | EL17-90-001 |
| |) | |
| New York Power Authority v. PJM Interconnection, L.L.C., and PJM Transmission Owners in their Collective Capacity |) | EL17-94-000 |
| |) | |
| PJM Interconnection, L.L.C. |) | ER18-579-002 |
| |) | |
| PJM Interconnection, L.L.C. |) | ER18-680-000 |
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| New Jersey Board of Public Utilities v. PJM Interconnection, L.L.C., 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 |) | EL18-54 |
| |) | |
| |) | (not consolidated) |

**ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
OPPOSING MOTION TO CONSOLIDATE OF THE
NEW JERSEY BOARD OF PUBLIC UTILITIES AND THE
NEW JERSEY DIVISION OF RATE COUNSEL**

In accordance with Rule 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this answer opposing the September 14, *Motion to Consolidate* (“Motion”) in the above-captioned

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

proceedings. The New Jersey Board of Public Utilities (“NJBPU”) and the New Jersey Division of Rate Counsel (“NJRC”) (jointly, the “Movants”) ask that the Commission consolidate Docket No. EL18-54-000 (the “NJBPU Complaint Proceeding”) with the other dockets captioned above (the “PJM RTEP Settlement Proceedings”). The NYISO strongly opposes the Motion and urges the Commission to deny it.

As discussed below, the Commission has already rejected a request to consolidate the NJBPU Complaint Proceeding with three of the dockets included in the PJM RTEP Settlement Proceedings. Consolidation in the circumstances of this case would also clearly be inconsistent with Commission practice. It would likewise be inappropriate on the merits given the substantial differences between the issues and parties involved and the differing procedural stages of litigation. Moreover, the NJBPU Complaint Proceeding involved a complaint that was rejected in its entirety. The underlying complaint failed, among other things, because it sought relief that was expressly prohibited by a core holding of Order No. 1000.² Arguments that the Commission rejected because they are contrary to Order No. 1000’s core requirements, along with other issues raised in the NJBPU Complaint Proceeding that the Commission rejected as beyond the scope of that proceeding,³ should not be subject to settlement discussions. In short, the Motion

² See *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014). See also, *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214 (2013), *order on reh’g and compliance*, 147 FERC ¶ 61,128 (2014), *order on reh’g and compliance*, 150 FERC ¶ 61,038, and *order on reh’g and compliance*, 151 FERC ¶ 61,250 (2015).

³ See, e.g., *New Jersey Board of Public Utilities v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,139 (2018) (the “NJBPU Order”) at P 59 (holding that questions concerning the eligibility of Merchant Transmission Facilities that converted to Non-Firm Transmission Withdrawal Rights in PJM to continue to support capacity imports to New York was beyond the scope of the NJBPU Complaint Proceeding).

should not be granted because it would undermine, rather than promote, administrative efficiency.

I. ANSWER

A. The Motion Should Be Denied On Multiple Procedural Grounds

The Motion suffers from multiple critical procedural defects that are themselves sufficient basis for denial. First, the Commission recently rejected a virtually identical request by the NJBPU. The NJBPU's December 22, 2017 Complaint in Docket No. EL18-54-000 (the "NJBPU Complaint") asserted that the issues it was raising were "inextricably linked" to those in "Docket Nos. EL17-84, EL17-90, EL17-94, ER17-725, ER17-905 and ER17-950" ⁴ The NJBPU therefore asked "the Commission to take the necessary procedural steps to dispose of all related issue in a coordinated fashion, which advances the public interest as well as administrative efficiency." ⁵

The NJBPU Order rejected the NJBPU's request to consolidate its complaint with other Dockets, stating "[w]e deny the request for consolidation as the Complaint raises different issues, is at a different stage of litigation and can be resolved without consideration of the issues of the other proceedings." ⁶

Thus, the Commission has already refused to consolidate the NJBPU Complaint Proceeding with three of the dockets included in the PJM RTEP Settlement Proceedings. The Motion admits this fact ⁷ but makes no effort to explain why the Commission should alter its

⁴ *Complaint of the New Jersey Board of Public Utilities*, Docket No. EL18-54-000 (December 22, 2017) at 2. The NJRC was not a co-complainant with the NJBPU but filed supporting comments.

