

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

**Independent Power Producers of)
New York, Inc.,)
Complainant,)
v.) Docket No. EL18-__-000
New York Independent System)
Operator, Inc.,)
Respondent.)**

COMPLAINT REQUESTING FAST TRACK PROCESSING

I. INTRODUCTION AND EXECUTIVE SUMMARY

Pursuant to Sections 206 and 306 of the Federal Power Act (the “FPA”)¹ and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”),² Independent Power Producers of New York, Inc. (“IPPNY”) respectfully submits this complaint (the “Complaint”) requesting that the Commission act expeditiously to direct the New York Independent System Operator, Inc. (“NYISO”) to comply with its tariff and prohibit resources in the PJM Interconnection, L.L.C. (“PJM”) market from scheduling installed capacity (“ICAP”) withdrawals to the NYISO’s Zone J across certain Merchant Transmission

¹ 16 U.S.C. §§ 824e, 825e (2018).

² 18 C.F.R. § 385.206 (2018).

Facilities³ (“MTFs”) that have elected to replace their Firm Transmission Withdrawal Rights (“Firm TWRs”) with Non-Firm Transmission Withdrawal Rights (“Non-Firm TWRs”).

Pursuant to the PJM OATT, MTFs must have Firm TWRs for resources in PJM to schedule withdrawals of ICAP over the MTFs to NYISO Zone J.⁴ Pursuant to the NYISO’s Services Tariff, resources in PJM are ineligible to deliver ICAP into the NYISO’s Zone J over an MTF unless it has been demonstrated to the NYISO’s satisfaction that PJM will not recall or curtail the delivery to satisfy its own loads.⁵ As the Commission held last December and reaffirmed this past May in three separate proceedings, PJM can curtail energy deliveries from PJM to Zone J over MTFs owned by Linden VFT, LLC (“Linden VFT”) and Hudson Transmission Partners, LLC (“HTP”) if the energy is needed to serve load, to address a reliability or operational issues, or for economics on the PJM system because Linden VFT and HTP elected to convert the Firm TWRs for their MTFs to Non-Firm TWRs to avoid their respective Regional Transmission Expansion Plan (“RTEP”) transmission upgrade cost allocations (the “Conversion”).⁶ Thus, it is now incontrovertible that resources seeking to use Linden VFT’s and HTP’s MTFs to withdraw ICAP from PJM into Zone J are subject to recall or curtailment by PJM and are therefore not able to qualify under the NYISO’s Services Tariff to

³ This and other capitalized terms herein have the meanings 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”).

⁴ See PJM OATT § 1, Definitions E-F at 8.

⁵ See NYISO Services Tariff § 5.12.2.1.

⁶ *Linden VFT, LLC v. Pub. Serv. Elec. & Gas Co. & PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,264, at P 25 (2017), *settlement judge procedures established*, 164 FERC ¶ 61,034 (2018) (“Linden VFT Order”); *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,262, at P 43 (2017), *settlement judge procedures established*, 164 FERC ¶ 61,034 (2018) (“HTP Order”); *N.J. Bd. Of Pub. Utilities v. PJM Interconnection, L.L.C. et al.*, 163 FERC ¶ 61,139, at P 59 (2018) (rehearing pending) (“NJBPU Order”).

sell ICAP into Zone J. Instead, any entity that would have sought to use these MTFs to sell ICAP into New York should offer it into PJM’s capacity market.

The NYISO’s—and, to the extent PJM has in fact assured the NYISO that it will not curtail service over MTFs that do not have Firm TWRs as NYISO has alleged, PJM’s—erroneous tariff interpretations that the Conversion does not prohibit resources using MTFs without Firm TWRs from withdrawing ICAP from PJM to Zone J are currently jeopardizing the reliability and resilience of both markets.⁷ The Commission has confirmed that, due to the Conversion, PJM “can curtail or interrupt [Linden VFT’s and HTP’s] service into NYISO when such service degrades or impedes the reliability of the system or for economic reasons because they are now using either non-firm transmission service or Non-Firm Transmission Withdrawal Rights.”⁸ The Commission further stated that, post-Conversion, PJM “will no longer need to plan and develop its system to guarantee non-interruptible services over these lines.”⁹ As such, there can be no certainty whether, when PJM is faced with any particular reliability, operational, or economic issue, PJM will curtail energy in PJM or will instead curtail deliveries into New York. In any event, neither PJM nor the NYISO is under any obligation to plan for or take any steps to ensure that the PJM system can and will continue to support deliveries into New York.

Moreover, the NYISO’s erroneous treatment of this imported energy as firm “capacity” that is serving the NYISO market is impacting the clearing prices in both the PJM and NYISO markets, given that the NYISO is permitting imported capacity that does not really represent a true capacity commitment to participate in its capacity auction and the resources that are

⁷ To be clear, while Complainant believes that PJM would be violating its OATT if it curtailed its own load rather than deliveries over MTFs using non-Firm TWRs, the focus of this Complaint is NYISO’s continuing violation of the Services Tariff.

⁸ NJBPU Order at P 56.

⁹ *Id.*

purporting to provide that capacity to the NYISO market are at the same time electing not to participate in the PJM capacity auctions. Unless the Commission takes prompt corrective action, the NYISO’s erroneous tariff interpretation will continue to artificially impact the clearing prices in these markets, skew investment decisions that will have a long-term impact on the resilience of both the PJM and NYISO systems, and cause further unnecessary reliability and operational risks on both sides of the interface in heavily populated and highly constrained regions of both systems.

As discussed below and in the affidavits of Mr. Mark D. Younger of Hudson Energy Economics, LLC, provided in Exhibit A hereto (the “Younger Affidavit”), and Mr. Thomas M. Piascik of Tangibl Group, Inc., provided in Exhibit B hereto (the “Piascik Affidavit”), the Commission should, based on the plain language of their respective tariffs, Commission orders, and Good Utility Practice related to firm and non-firm service, order the NYISO to: (i) recognize the non-firm properties of these MTFs post-Conversion as now being subject to curtailment by PJM to serve its load, address an operational issue, or for reliability or economics; and (ii) prohibit further ICAP sales to Zone J across these MTFs because these MTFs do not have Firm TWRs to withdraw ICAP from PJM to Zone J and, as such, the sellers of ICAP utilizing these MTFs do not qualify as Installed Capacity Sellers under the NYISO’s Services Tariff because there is no legitimate basis on which the NYISO could conclude such ICAP “will not be recalled by an External Control Area to satisfy its own Control Area Loads.”¹⁰

II. BACKGROUND

Linden VFT and HTP are the owners of MTFs that interconnect PJM and the NYISO and provide 330 MW and 660 MW of transfer capability between the two regions, respectively. HTP

¹⁰ NYISO Services Tariff § 5.12.2.1.

owns a controllable, high voltage, direct current MTF that runs between the Point of Receipt (“POR”) at the PSE&G Bergen Substation in Ridgefield, New Jersey to the Point of Delivery (“POD”) and interchange between PJM and NYISO at the Con Edison West 49th Street substation in New York, New York.¹¹ Linden VFT owns a controllable MTF that runs between the POR at the Linden VFT Switching Station in Linden, New Jersey to the POD and interchange between PJM and the NYISO at the 345 kV Linden Cogen ring bus in Linden, New Jersey and where it is then further transmitted by the NYISO to the Con Edison Goethals substation in Staten Island, New York.¹²

As Mr. Piascik establishes in his affidavit, Linden VFT and HTP applied for, and made the necessary upgrades to secure, Firm TWRs.¹³ ICAP sales over the Linden VFT MTF require that energy be deliverable across two separate and distinct paths: (i) Path 1 running from injection points within PJM to the PJM side of the Linden VFT interface (the POR); and (ii) Path 2 running from that point to the POD with the New York border.¹⁴

As Linden VFT itself has explained, faced with incurring significant costs for its pro rata share of the Bergen RTEP upgrades, Linden VFT sought to reconfigure the service structure for its facility. First, Linden VFT elected to secure Firm Point-to-Point transmission service on Path 1 for the purpose of providing its customers with a “bundled” service.¹⁵ Second, Linden VFT sought to convert its Firm TWRs across Path 2 to Non-Firm TWRs, a lower level of service so

¹¹ Piascik Aff. ¶ 7.

¹² *Id.*

¹³ *Id.* ¶ 4.

¹⁴ See *id.* ¶ 7; Younger Aff. ¶¶ 17, 19.

¹⁵ Younger Aff. ¶ 22. According to Linden VFT, its customers previously had scheduled their own Firm Point-to-Point transmission service.

that PJM would no longer have any obligation to plan its system for Linden VFT’s MTF and, as a corollary, Linden VFT would no longer be held responsible for RTEP transmission upgrade costs.¹⁶

Linden VFT’s and HTP’s efforts to terminate their Firm TWRs ultimately resulted in two FPA § 206 proceedings to determine whether they should be authorized to take these actions.¹⁷ Pursuant to PJM’s OATT, Firm TWRs permit the rights-holder to schedule energy *and* capacity withdrawals from the PJM system to the New York border.¹⁸ Non-Firm TWRs provide a reduced level of service that permit the rights-holder to schedule energy only on an as-available basis subject to curtailment by PJM.¹⁹ In its complaint initiating its FPA § 206 proceeding, Linden VFT forthrightly acknowledged that Non-Firm TWRs were a lower level of service, and thus, converting to Non-Firm TWR service to the New York border, by definition, meant its transactions to New York would face the risk of being interrupted because PJM would no longer be required to plan for its facility.²⁰ Linden VFT stated that “PJM can shut off flows, consistent with applicable rules and procedures.”²¹

¹⁶ See *id.* ¶ 23; Docket No. EL17-90-000, *Linden VFT, LLC v. Pub. Serv. Elec. & Gas Co. & PJM Interconnection, L.L.C.*, Complaint (Sept. 18, 2017) (“Linden VFT Complaint”), at 18–19 (acknowledging a generator taking non-firm service (i.e., an energy only service) is only “eligible to deliver its output on an as-available basis of transmission capacity,” which means that “no upgrades for the delivery of power, the reduction of congestion or the mitigation of transmission overloads is necessary for such service,” and establishing that “[t]here simply is no dispute that conversion of TWRs from Firm to Non-Firm reduces the impact on the PJM transmission system because, as is the case with all types of firm service, Firm TWRs require PJM to plan for power withdrawal at a designated point of interconnection without regard to levels of congestion.”).

¹⁷ Linden VFT Complaint; Docket No. EL17-84-000, *PJM Interconnection, L.L.C.*, 160 FERC ¶ 61,056 (2017).

¹⁸ PJM OATT § 1, Definitions E-F at 8.

¹⁹ PJM OATT § 1, Definitions L-M-N at 15.

²⁰ Linden VFT Complaint at 11.

²¹ *Id.* (citation omitted).

In Docket Nos. EL17-90 and EL17-84, the Commission issued separate orders determining that Linden VFT and HTP must be permitted to convert their Firm TWRs to Non-Firm TWRs and directed PJM to make a compliance filing reflecting such conversions.²² In its Linden VFT Order, the Commission drew an important distinction between Firm TWR service and Non-Firm TWR service. The Commission stated that pursuant to Linden VFT’s original Firm TWR service, “PJM must guarantee that its transmission system is robust enough to permit Linden to use its Firm TWRs to export 330 MWs of power from its source in PJM *across the river to New York at all times.*”²³ In contrast, the Commission stated that “[c]onverting those Firm TWRs to Non-Firm TWRs imposes no additional obligation on PJM and, in fact, is less burdensome in that PJM will no longer have to guarantee that its transmission system can support such use.”²⁴ The Commission also made the consequence of electing to move forward with the Conversion clear: PJM, the operator of the fully controllable Linden VFT MTF, “can shut off flows if those flows jeopardize reliability or cause operational problems in New Jersey or elsewhere on the PJM system.”²⁵

Thereafter, the Commission reaffirmed its Linden VFT and HTP Orders just this past May in its NJBPU Order confirming that MTFs without Firm TWRs are subject to curtailment by PJM.²⁶ In its comments on the NJBPU Complaint, IPPNY demonstrated, as it does in this

²² Linden VFT Order at P 23; HTP Order at P 41.

²³ Linden VFT Order at P 25 (emphasis added).

²⁴ *Id.*

²⁵ *Id.* (citation omitted).

²⁶ NJBPU Order at P 59 (citing Linden VFT Order at PP 25, 32). In its complaint, NJBPU challenged the fact that certain entities, including Linden VFT, were able to avoid RTEP costs while New York has continued to receive certain benefits from its interconnection with PJM. *See Docket No. EL18-54-000, N.J. Bd. Of Pub. Utilities v. PJM Interconnection, L.L.C. et al.,* Complaint of New Jersey Board of Public Utilities at 1–3 (Dec. 22, 2017) (“NJBPU Complaint”).

Complaint, that resources in PJM can no longer be eligible to deliver ICAP to Zone J over MTFs if the MTFs do not have Firm TWRs because such deliveries are subject to curtailment by PJM.²⁷ IPPNY asserted that if PJM did not curtail flows over the Linden VFT MFT to meet its own system needs and load but instead PJM and the NYISO allowed Linden VFT to continue delivering ICAP from PJM to Zone J, it would be a violation of the NYISO's and PJM's tariffs. In its response to IPPNY's comments, PJM stated that it "gave no assurances to NYISO, Linden or HTP 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.

Whether a resource qualifies as a NYISO capacity resource or not is a NYISO decision."²⁸ PJM further stated that it "did inform the NYISO that if Linden secured long-term firm Point-to-Point transmission out service to deliver energy to the receipt of the Linden VFT Facility, that firm service could be subject to Transmission Loading Relief ("TLR") level 5 curtailment priority, which is consistent with the treatment of other firm transmission service reservations."²⁹

While the Commission found that IPPNY's comments were outside the scope of the NJBPU Complaint because an examination of the NYISO Services Tariff was also required, the Commission directly focused on the assurance the NYISO allegedly had received from PJM and specified that this assurance was not adequate to prevent transactions over these now Non-Firm TWRs from being curtailed:

The premise of these arguments is 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. *We do not agree with this premise.* As

²⁷ Docket No. EL18-54-000, *supra*, Comments of Independent Power Producers of New York, Inc. (Feb. 23, 2018).

²⁸ Docket No. EL18-54-000, *supra*, Limited Response of PJM Interconnection, L.L.C. (Mar. 1, 2018), at 2 ("PJM Response").

²⁹ *Id.*

we have explained in our prior orders, 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.*³⁰

Contrary to PJM's position in the proceeding concerning its requirements to control and operate these lines post-Conversion, the Commission also specified:

[U]nder the PJM Tariff, withdrawals scheduled using Non-Firm Transmission Withdrawal Rights have rights similar to those scheduled using non-firm point-to-point transmission service. Thus, 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.³¹

As established by the Commission in the NJBPU Order, review of the NYISO's Services Tariff is thus the pivotal consideration to address the instant Complaint. *If* specific requirements are met, the NYISO Services Tariff allows PJM suppliers to sell ICAP to the NYISO either over the AC interface between the two regions or over MTFs, like those owned by Linden VFT and HTP, which the NYISO has awarded Unforced Capacity Deliverability Rights ("UDRs").³² Specifically with respect to the latter category, the NYISO's 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

³⁰ NJBPU Order at P 59 (emphasis added) (citing Linden VFT Order at PP 25, 32 ("[T]he 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."); *see also id.* at P 58 n.99.

³¹ *Id.* at P 59 n.100 (citations omitted).

³² Younger Aff. ¶ 16. UDRs are rights associated with controllable transmission projects that interface with NYISO Localities that authorize the import of external capacity resources into the NYISO only if those imports meet all of the requirements for Installed Capacity Suppliers under the Services Tariff. *Id.*

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.³³

Until they terminated their Firm TWRs this past December, Linden VFT and HTP had Firm TWRs to deliver energy and ICAP from their interconnection points in the PJM system to the New York interface (*i.e.*, Path 2 was satisfied).³⁴ Linden VFT has previously explained that its customers had Firm Point-to-Point rights to deliver energy and ICAP to the Linden VFT interconnection point in PJM (*i.e.*, Path 1 was satisfied).³⁵ This combination of Firm Point-to-Point transmission service and Firm TWRs ensured that PJM could not curtail the transaction to the NYISO, *i.e.*, it was deliverable, thus meeting the NYISO’s eligibility requirements for ICAP suppliers in PJM to serve Zone J load.³⁶ However, while Firm Point-to-Point transmission service within PJM has been retained across Path 1, which Linden VFT now secures for its customers, Linden VFT reduced service across Path 2 to non-firm, energy only service when it completed the Conversion³⁷—the very form of service the Commission expressly found was subject to curtailment or interruption “for reliability and economic reasons, irrespective of the priority of any upstream firm transmission service.”³⁸

³³ *Id.* ¶ 17 (citing Docket No. EL17-84-000, *supra*, Answer of Linden VFT, LLC (Nov. 13, 2017), at 4–5 (“Linden VFT November 13 Answer”).

³⁴ HTP reported to the Commission that it terminated its Firm TWRs as of December 15, 2017 and now only has Non-Firm TWRs; Linden VFT reported to the Commission that it converted its Firm TWRs to Non-Firm TWRs effective December 31, 2017. *Id.* ¶¶ 19–20 (citations omitted).

³⁵ *Id.* ¶ 19.

³⁶ *Id.*

³⁷ *Id.* ¶¶ 22–23.

³⁸ NJBPU Order at P 59 (citations omitted). Unlike Linden VFT, HTP has not obtained Firm Point-to-Point transmission service. This is likely due to the fact that HTP, even while it had Firm TWRs, could sell only *de minimis* amounts of ICAP into Zone J because its MTF is a mitigated resource in the NYISO’s ICAP auction and its ICAP offers have not cleared the ICAP auctions in any meaningful amount. See Docket No. EL17-84-000, *supra*, Motion for Leave to Answer and Answer of the New York Power Authority (Nov. 14, 2017), at 5; *see also* Younger Aff. ¶ 20.