⁵ *Answer of the New York Independent System Operator, Inc.*, Docket No. EL18-54-000 (February 23, 2018) at 13.

⁶ NJBPU Order at P 49.

⁷ See Motion at 3.

earlier denial. Nothing has changed that would justify overturning the NJBPU Order on this point. The fact that the NJBPU Complaint sought consolidation with three, but not all, of the dockets in the PJM RTEP Settlement Proceedings is immaterial. The Motion is either an impermissible collateral attack on the NJBPU Order or, at a minimum, an unsupported attempt to reverse a procedural ruling that should fail under the Commission's policy against unnecessary re-litigation.⁸

Second, consolidation would be inconsistent with established Commission practice. The Commission has frequently stated that "in general," it "consolidates proceedings only if a trial-type evidentiary hearing is required"⁹ The Commission has not required trial-type evidentiary hearings in either the NJBPU Complaint Proceeding or the PJM RTEP Settlement Proceedings. The Motion makes no attempt to justify commencing a single hearing encompassing all of the captioned dockets at this late stage.

B. The Motion Should Be Denied on its Merits Because the NJBPU Complaint Proceeding and the PJM RTEP Settlement Proceedings Involve Different Issues, Different Parties, and Are at Different Procedural Stages

Beyond the Motion's fundamental procedural defects, consolidation should be denied because the NJBPU Complaint Proceeding involves different issues and parties and is in a much different procedural posture. The PJM RTEP Settlement Proceedings involve various long-running disputes over the allocation of Regional Transmission Expansion Planning costs to two PJM Merchant Transmission Facilities, *i.e.*, Linden VFT, LLC ("Linden VFT") and Hudson

⁸ See, e.g., *Pacific Gas & Electric Co.*, 121 FERC ¶ 61,065 (2007) at P 40, explaining that Commission has a well-established policy against "unnecessary re-litigation" that is based upon, but is generally more flexible than, judicial preclusion doctrines such as collateral estoppel and *res judicata*.

⁹ *Dynegy Resource I, LLC, et al.*, 150 FERC ¶ 61,232 (2015) at P 17 and n. 24; citing *Duke Energy Corp.*, 136 FERC ¶ 61,245, at P 33 (2011); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 25 (2008); *Terra-Gen Dixie Valley*, 132 FERC ¶ 1,215, at P 44, n.74 (2010).

Transmission Partners, LLC (“HTP”), and one former PJM transmission customer, *i.e.*, Consolidated Edison Company of New York, Inc. By contrast, the NJBPU Complaint Proceeding began only after the Commission had issued multiple orders in the proceedings that the Commission decided to include in the settlement discussions and attempted to raise new claims which were entirely rejected by the Commission.

Recently, the Commission issued an order establishing settlement procedures for the PJM RTEP Settlement Proceedings (the “Settlement Order”).¹⁰ The Commission explained that the circumstances regarding PJM’s cost responsibility assignments for certain transmission projects developed through PJM’s Order No. 1000 planning processes had changed.¹¹ The Commission therefore decided to “establish settlement judge procedures in the captioned dockets to permit the parties to seek a settlement given the changes in circumstances.”¹² Specifically, the Commission stated that:

[T]he Edison Rebuild Project has been cancelled, and all of the costs of the Sewaren Project have been reassigned to PSEG. Con Edison has terminated its transmission service agreements, and PJM has reassigned the cost responsibility assignments for RTEP transmission facilities previously assigned to Con Edison. Hudson and Linden have amended their respective interconnection service agreements to convert their Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights. As a result, the assignment of cost responsibility pursuant to the just and reasonable cost allocation method set forth in the PJM Tariff for the Bergen Linden Corridor Project has been affected significantly. Given the extent of these changed circumstances and the changes to the cost responsibility assignments relating specifically to the Bergen Linden Corridor Project, we find it appropriate to provide the parties with an opportunity to settle the issues raised in the captioned proceedings.

¹⁰ See *Linden VFT, LLC v. PJM Interconnection, L.L.C., et al.*, 164 FERC ¶ 61,034 (2018).

¹¹ See Settlement Order at P 2.

¹² *Id.* at P 12.