III. THE COMMISSION SHOULD RULE THAT THE NYISO MUST PROHIBIT THE EXPORT OF ICAP FROM PJM TO ZONE J OVER MTFs THAT DO NOT HAVE FIRM TWRS.

The determination of whether ICAP sales across the Linden VFT and HTP MTFs must be prohibited after they completed the Conversion requires analysis of relevant provisions of the NYISO's Services Tariff and the PJM OATT. To be permitted to sell ICAP in New York, the first threshold a resource must meet is demonstrating the resource's eligibility to provide ICAP service. The NYISO's Services Tariff provisions governing how external ICAP Suppliers may deliver ICAP via a UDR specify that transmission customers are ineligible to use a UDR to supply ICAP into the NYISO's Zone J if PJM can recall or curtail the delivery to satisfy PJM's own loads, providing in pertinent part:

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*, or, in the case of Control Area System Resources, if they demonstrate that the External Control Area will afford the NYCA Load the same curtailment priority that they afford their own Control Area Native Load Customers.³⁹

Likewise, as confirmed by the Commission in its Linden VFT, HTP, and NJBPU Orders, the PJM OATT defines Non-Firm TWRs as a lower quality of service than Firm TWRs as follows:

“Firm Transmission Withdrawal Rights” shall mean the *rights to schedule energy and capacity withdrawals* from a Point of Interconnection of a Merchant Transmission Facility with the Transmission System. Firm Transmission Withdrawal Rights may

³⁹ NYISO Services Tariff § 5.12.2.1 (emphasis added).

be awarded only to a Merchant D.C. Transmission Facility that connects the Transmission System with another control area. Withdrawals scheduled using Firm Transmission Withdrawal Rights have rights similar to those under Firm Point-to-Point Transmission Service.⁴⁰

“No-Firm (sic)Transmission Withdrawal Rights” shall mean the *rights to schedule energy withdrawals* from a specified point on the Transmission System. Non-Firm Transmission Withdrawal Rights may be awarded only to a Merchant D.C. Transmission Facility that connects the Transmission System to another control area. *Withdrawals scheduled using Non-Firm Transmission Withdrawal Rights have rights similar to those under Non-Firm Point-to-Point Transmission Service.*⁴¹

The PJM OATT establishes two key distinctions between Firm TWRs and Non-Firm TWRs: (1) Firm TWRs are defined as allowing the right to schedule “energy and capacity withdrawals”⁴² while Non-Firm TWRs allow the scheduling of energy withdrawals only,⁴³ and (2) Firm TWRs receive the same priority as Firm Point-to-Point service while Non-Firm TWRs receive the same priority as Non-Firm Point-to-Point service. To that end, Non-Firm Point-to-Point Transmission Service is defined as:

Point-To-Point Transmission Service under the Tariff that is reserved *and scheduled on an as-available basis and is subject to Curtailment or Interruption* as set forth in Tariff, Part II, section 14.7. Non-Firm Point-To-Point Transmission Service is available on a stand-alone basis for periods ranging from one hour to one month.⁴⁴

Importantly, Schedules 16 and 17 of the PJM OATT, which respectively govern the scheduling of firm and non-firm transmission service on Linden VFT’s and HTP’s MTFs

⁴⁰ PJM OATT § 1, Definitions E-F at 8 (emphasis added).

⁴¹ *Id.* § 1, Definitions L-M-N at 15 (emphasis added).

⁴² *Id.* § 1, Definitions E-F at 8.

⁴³ *Id.* § 1, Definitions L-M-N at 15.

⁴⁴ *Id.* (emphasis added).

themselves, capture this core distinction between firm and non-firm service classifications. Each Schedule provides that transmission customers can schedule a Firm Reservation or a Non-Firm Reservation for transmission service from the MTF's POR to its POD. For example, Schedule 16 provides:

1.1.1 Firm Linden VFT Reservation: A Firm Linden VFT Reservation allows a Linden VFT Transmission Customer to schedule capacity and energy on a firm basis from the Linden FFT [sic] Point of Receipt to the Linden VFT Point of Delivery.

1.1.2 Non-Firm Linden VFT Reservation: A Non-Firm Linden VFT Reservation allows a Linden VFT Transmission Customer to schedule energy on a non-firm, as available, basis from the Linden VFT Point of Receipt to the Linden VFT Point of Delivery.

As with Firm TWRs and Non-Firm TWRs, a transmission customer selecting a Firm Reservation can “schedule capacity and energy on a firm basis,” while a Non-Firm Reservation customer can only “schedule energy on a non-firm, as available, basis.”⁴⁵ PJM’s operating procedures require curtailment and interruption of Non-Firm exports before significant emergency conditions exist. PJM Manual 13 (Emergency Operations) requires that, prior to entering Emergency Procedures, PJM must: 1) review weather projections, load forecasts, reserve projections and generation performance; 2) ensure LMPs are reflective of system conditions; 3) *curtail all Non-Firm exports*; and 4) may elect to implement an interchange cap to stabilize the amount of interchange during peak hours to protect against volatility.⁴⁶

Taken together, these provisions indisputably establish that, once Linden VFT elected to make the Conversion and rely solely on Non-Firm TWRs, the entities attempting to utilize the Linden VFT path to sell ICAP into New York failed the threshold eligibility requirement, and

⁴⁵ *Id.*, Schedule 16 §§ 1.1.1, 1.1.2, Schedule 17 §§ 1.1.1, 1.1.2.

⁴⁶ See Piascik Aff. ¶ 16 (citation omitted).

thus, ICAP sales across the Linden VFT MTF post-Conversion must be prohibited. As established *supra*, the Commission ruled that PJM can curtail service over Linden VFT's and HTP's MTFs in its Linden VFT, HTP, and NJBPU Orders under a wide variety of circumstances such as serving its own loads, addressing operational issues, for reliability or for economics. Given the extensive bases to curtail these transactions, the NYISO has no legitimate basis to be satisfied that these transactions “*will not be recalled or curtailed by an External Control Area to satisfy its own Control Area Loads.*”⁴⁷ Thus, deliveries over MTFs without Firm TWRs clearly violate the NYISO’s Services Tariff because the energy associated with this ICAP is expressly subject to interruption or curtailment. Put simply, sales across the Linden VFT and HTP MTFs no longer satisfy the threshold eligibility requirement.

Prior to the Commission’s issuance of the Linden VFT and HTP Orders, the NYISO informed market participants that, “[b]ased on the NYISO’s current understanding and its discussions with PJM,” an entity with Firm Point-to-Point service to the interconnection point with the PJM system, *i.e.*, the POR, was eligible to sell ICAP to New York even though it no longer had Firm TWRs to deliver ICAP over its transmission line into New York, *i.e.*, from the POR to the POD.⁴⁸ The NYISO stated that it had based its position on PJM’s “assurances” that it would not curtail transactions over the Linden VFT to New York post-Conversion.⁴⁹

In December, the Commission issued the Linden VFT and HTP Orders expressly

⁴⁷ NYISO Services Tariff § 5.12.2.1.

⁴⁸ Zachary T. Smith, *Discussion of UDR Deliverability Requirements*, NYISO (Sept. 18, 2017), at 8, http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_icapwg/meeting_materials/2017-09-18/UDR%20Deliverability%20Requirements.pdf.

⁴⁹ Younger Aff. ¶ 25. In a revision to its presentation, the NYISO focused on the fact that capacity not delivered would be subject to a penalty. As Mr. Younger establishes, this is a red herring. The threshold eligibility requirements must first be met. The penalty structure is then used to police the behavior of those resources who are deemed eligible to provide, and sell, ICAP. *Id.*

establishing a Conversion election carried with it a fundamental change in the nature of service provided—PJM could cut flows impacting reliability or causing operational problems in any location on the PJM system.⁵⁰ The reason is simple. The Conversion, by definition, meant PJM no longer had any obligation to include these resources in its system planning.⁵¹ Thus, the quid pro quo for avoiding RTEP cost allocation was accepting a lower level of service – a trade-off Linden VFT expressly acknowledged.⁵²

Even in the face of the Commission’s determination in its Linden VFT and HTP Orders confirming that PJM can curtail service over MTFs that do not have Firm TWRs, however, the NYISO nevertheless continued to maintain its position that ICAP sales across the Linden VFT MTF utilizing its Non-Firm TWRs were permissible. In a presentation to Market Participants after the issuance of the Linden VFT and HTP Orders, the NYISO stated 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 §] 5.12.2.1.”⁵³ The NYISO indicated that Linden VFT had secured Firm Point-to-Point transmission service to deliver energy to the receipt point of the Linden VFT MTF in PJM and again defaulted to the fact that PJM had assured the NYISO that transactions over this MTF to the NYISO would not be

⁵⁰ Linden VFT Order at P 25; HTP Order at P 43.

⁵¹ Linden VFT Order at P 25 (specifying “PJM will no longer have to guarantee that its transmission system can support such use.”)

⁵² See Linden VFT November 13 Answer at 5.

⁵³ Zachary T. Smith, *Proposed ICAP Manual Revisions Regarding Deliverability Requirements for Capacity Imports from PJM*, NYISO (Jan. 17, 2018), at 2,
http://www.nyiso.com/public/webdocs/markets_operations/committees/bic/meeting_materials/2018-01-17/5%20Import%20Right%20Deliverability%20Requirements%20final.pdf.

curtailed.⁵⁴ ICAP market results since these Conversions were made reflect the fact that ICAP sales have continued to be permitted.⁵⁵

Thereafter, the Commission issued the NJBPU Order. In this Order, the Commission both reaffirmed its earlier decisions concerning PJM's ability to curtail energy delivered over the Linden VFT MTF post-Conversion and expressly rejected the premise that Firm Point-to-Point service to the PJM side of the interface standing alone sufficed to ensure deliverability of the energy associated with these ICAP sales.⁵⁶ The results of the ICAP market auction and the associated NYISO report issued for the July 2018 ICAP market, however, indicate that the NYISO has continued to permit the Linden VFT MTF to deliver ICAP to Zone J.⁵⁷ The NYISO appears to be maintaining its position irrespective of the Commission's clear edict that Firm Point-to-Point service on Path 1 does not override the fact that Non-Firm TWRs on Path 2 renders transactions utilizing the MTF curtailable by PJM for a wide variety of reasons such as serving its own loads, addressing operational issues, for reliability or for economics.

The NYISO's decision to allow the delivery of ICAP over the Linden VFT MTF from PJM to Zone J based solely on PJM's purported assurances to the NYISO that such deliveries will not be curtailed violates the NYISO Services Tariff, Commission precedent, and Good Utility Practice associated with the core distinction between firm and non-firm service. Thus, such sales must be prohibited.

⁵⁴ Younger Aff. ¶ 29. While HTP has not, to IPPNY's knowledge, requested Firm Point-to-Point service for deliveries in PJM, the NYISO would likely apply its treatment to HTP or any other UDR connected to PJM assuming they have Firm Point-to-Point service in PJM and Non-Firm TWRs for deliveries across the line into New York. *See id.*

⁵⁵ *Id.* ¶ 52.

⁵⁶ NJBPU Order at P 59.

⁵⁷ Younger Aff. ¶ 31. The July market was the first auction following the issuance of the NJBPU Order.

Moreover, the delivery of ICAP over Linden VFT’s and HTP’s MTFs also violates PJM’s OATT. PJM’s OATT requires Firm TWRs and Firm Reservations to deliver ICAP over an MTF while Non-Firm TWRs and Non-Firm Reservations permit the delivery of energy as available and as transfer capability permits—“a bedrock principle universally recognized as Good Utility Practice throughout the power generation and electric transmission systems in the United States.”⁵⁸ As Mr. Piascik explains, the distinction between firm and non-firm service is that firm service provides greater certainty that load will be served in high demand situations. Firm service is required to sell ICAP because “ICAP is the capability to provide energy under the most adverse conditions when it is most in need. It is the product that is instrumental to the security and reliability of the bulk electric system.”⁵⁹ On the other hand, only non-firm service is required to deliver energy, which need only be “delivered on an as available, economic basis with minimal restriction placed on the energy supplier other than ensuring market pricing is just and reasonable.”⁶⁰

As Mr. Piascik describes in his affidavit, Schedules 16 and 17 to the PJM OATT require HTP and Linden VFT to allocate their transmission capability rights to their respective transmission customers, which “shall include the allocation of the Firm and Non-Firm Transmission Withdrawal Rights, as applicable, which have been assigned” to each MTF owner (*i.e.*, Linden VFT and HTP can only offer to its respective customers what it itself holds—non-firm service post-Conversion).⁶¹

⁵⁸ Piascik Aff. ¶ 12.

⁵⁹ *Id.* ¶ 13.

⁶⁰ *Id.*

⁶¹ *Id.* ¶ 11 (quoting PJM OATT Schedule 16 § 2.1, Schedule 17 § 2.1).

Thus, under the PJM OATT, resources in PJM cannot deliver ICAP to Zone J over Linden VFT's and HTP's MTFs because Non-Firm TWRs cannot be used to export capacity. As Mr. Younger states in his affidavit, it is unclear exactly what assurances PJM gave to the NYISO.⁶² If PJM in fact assured the NYISO that it would not curtail service over these MTFs to secure its own load, address system operational needs, for reliability or for economics, the Commission's Linden VFT, HTP, and NJBPU Orders make it clear that if PJM operated in this manner it would be a violation of the PJM OATT. Nor may the NYISO simply accept any such assurance—assuming it was given—in the face of the Commission's orders. To the contrary, the NYISO has an independent obligation to administer its Services Tariff and ensure the requirements of its tariffs are met. The NYISO has not met its obligation vis-à-vis ICAP sales over the Linden VFT MTF.

Indeed, to the extent that there could be any room for debate on this question of the adequacy of PJM's assurances, the Commission eliminated it in the NJBPU Order. In its answer to IPPNY's comments on the NJBPU Complaint, PJM indicated it had advised 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 Transmission Loading Relief ("TLR") level 5 curtailment priority, which is consistent with the treatment of other firm transmission service reservations."⁶³ However, the Commission was clear in its NJBPU Order that a transmission customer having Firm Point-to-Point service to the POR combined with Non-

⁶² Younger Aff. ¶ 34.

⁶³ PJM Response at 2.

Firm TWR service to the POD would be subject to curtailment “for reliability and economic reasons, *irrespective of the priority of any upstream firm transmission service.*”⁶⁴

The basis for the Commission’s determination is clear. As Mr. Piascik explains in his affidavit, an MTF must demonstrate deliverability across both Path 1 and Path 2 to sell ICAP to New York.⁶⁵ Thus, it must have both Firm Point-to-Point service from the generator’s location in PJM to the Linden VFT receipt point in PJM *and* it must have Firm TWRs from that point to the New York interface in order to dependably and reliably serve New York load.⁶⁶ The combination of Firm Point-to-Point transmission service to the Linden VFT interconnection point on the PJM system (the POR) with the Linden VFT MTF’s now Non-Firm TWRs to the New York border (the POD) is not sufficient. Because PJM’s answer in its response to IPPNY’s comments on the NJBPU Complaint is only related to Path 1, it was not applicable to Path 2. It does not—indeed, cannot—support a NYISO conclusion that Path 2 will not be curtailed to serve load, reliability or economics.

In fact, Linden VFT itself correctly recognized that “it would face an increased risk that its exports over its facility to the NYISO border would be subject to interruption” if its request to terminate its Firm TWRs was granted and it subsequently only held Firm Point-to-Point service within PJM and Non-Firm TWRs to the New York border.⁶⁷ To state the risk is “increased” is an understatement. As the Commission held in its Linden VFT Order, “the Linden facility is

⁶⁴ NJBPU Order at P 59. The Commission further specified 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.*” *Id.* P 59 n.100. (Emphasis added).

⁶⁵ Piascik Aff. ¶ 7.

⁶⁶ *Id.*; see also Younger Aff. ¶ 17.

⁶⁷ Linden VFT November 13 Answer at 5.

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.”⁶⁸

Given that Linden VFT has chosen Non-Firm TWRs, PJM should have clarified for the NYISO that Schedule 16 of the PJM OATT prohibits transmission customers from delivering ICAP across a Non-Firm Linden VFT Reservation. In addition, in accordance with the Commission’s prior orders, PJM should have clarified for the NYISO that it cannot provide any assurances that the delivery of energy across the Linden VFT MTF will not be interrupted or curtailed to serve its own loads, to address an operational issue, or for reliability or economics. Indeed, any assurances aside, the NYISO has an independent obligation to administer its Services Tariff. Thus, the NYISO should have prohibited the ICAP sales based on the Commission’s Linden VFT, HTP and NJBPU Orders.

Based on the foregoing, the Commission should rule that the Linden VFT and HTP MTFs, and any other UDR between PJM and New York with Non-Firm TWRs, fail to meet the threshold eligibility requirements to deliver ICAP from PJM to the NYISO, and thus, ICAP sales across these lines are prohibited.

IV. THE NYISO’S ERRONEOUS DETERMINATION THAT THE CONVERSION DOES NOT PREVENT ENTITIES UTILIZING THE LINDEN VFT MTF FROM SUPPLYING ICAP TO THE NYISO IS CURRENTLY JEOPARDIZING SYSTEM RESILIENCE AND RELIABILITY AND CAUSING SIGNIFICANT FINANCIAL HARM TO THE NEW YORK AND PJM MARKETS AND, UNLESS THE COMMISSION TAKES CORRECTIVE ACTION, THE HARMS TO THESE MARKETS WILL CONTINUE UNABATED.