The Movants assert that consolidation is warranted because the “changed circumstances” described in the Settlement Order also apply to Docket No. EL18-54-000.¹³ This is simply not true. All of the “changed circumstances” referenced by the Commission occurred before the issuance of the NJBPU Order. No circumstances have changed since the Commission’s complete rejection of the NJBPU Complaint that would warrant including the issues raised in Docket No. EL18-54-000 in the settlement discussions. Presumably, the Commission recognized as much when it opted not to include Docket No. EL18-54-000 among the proceedings addressed by the Settlement Order.¹⁴ The mere fact that the NJBPU Complaint mentioned some facts later described as “changed circumstances” by the Settlement Order does not justify consolidation; to the contrary it indicates that the Commission took those facts into account in its Settlement Order.

Moreover, there are other material factual and legal distinctions between the NJBPU Complaint Proceeding and the PJM RTEP Settlement Proceedings. First, the Complaint proposed to impose cost responsibility for the Bergen Linden Corridor (“BLC”) project in New Jersey on New York parties that are not, and were not previously, PJM transmission customers for the first time. It also sought to require refunds from them. In addition, the NJBPU Complaint raised issues regarding the NYISO’s administration of its Services Tariff, including its role in administering the Joint Operating Agreement with PJM. Other parties tried to inject questions regarding the eligibility of the Linden VFT and HTP merchant transmission facilities

¹³ See Motion at 3.

¹⁴ The Commission’s decision to exclude Docket No. EL18-54-000 from the Settlement Order may also have been informed by its then very recent rejection of the NJBPU Complaint’s consolidation request.

to continue to support capacity imports into New York into the proceeding.¹⁵ These issues are beyond the scope of the issues included in the PJM RTEP Settlement Proceedings, which only involve regional transmission expansion plan (“RTEP”) allocations to PJM customers. There does not appear to be any reason why the issues in the PJM RTEP Settlement Proceedings could not be resolved without addressing the NJBPU Complaint Proceeding.

Second, the NJBPU Complaint targeted the NYISO, which plays no role in the PJM RTEP cost allocation process, is not subject to RTEP cost allocations itself, and has no say in whether other New York entities receive or pay allocations. The NYISO has never taken a substantive position in any of the PJM RTEP Settlement Proceedings and is only a party in Docket No. EL15-67-000. If the Motion were granted, the NYISO would be compelled to become involved in discussions of PJM RTEP Settlement Proceeding issues that are, otherwise, of no interest to it. Many NYISO stakeholders are similarly situated and would likewise be drawn into the PJM RTEP Settlement Proceedings for the first time if rejected NJBPU Complaint Proceeding issues, such as the potential allocation of PJM RTEP costs to all NYISO customers, became subjects for settlement negotiation.

Third, the NJBPU Order rejected the NJBPU Complaint’s claims in their entirety¹⁶ and clearly stated that it found “none of them persuasive.”¹⁷ In particular, the NJBPU Complaint attempted to overturn a core holding of Order No. 1000 and asked the Commission to require PJM and NYISO to rewrite the requirements of their tariffs that implement the Order No. 1000

¹⁵ See NJBPU Order at P 59. The Commission rejected these efforts, explicitly stating 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.” *Id.*

¹⁶ See NJBPU Order at PP 1, 51, 53-55, 60.

¹⁷ NJBPU Order at P 51.

requirements. The NJBPU Complaint asked the Commission to compel the NYISO's transmission customers and New York loads to pay for transmission facilities planned by PJM, and constructed solely in PJM's Balancing Authority Area, without the NYISO's participation in the PJM planning process, or prior consent to the proposed allocation of costs to New York.

The Commission flatly denied this request explaining that:

The Bergen-Linden Corridor Project was planned solely through PJM's RTEP, and cost responsibility for the Bergen-Linden Corridor Project was assigned consistent with PJM's Order No. 1000 regional cost allocation method, which was accepted as complying with Order No. 1000. NYISO, moreover, has not voluntarily agreed to be responsible for the costs of the Bergen-Linden Corridor Project. We thus find that, because the Bergen-Linden Corridor Project was planned by a single region, i.e., PJM, and without a voluntary commitment to share cost responsibility by the other region, i.e., NYISO, it is just and reasonable for the costs of the project to be allocated solely within that region, PJM. Consistent with Cost Allocation Principle 4, JOA Section 35.10.6 states that, except for transmission projects selected as Interregional Transmission Projects in both NYISO and PJM, "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...." We believe that Cost Allocation Principle 4 is applicable here because it is consistent with past precedent and Order No. 1000 had been issued prior to the planning for the Bergen-Linden Corridor Project.¹⁸