As Mr. Younger demonstrates in his affidavit, NYISO customers, PJM customers, and the markets themselves are currently incurring substantial harm from the continuation of

⁶⁸ Linden VFT Order at P 25.

ineligible ICAP sales across the Linden VFT facility post-Conversion.⁶⁹ The ICAP market auction results since the beginning of the year demonstrate that Linden VFT has continued to sell the same amount of ICAP post-Conversion despite the fact that it is now taking a lower level, curtailable service from PJM.⁷⁰ In fact, the NYISO ICAP spot market auction results for the month of July 2018 reveal that the NYISO has continued to permit these sales notwithstanding the Commission’s determination that the NYISO’s past reliance on the fact Linden VFT had secured firm point-to-point service to the PJM side of the interface as the basis to allow such sales was ill-founded.⁷¹ A Commission ruling determining that Linden VFT is ineligible to sell ICAP to New York with its Non-Firm TWRs is required to avoid continuing harm to the NYISO and PJM markets.⁷²

With respect to the harm to PJM markets, the impermissible sale of ICAP artificially reduces the level of ICAP that would otherwise be available to supply the PJM market, which may unjustly be causing higher ICAP prices for PJM loads.⁷³ As discussed above, for the NYISO to be able to rely on such sales, PJM would have to cede its right to curtail the energy associated with such capacity sales when it allows these exports to take place.⁷⁴ However, doing so places the PJM system at higher risk with respect to PJM’s ability to serve load, to address operational issues or to address circumstances involving reliability or economics.⁷⁵ PJM must

⁶⁹ Younger Aff. ¶¶ 45–53.

⁷⁰ *Id.* ¶ 52.

⁷¹ *Id.* ¶¶ 31, 52.

⁷² *Id.* ¶ 53.

⁷³ *Id.* ¶ 46.

⁷⁴ *Id.* ¶ 47.

⁷⁵ *Id.*

thus either adversely affect its own customers or cut the transactions to New York notwithstanding the alleged promises given.

With respect to the harm to NYISO markets, the NYISO faces the risk that ICAP exported over the Linden VFT MTF on which it relied to meet system needs will not be available if PJM correctly curtails such exports to meet any of a variety of needs on its own system.⁷⁶ Most problematically, customers in two heavily populated and highly constrained regions must be served and it is likely that PJM would have the greatest need to curtail service over Non-Firm TWRs in Northern New Jersey on high load, high unit outage days, or during other correlated system contingencies, which are when the NYISO is most likely to need deliveries from its ICAP resources into Southeastern New York.⁷⁷ The receipt point of Linden VFT is a mere one mile from New York City, ensuring that weather conditions between the relevant portions of these two systems are essentially identical. If PJM is experiencing system stress in New Jersey for reasons other than an unexpected forced outage affecting the PJM system alone, it is likely that the NYISO is experiencing similar stressed system conditions in New York City.

In addition, allowing the impermissible export of ICAP over the Linden VFT MTF has artificially suppressed—and will continue to artificially suppress—the ICAP clearing prices throughout New York.⁷⁸ Mr. Younger calculated that ICAP clearing prices will be suppressed by as much as approximately \$4.32/kW-month in Zone J and by as much as approximately \$2.49/kW-month and \$0.78/kW-month in the G-J Locality and New York Control Area,

⁷⁶ *Id.* ¶ 48.

⁷⁷ *See id.*

⁷⁸ *Id.* ¶¶ 50–52.

respectively, for Capability Year 2018-2019.⁷⁹ Such price suppression could, *inter alia*, significantly contribute to the premature retirement of otherwise economic resources that are needed for reliability and resilience in the NYISO and PJM and will likely stymie investor confidence.⁸⁰

As the Commission ruled that PJM “will no longer need to plan and develop its system to guarantee non-interruptible services over these lines,”⁸¹ it is clear that neither PJM nor the NYISO are taking responsibility for ensuring that a reliable path exists between generating resources in PJM and the NYISO system. However, the NYISO is still accepting deliveries over the Linden VFT MTF and treating them as ICAP as if PJM is still guaranteeing non-interruptible service over the MTF. The correct response is for the NYISO to bar deliveries of ICAP over the now interruptible MTF. This will send the appropriate signal that this ICAP needs to be replaced with other ICAP and will incent any necessary investment in resilience and reliability within the NYISO.

V. RELIEF REQUESTED

For the reasons set forth herein, IPPNY respectfully requests that the Commission expeditiously rule that the PJM OATT and NYISO Services Tariff prohibit resources in PJM from scheduling ICAP withdrawals to the NYISO’s Zone J across MTFs that have elected to replace their Firm TWRs with Non-Firm TWRs and direct the NYISO to: (i) recognize the post-Conversion non-firm curtailable properties of the Linden VFT and HTP MTFs; (ii) prohibit further ICAP sales to NYISO Zone J across these MTFs until such time that Firm TWR service is reinstated because these MTFs cannot show they have firm service to the New York border

⁷⁹ *Id.* ¶ 51.

⁸⁰ *Id.*

⁸¹ NJBPU Order at P 56.

and, thus, ICAP sold over these lines no longer meets the eligibility requirements of an ICAP Supplier; and (iii) provide such other relief as the Commission determines necessary.

VI. REQUEST FOR FAST TRACK PROCESSING

The issues raised in this Complaint warrant fast track processing under Rule 206(b)(11) of the Commission's Rules of Practice and Procedure.⁸² As explained herein, an expeditious Commission ruling determining that entities in PJM are ineligible to deliver ICAP over Linden VFT to New York post-Conversion with its Non-Firm TWRs is required to avoid continuing harm to the NYISO and PJM markets. The ICAP market auction results since the beginning of the year demonstrate that the Linden VFT MFT is delivering the same amount of ICAP post-Conversion with its Non-Firm TWRs that it delivered pre-Conversion with its Firm TWRs notwithstanding the VFT, HTP and NJBPU Orders.⁸³

The NJBPU Complaint was filed at the end of December, roughly the same time that the Conversion decision was being contemplated. IPPNY thus initially sought to resolve these tariff violations by raising these issues to the Commission in comments filed on the NJBPU Complaint this past February. After the Commission provided clear guidance in its NJBPU Order that deliveries over the Linden VFT MTF are subject to curtailment, but found such issues could not be resolved in the NJBPU Complaint proceeding, IPPNY afforded the NYISO and PJM the opportunity to heed the Commission's guidance and prohibit deliveries of ICAP over Linden VFT's MTF in the July ICAP auction, the first spot market following issuance of the NJBPU Order.⁸⁴ Notwithstanding the Commission's statements in the NJBPU Order, IPPNY must now

⁸² 18 C.F.R. § 385.206(b)(11).

⁸³ Younger Aff. ¶¶ 31, 52.

⁸⁴ *Id.* ¶ 31.

file this Complaint because it appears that the NYISO has continued to permit ICAP deliveries over Linden VFT's MTF.⁸⁵ Each monthly ICAP auction that occurs without a Commission order directing the NYISO to prohibit these transactions will further add to the harms that have been incurred by NYISO and PJM customers since the beginning of the year.

VII. OTHER MATTERS

A. Other Proceedings

IPPNY raised the same issues it raised in this Complaint in its comments on the NJBPU Complaint in Docket No. EL18-54-000. The Commission ruled IPPNY's issues were beyond the scope of the NJBPU Complaint because they required examination of the Services Tariff.⁸⁶

B. Negotiations Among the Parties

In its response to IPPNY's comments filed on the NJBPU Complaint, the NYISO disputed IPPNY's demonstration that the NYISO is in violation of its Services Tariff by allowing ICAP to be delivered into Zone J over Linden VFT's MTF. Subsequent to the Commission's NJBPU Order, IPPNY discussed the issues raised in this Complaint with the NYISO and PJM. The discussions did not produce a resolution of these issues and ICAP sales across the Linden VFT facility are expected to continue unabated without Commission action. IPPNY does not think that further discussions between the parties will resolve the concerns that have prompted this Complaint. IPPNY has notified the NYISO and PJM that it will file this Complaint.

In accordance with Rule 206(b)(9) of the Commission's Rules of Practice and Procedure,⁸⁷ IPPNY has not contacted the Commission's Office of Enforcement before filing this Complaint. This Complaint concerns a dispute over the interpretation of the NYISO

⁸⁵ *Id.* ¶¶ 31, 52.

⁸⁶ NJBPU Order at P 59.

⁸⁷ 18 C.F.R. § 385.206(b)(9).

Services Tariff and the PJM OATT, and thus involves issues that are not suited to resolution by the Office of Enforcement.

C. Financial Impact

As discussed in Part IV above, allowing the impermissible export of ICAP over the Linden VFT MTF has artificially suppressed—and will continue to artificially suppress—the ICAP clearing prices throughout New York. ICAP clearing prices may be suppressed by as much as approximately \$4.32/kW-month in Zone J and by as much as approximately \$2.49/kW-month and \$0.78/kW-month in the G-J Locality and New York Control Area, respectively, in Capability Year 2018-2019. Such price suppression could significantly contribute to the premature retirement of otherwise economic resources and will sap investor confidence. Likewise, to the extent resources sold to New York would have bid into, and cleared, the PJM market, its capacity spot market prices have been—and are being—artificially inflated.

D. Description of Complainant and Respondent

1. Complainant

IPPNY is a not-for-profit trade association representing the independent power industry in New York State. Its members include nearly 75 companies involved in the development and operation of electric generating facilities and the marketing and sale of electric power in New York. IPPNY's members include suppliers and marketers that participate in the NYISO's and PJM's energy, capacity, and ancillary services markets.

2. Respondent

NYISO

The NYISO is the independent system operator (“ISO”) for the State of New York. As an ISO, NYISO operates the region’s transmission system and administers organized wholesale electricity markets pursuant to its Services Tariff and Open Access Transmission Tariff.

E. Communications and Correspondence

All correspondence and communications regarding this filing should be addressed to the following persons, who should be placed on the Commission’s official service list in this proceeding:

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F. Service and Form of Notice

In accordance with Rule 206(c) of the Commission’s Rules of Practice and Procedure,⁸⁸ Complainant is serving a copy of this Complaint on the NYISO, and on PJM, Linden VFT, HTP and parties on the official service lists compiled by the Secretary in Docket Nos. EL18-54-000, EL17-84-000 and EL17-90-000, who are the other persons who could be affected by this Complaint. In accordance with Rule 206(b)(10) of the Commission’s Rules of Practice and

⁸⁸ *Id.* § 385.206(c).

Procedure,⁸⁹ a form of notice suitable for publication in the Federal Register is provided in Exhibit C.

VIII. CONCLUSION

WHEREFORE, Complainant requests that the Commission expeditiously issue an order granting this Complaint and ordering the relief requested herein.

Respectfully submitted,

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Dated: July 31, 2018

⁸⁹ *Id.* § 385.206(b)(10).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on the respondent, New York Independent System Operator, Inc., and on PJM Interconnection, L.L.C., Linden VFT, LLC, Hudson Transmission Partners, LLC and parties listed on the official service lists compiled by the Secretary in Docket Nos. EL18-54-000, EL17-84-000 and EL17-90-000.

Dated at Albany, NY, this 31st day of July, 2018.

David B. Johnson
David B. Johnson

EXHIBIT A

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

**Independent Power Producers of)
New York, Inc.,)
Complainant,)
v.) Docket No. EL18-__-000
)
New York Independent System)
Operator, Inc.,)
Respondent.)**

AFFIDAVIT OF MARK D. YOUNGER

1. My name is Mark D. Younger. I am employed as President of Hudson Energy Economics, LLC. My business address is 480 Pondview Road, Petersburgh, New York 12138.
2. My entire professional career has been devoted to matters relating to electric generation and the development of competitive electricity markets. For over fifteen years, I have been an active participant in the working groups refining the New York Independent System Operator, Inc. (“NYISO”) market structure and identifying corrections, improvements and enhancements to the market design, including all aspects of its energy, ancillary services, and installed capacity (“ICAP”) markets. Pertinent to this case, I have participated in the development of rules addressing the requirements for both internal and external resources to be eligible to participate as Installed Capacity Suppliers in the NYISO’s capacity markets, including the initial development and ongoing refinement of the NYISO’s capacity deliverability rules. I have also attended NYISO working group

meetings where the ability of resources that have changed the nature of their transmission service to continue to make capacity sales in New York was discussed. In addition, for the last eleven years I have been the main generator sector representative for the Installed Capacity Subcommittee (“ICS”) of the New York State Reliability Council (“NYSRC”). The ICS oversees the reliability analyses conducted by the NYISO and the NYSRC sets the installed reserve margin (“IRM”) for New York State on an annual basis based on that analysis. In this capacity, I have reviewed, and provided input on, the NYISO’s IRM study assumptions and results. Over this time period, I have also testified in numerous Federal Energy Regulatory Commission (“Commission”) and New York State Public Service Commission proceedings relating to many aspects of the overall NYISO market design. My resume is attached as Exhibit MDY-1.

3. I write this affidavit in support of Independent Power Producers of New York, Inc.’s (“IPPNY”) Complaint Requesting Fast Track Processing against the NYISO (the “Complaint”).
4. IPPNY asked me to: (i) address whether the NYISO’s decision to continue to allow ICAP to be delivered from PJM to the NYISO’s Zone J over Linden VFT, LLC’s (“Linden VFT”) and Hudson Transmission Partners, LLC’s (“HTP”) Merchant Transmission Facilities (“MTFs”) violates the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) after Linden VFT and HTP converted their Firm Transmission Withdrawal Rights (“Firm TWRs”) to Non-Firm Transmission Withdrawal Rights (“Non-Firm TWRs”) as of January 1, 2018 (the “Conversion”); and (ii) identify

whether there are adverse reliability and market impacts resulting from these sales.¹

5. As I discuss in greater detail below, the NYISO has elected to ignore the fundamental characteristic of non-firm service—the fact that it may be curtailed—in the face of clear guidance from the Commission in a series of orders addressing these very circumstances. The NYISO’s decision to continue to allow ICAP to be imported over Linden VFT’s MTF or any other MTF that does not have Firm TWRs, such as HTP’s MTF, violates the NYISO’s Services Tariff because entities transmitting energy over MTFs that do not have Firm TWRs do not meet the threshold eligibility requirements of the Services Tariff to qualify as external sources of ICAP to the NYISO markets. The NYISO’s—and, upon information and belief, PJM Interconnection, L.L.C.’s (“PJM”)—treatment of the Conversion already has caused direct harm to the New York and PJM markets. Until ICAP sales into NYISO Zone J or other zones via MTFs holding only Non-Firm TWRs are prohibited, such sales will continue to harm these markets and will pose a threat to the ongoing reliable operations of heavily populated and highly constrained areas of the New York and PJM systems.
6. To be eligible to export ICAP from PJM into New York to serve NYISO Zone J load, firm service is required all the way to the New York interface. The NYISO reported to its Market Participants that PJM had assured the NYISO that entities in PJM could deliver ICAP to New York over MTFs without Firm TWRs so long as they procured

¹ Capitalized terms herein have the meanings given in the PJM Open Access Transmission Tariff (the “PJM OATT”) and the NYISO’s Services Tariff.

Firm Point-to-Point service to the MTF's interconnection point with PJM.² As the NYISO's Services Tariff requires that ICAP delivered over MTFs not be curtailable, this effectively means that transactions over Linden VFT's and HTP's MTFs could not be curtailed notwithstanding the change in service from Firm TWRs to Non-Firm TWRs resulting from the Conversion. Based on its characterization of PJM's position, the NYISO took and continues to take the position that the Conversion did not render MTFs, such as the ones owned by Linden VFT and HTP, ineligible to deliver ICAP from PJM to NYISO. The NYISO made its position clear in response to questions from Market Participants during several working group meetings.

7. If such assurances were in fact made, PJM is effectively enabling entities exporting energy over Linden VFT's and HTP's MTFs to Zone J to receive the benefits of firm service to sell ICAP to Zone J load when, by virtue of Linden VFT's and HTP's own actions, they only possess non-firm rights to deliver energy into Zone J. The NYISO cannot rely on these statements because it could require PJM to shed load in PJM to allow these non-firm exports to continue to be delivered into New York across the lines. As more fully discussed in the affidavit of Thomas M. Piascik, of Tangibl Group, Inc., if PJM made such an assurance, PJM's assurances are inconsistent with the requirements in its OATT now that Linden VFT and HTP have tendered back the Firm TWRs for these MTFs.³ Indeed, as explained in more detail below, allowing Linden VFT to maintain

² Zachary T. Smith, *Discussion of UDR Deliverability Requirements Updated: Slides 8 ,9, & 10*, NYISO (Sept. 18, 2017), at 8, http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_icapwg/meeting_materials/2017-09-18/UDR%20Deliverability%20Requirements.pdf (“NYISO September 18 Presentation”).

³ Piascik Aff. ¶¶ 14, 20–21.

effectively the same service is particularly problematic in this case because Linden VFT has openly admitted that it completed the Conversion solely to avoid incurring the substantial Regional Transmission Expansion Plan (“RTEP”) costs associated with the Bergen Project that must be incurred by firm load and parties with Firm TWRs.

8. The lack of transparency with respect to the scope, nature, and bases of the assurances allegedly provided by PJM to the NYISO to justify the continued eligibility of these MTFs to deliver ICAP into New York is creating significant uncertainty concerning which load will be served by PJM during periods when “flows jeopardize reliability or cause operational problems in New Jersey or elsewhere on the PJM system”⁴ and during periods when “PJM can curtail or interrupt the withdrawal service for reliability and economic reasons.”⁵ In short, PJM’s alleged assurance to the NYISO and the NYISO’s acceptance of that assurance in light of all the contrary tariff obligations and Commission orders casts significant uncertainty over reliability and system operations because it is not known which load will be served and which load will be curtailed.
9. Beyond the critical reliability implications, the NYISO’s actions are causing PJM customers to suffer significant financial harm. Based on PJM’s alleged assurances, the NYISO is impermissibly allowing the sale of ICAP over Linden VFT’s and HTP’s MTFs into New York. ICAP sales from PJM to New York under these circumstances artificially reduce the amount of ICAP available to sell into and potentially clear the PJM

⁴ *Linden VFT, LLC v. Pub. Serv. Elec. & Gas Co. & PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,264, at P 25 (2017) (citation omitted) (“Linden VFT Order”); *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,262, at P 43 (2017) (“HTP Order”); *N.J. Bd. of Pub. Utilities v. PJM Interconnection, L.L.C. et al.*, 163 FERC ¶ 61,139, at P 59, note 100 (2018) (“NJBPU Order”).