This dispositive ruling upheld a bedrock principle of Order No. 1000. The NJBPU failed to challenge it on rehearing.¹⁹ There is thus no issue from the NJBPU Proceeding that the NYISO would have any reason to negotiate. It is inconceivable that the NYISO would agree that New York loads that are not PJM transmission customers should pay any part of the cost PJM incurred to construct the BLC project for the reasons that previously explained, and the Commission accepted, in the NJBPU Complaint Proceeding.

¹⁸ NJBPU Order at P 54 (footnotes omitted).

¹⁹ The only two issues that the NJBPU preserved on rehearing were claims that the Commission allegedly erred by: (i) failing to examine rate impacts affecting PJM; and (ii) failing to order an administrative hearing to explore the NJBPU Complaint's allegations.

Fourth, the PJM RTEP Settlement Proceedings and NJBPU Complaint Proceeding are at different procedural stages. The earliest of the PJM RTEP Settlement Proceedings began in May 2015, two and a half years before the NJBU Complaint was filed. Rehearing has been pending in Docket Nos. EL15-67 and ER15-2562 for more than two years. The PJM RTEP Settlement Proceedings are also closely linked to multiple older RTEP allocation dockets. Three of those earlier proceedings are currently on appeal but in abeyance before the United States Court of Appeals for the District of Columbia Circuit pending final Commission action in Docket No. EL15-67-000.²⁰ By contrast, those appeals are not connected in any way to Commission action on rehearing in the NJBPU Complaint Proceeding. Consolidation could therefore only delay action in the PJM RTEP Settlement Proceedings and related appeals.

In short, consolidating the NJBPU Complaint Proceeding with the PJM RTEP Settlement Proceedings would undermine, rather than promote, administrative efficiency. The cases involve different parties, different issues, and are at different procedural stages.²¹ Consolidation would simply enable the NJBPU to rehash arguments on issues that the Commission has firmly rejected on issues that should not be subject to negotiations. Consolidation would thereby expand, not narrow, the scope of the disputed issues and would be very likely to substantially extend the

²⁰ Appeals in Docket Nos. ER14-972, EL15-18, and ER14-1485, which concern slightly earlier disputes over PJM RTEP cost allocations are currently being held in abeyance. *See Consolidated Edison Company of New York, Inc. and Linden VFT, LLC Petition for Review, Unopposed Motion to Consolidate, and Unopposed Motion to Hold in Abeyance*, United States Court of Appeals for the District of Columbia Circuit, Case No. 16-1153 (May 25, 2016).

²¹ *See, e.g., Midcontinent Express Pipeline, LLC*, 124 FERC ¶ 61,089, at P 27 (2008) (“The Commission formally consolidates matters only if a trial-type evidentiary hearing is required to resolve common issues of law and fact, and if consolidation will ultimately result in greater administrative efficiency.”); *Startrans IO, LLC*, 122 FERC ¶ 61,253 (2008) (finding formal consolidation inappropriate where a trial-type evidentiary hearing is not required to resolve common issues of law and fact and where consolidation will not ultimately result in greater administrative efficiency).

duration of the PJM RTEP Settlement Proceedings.²² Consolidation is thus clearly not appropriate and the Motion should be denied.

Respectfully submitted,

/s/ Ted J. Murphy

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²² The Motion claims that consolidation would not “delay the ongoing settlement process.” Motion at 4. This is simply not credible given the current procedural timetable in the PJM RTEP Settlement Proceedings. *See Order Scheduling Settlement Activities*, Docket Nos. EL15-67-000, *et al.*, (August 14, 2018) which contemplates, among other things, the development of a joint issues list by October 16 and an exchange of settlement offers by October 23. In reality, if the Motion were granted, any possible resolution of the issues in the PJM RTEP Settlement Proceedings would be substantially delayed.

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 in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Rensselaer, NY this 28th day of September 2018.

By: /s/ John C. Cutting

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