⁵ NJBPU Order at P 59.

market, which may raise PJM market clearing prices, all else equal.

10. As the Commission has established and Mr. Piascik explains in further detail in his affidavit, PJM has the obligation to curtail transactions over these non-firm transmission lines to serve PJM loads for operational reasons, reliability, or economics as mandated by PJM's tariffs.⁶ If PJM allows the power to flow and cuts its own load or takes other actions to the detriment of its system, non-firm New York load and customers would receive service while firm load and customers in PJM would be curtailed or adversely affected contrary to PJM's OATT, recent Commission orders, and years of Commission precedent addressing firm and non-firm services. Thus, PJM consumers would be harmed while New York consumers would impermissibly be provided service.
11. The New York market is also harmed in two material respects. First, from a reliability standpoint, if the energy backed by these Non-Firm TWRs is treated correctly as a non-firm supply, deliveries across the Linden VFT MTF (and, potentially, at some point in the future, deliveries across the HTP MTF) into Zone J do not provide the minimum level of certainty that is required under the Services Tariff for these resources to qualify as Installed Capacity Suppliers, which will result in significant reliability and operational problems that should not be permitted to go unresolved.
12. If PJM curtails service to New York as required by its OATT obligations, NYISO consumers are harmed because PJM would not be abiding by its alleged assurance that the transactions over these non-firm transmission lines would not be curtailed. During

⁶ “[T]he 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.” Linden VFT Order at P 25 (citation omitted). See also Piascik Aff. ¶¶ 14, 20–21.

the strained system conditions where these issues are likely to arise, the NYISO could well find itself forced to cut service to New York consumers as a result.

13. Second, from a markets standpoint, the sale of the non-qualifying ICAP is unjustly suppressing ICAP prices in New York, thereby eroding the signals that other Installed Capacity Suppliers rely upon to cover their costs. This could significantly contribute to generators in New York, whose delivery to New York is not curtailable by PJM, retiring as a result of not earning sufficient revenues to cover their costs. Consequently, the NYISO could be losing resources that provide for reliability while relying upon resources that may not be reliably delivered from PJM.
14. A review of the NYISO ICAP Auction Results since the beginning of 2018, when Linden VFT and HTP converted their MTFs to Non-Firm TWRs, shows that there has been no significant change in the amount of ICAP sold in Zone J following the Conversion. Given that no new large resources have come online in this area during this period, the reasonable conclusion is that the NYISO has continued to allow at least Linden VFT to sell ICAP into Zone J even though it does not meet the threshold eligibility requirements of the Services Tariff. Therefore, the damage to the NYISO markets is already occurring and will continue to occur until PJM and the NYISO comply with their respective tariffs or this issue is corrected by the Commission.
15. As I explain below, the Commission should determine that the NYISO has violated its Services Tariff by allowing suppliers that deliver energy over Linden VFT's and HTP's MTFs to participate as external capacity suppliers to New York because Linden VFT and HTP terminated their Firm TWRs and can no longer demonstrate that deliveries over their MTFs will not be curtailed by PJM if they are otherwise needed to address

reliability, operational, or economic issues on the PJM system. In accordance with the plain language of their tariffs, recent Commission orders, and longstanding Commission precedent related to firm and non-firm service, the Commission should thus order the NYISO to prohibit future ICAP sales across the Linden VFT and HTP MTFs, and any other MTF that does not have Firm TWRs, into New York because they are non-firm curtailable MTFs that do not meet the threshold eligibility requirements to deliver ICAP to the NYISO.

Background

16. If paired with the correct service in PJM, ICAP can be sold from PJM to New York in two ways. First, each year, the NYISO defines the amount of ICAP imports that may be sold from PJM to New York over the AC interface between the two regions. Second, given the nature of their interconnection between the two systems, the Linden VFT and HTP MTFs have been awarded Unforced Capacity Deliverability Rights (“UDRs”) on the New York side of the interface. UDRs are rights associated with controllable transmission projects that interface with NYISO Localities that authorize the import of external capacity resources into the NYISO only if those imports meet all of the requirements for Installed Capacity Suppliers under the Services Tariff.
17. As Linden VFT itself has previously explained to the Commission, to demonstrate eligibility to sell ICAP to New York, an MTF must demonstrate deliverability across two separate paths—specifically, from the generator’s location to the Linden VFT interface on the PJM side (which I will call Path 1 herein) *and* from that point to the New York

interface (which I will call Path 2).⁷

18. In pleadings previously filed with the Commission, Linden VFT established that it had paid for all upgrades and system enhancements in PJM for its 330 MW of Firm TWRs to deliver energy and capacity from PJM to New York and, prior to 2014, also had paid its allocation of RTEP upgrade costs to accommodate PJM's system planning for its Firm TWRs.⁸ Linden VFT thus secured Firm TWRs from its interconnection point on the PJM system to the New York interface to satisfy the required Path 2.
19. Until this year, customers on the Linden VFT MTF satisfied Path 1 by securing Firm Point-to-Point rights to the Linden VFT interconnection point on the PJM side.⁹ Combining Firm Point-to-Point service within PJM to address Path 1 *and* Firm TWRs from that point to the New York border to address Path 2 ensured the export from PJM to the NYISO would not be curtailed in accordance with the PJM OATT. By satisfying the requirements of both Path 1 and Path 2, this ICAP was deliverable to Zone J load. Linden VFT sold ICAP in the New York market on that basis through December 2017.¹⁰
20. Until January 1, 2018, HTP also had Firm TWRs to the New York interface. However, HTP was mitigated under the NYISO's Buyer-Side Market Power Mitigation Rules, and thus has been required to submit capacity offers no lower than a predesignated Offer

⁷ Docket No. EL17-84-000, *PJM Interconnection, L.L.C.*, Answer of Linden VFT, LLC (Nov. 13, 2017), at 4–5 (“Linden VFT November 13 Answer”).

⁸ Docket No. EL17-90-000, *Linden VFT, LLC v. Pub. Serv. Elec. & Gas Co. & PJM Interconnection, L.L.C.*, Complaint and Request for Fast Track Processing and Motion for Expedition, Or in the Alternative, Stay of Certain RTEP Charges of Linden VFT, LLC (Sept. 18, 2017), at 5, 7 (“Linden VFT Complaint”).

⁹ See Docket No. EL17-84-000, *supra*, Response of Linden VFT, LLC (Nov. 3, 2017), at 9 (“Linden VFT Response”).

¹⁰ See Docket No. EL17-90-001, *Linden VFT, LLC v. Pub. Serv. Elec. & Gas Co. & PJM Interconnection, L.L.C.*, Answer and Motion for Leave to Answer and Answer of Linden VFT, LLC (Jan. 31, 2018), at 3 (“Linden VFT January 31 Answer”)

Floor since it began commercial operations. Upon information and belief, it has not cleared more than an insignificant amount of its ICAP in the NYISO's spot market auctions since it began operations. Recent capacity clearing prices in New York have been well below HTP's Offer Floor so it is doubtful that they have offered significant capacity into the NYISO market. The New York Power Authority ("NYPA") confirmed to the Commission that HTP has made only *de minimis* ICAP sales due to the Offer Floor mitigation.¹¹

21. In response to the potential re-allocation of significant RTEP costs for the Bergen transmission project, both Linden VFT and HTP sought to tender back their Firm TWRs last year and replace these rights with Non-Firm TWRs for their MTFs.¹² After a series of pleadings were filed in several dockets, two Section 206 proceedings were commenced to determine whether Linden VFT and HTP should be authorized to take these actions (hereinafter, "Linden VFT Firm TWR Proceeding" and "HTP Firm TWR Proceeding," respectively).¹³
22. Linden VFT explained to the Commission in the Linden VFT Firm TWR Proceeding that it was proposing a change to both paths of this service going forward.¹⁴ With respect to Path 1, Linden VFT was seeking to obtain Firm Point-to-Point rights to its interconnection point on the PJM side of the system so that its customers would no longer

¹¹ Docket No. EL17-84-000, *supra*, Motion for Leave to Answer and Answer of the New York Power Authority (Nov. 14, 2017), at 5.

¹² See *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,021, at P 1 (2017); *PJM Interconnection, L.L.C.*, 160 FERC ¶ 61,056, at P 1 (2017).

¹³ See Linden VFT Order at P 1; HTP Order at P 1.

¹⁴ Linden VFT Response at 9.

have to obtain firm service to satisfy the requirements of Path 1.¹⁵ As Linden VFT further explained, the purpose of this change was simply so Linden VFT could provide a bundled product to its customers; it was not a material change in the nature of transmission service over its facility in and of itself.¹⁶

23. In contrast, Linden VFT expressly established in the Linden VFT Firm TWR Proceeding that it was proposing to *change* the transmission withdrawal rights it held for its MTF on Path 2 from *Firm* TWRs to only *Non-Firm* TWRs (*i.e.*, the TWR service path from its point of interconnection (the Point of Receipt) with the PJM transmission system to its Point of Delivery to the NYISO).¹⁷ As Linden VFT correctly acknowledged, by converting to Non-Firm TWRs, it would only “be eligible to deliver its output on an as-available basis of transmission capacity,” and thus, “it would face an increased risk that its exports over its facility to the NYISO border would be subject to interruption.”¹⁸ Linden VFT specifically stated it was seeking this lower level of service so that it would no longer be required to incur its pro rata share of RTEP costs.¹⁹
24. By seeking authorization to complete the Conversion, Linden VFT and HTP were acknowledging that they would no longer be able to ensure that they would be able to deliver the associated energy to New York when its ICAP was called because PJM could curtail the flow to address its system needs.
25. Prior to the issuance of the Commission’s Linden VFT and HTP Orders (collectively, the

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Linden VFT Complaint at 8–9.

¹⁸ Linden November 13 Answer at 5. To state the risk is “increased” is an understatement. PJM has the obligation to curtail service over the non-firm line to meet reliability needs or resolve operational problems in New Jersey or elsewhere on the PJM system.

¹⁹ *Id.* at 5–6.

“Firm TWR Orders”), the NYISO made a presentation at the September 18, 2017 Installed Capacity working group meeting advising Market Participants that “[b]ased on the NYISO’s current understanding and its discussions with PJM,” an entity with Firm Point-to-Point service to the interconnection point with the PJM system (*i.e.*, service across Path 1) was eligible to sell ICAP to New York.²⁰ In response to questions from me and other Market Participants, the NYISO stated that the basis for its position was “assurances” allegedly made by PJM that entities that secured Firm Point-to-Point transmission service to an MTF’s point of interconnection with PJM (such as Linden VFT has done) would not have their deliveries over the MTF to the NYISO be curtailed. While the NYISO “updated” this presentation at some point following this meeting, the revised presentation, which contains penalties ICAP Suppliers face when they fail to provide energy, conflates the threshold requirement of eligibility with the penalty structure applied to resources that are deemed eligible and that sell ICAP. The NYISO provides no explanation as to how a resource with Non-Firm TWRs meets the eligibility requirements to import ICAP into New York in the first place. The NYISO’s reliance on penalties to ensure energy deliveries over MTFs to meet the NYISO’s resource adequacy standard of a loss of load probability of one day in ten years is further flawed because the current penalties are too low to be an effective deterrent, and the NYISO could not realistically raise the penalty level high enough to ensure deliveries will be made to meet this standard. To be effective, the penalty level imposed would have to be so high that they would exceed the entity’s potential profits from its ICAP sales for all times

²⁰ NYISO September 18 Presentation at 8.

periods. Energy imports from PJM over MTFs do not provide any ICAP value if they can be blocked from being delivered during peak periods. Even if this penalty structure is effective in assuring deliveries by those ICAP Suppliers that meet the eligibility threshold, the NYISO's Services Tariff requires, as a minimum qualification criterion, that transmission customers must demonstrate to the NYISO that exports from PJM to New York over an MTF will not be recalled to serve PJM system load. This is consistent with the NYISO's recent revision to its rules to require that sales from PJM resources across the NYISO/PJM AC interface must show that they have firm transmission from their generator in PJM across the NYISO/PJM border into NYISO.²¹

26. In its Firm TWR Orders issued in December 2017, the Commission explained that conversion to Non-Firm TWRs eliminates firm service of deliveries over MTFs to the NYISO.²² In supporting its decision that Linden VFT and HTP should be permitted to complete the Conversion, the Commission established, for example, that Linden VFT's previous Firm TWR service required that "PJM must guarantee that its transmission system is robust enough to permit Linden to use its Firm TWRs to export 330 MWs of power from its source in PJM *across the river to New York at all times.*"²³
27. Converting to non-firm service, however, triggered the core distinction between Firm and Non-Firm TWR service. Specifically, per the Commission, "[c]onverting those Firm TWRs to Non-Firm TWRs imposes no additional obligation on PJM and, in fact, is less

²¹ Zachary T. Smith, *Proposed ICAP Manual Revisions Regarding Deliverability Requirements for Capacity Imports from PJM*, NYISO (Jan. 17, 2018), https://www.nyiso.com/public/webdocs/markets_operations/committees/bic/meeting_materials/2018-01-17/5%20Import%20Right%20Deliverability%20Requirements%20final.pdf ("NYISO January 17 Presentation").

²² See Linden VFT Order at P 3; HTP Order at P 2.

²³ Linden VFT Order at P 25 (emphasis added).

burdensome in that PJM *will no longer have to guarantee* that its transmission system can support such use.”²⁴ Thus, as stated by the Commission, the ramification of electing Non-Firm TWR service is that PJM, which operates this fully controllable line, “can shut off flows if those flows jeopardize reliability or cause operational problems in New Jersey or elsewhere on the PJM system.”²⁵ Linden VFT itself recognized that “PJM can shut off flows, consistent with applicable rules and procedures.”²⁶

28. HTP indicated to the Commission that it tendered back its Firm TWRs as of December 15, 2017 and now only has Non-Firm TWRs.²⁷ Linden VFT indicated to the Commission that it converted its Firm TWRs to Non-Firm TWRs effective December 31, 2017.²⁸
29. At a working group meeting which took place in January 2018 after the Commission issued its Firm TWR Orders and the Conversion was completed, the NYISO made a second presentation to Market Participants in which it reaffirmed that an MTF would continue to be eligible to sell ICAP into New York despite terminating its Firm TWRs as of that time and only having Non-Firm TWRs on Path 2 from New Jersey to New York. The NYISO stated that, based on its understanding and 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 §] 5.12.2.1.”²⁹ It was public knowledge that Linden VFT had arranged for Firm

²⁴ *Id.*

²⁵ *Id.* (citation omitted).

²⁶ Linden VFT Complaint at 11 (citation omitted).

²⁷ Docket No. EL17-84-001, *PJM Interconnection, L.L.C.*, Answer of HTP (Jan. 31, 2018), at 2.

²⁸ Linden VFT January 31 Answer at 3.

²⁹ NYISO January 17 Presentation at 2.

Point-to-Point service terminating on the PJM side of the MTF. The NYISO stated that PJM had assured the NYISO that transactions with Firm Point-to-Point service terminating on the PJM side across MTFs without Firm TWRs would not be curtailed and would continue to qualify as ICAP sales to New York. The NYISO's determination presumably applies to Linden VFT, HTP or any other UDRs connected to PJM if they or their customers obtain similar Point-to-Point service within PJM combined with Non-Firm TWRs to the New York interface.

30. The Commission recently reaffirmed the core distinction between Firm and Non-Firm TWR service in its NJBPU Order issued in late May 2018. Equally important, it also dispelled the notion that the nature of the service across Path 1 could be used to negate the effect of converting to Non-Firm TWRs across Path 2, stating, "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.*"³⁰
31. From the capacity market auction results and the associated NYISO report issued for the July 2018 ICAP market—the first spot auction since the Commission issued the NJBPU Order—it appears that Linden VFT offered and sold ICAP from PJM into the New York market at roughly the level of its Non-Firm TWRs. Consistent with the market clearing at much lower prices than HTP's minimum offer floor, it appears that either HTP was not selling any ICAP before the Conversion or that it has continued to sell the same small

³⁰ NJBPU Order at P 59 (emphasis added) (citations omitted).

amount of ICAP it was selling prior to the Conversion.

The NYISO Can No Longer Permit ICAP Sales over the Linden VFT and HTP MTFs Because These Entities Have Terminated Their Firm TWRs.

32. In working group meetings held last fall and winter, the NYISO continued to put credence behind PJM's alleged assurances that energy being delivered across the Linden VFT MTF would not be curtailed without ever explaining how a resource with only Non-Firm TWRs (which the Commission has now repeatedly established must be curtailed or interrupted by PJM to secure its own load, address system operational needs, for reliability, or for economics) could be deemed eligible to be an Installed Capacity Supplier in the first instance.
33. Indeed, in its NJBPU Order, the Commission expressly rejected the basis for permitting such sales cited by the NYISO to its Market Participants last winter. Specifically, focusing on the claim that MTFs that secure firm transmission service to the PJM border were still entitled to receive the same service and benefits after converting to Non-Firm TWRs, the Commission found such transactions were instead subject to curtailment by PJM for a wide variety of reasons.³¹
34. In the name of transparency, IPPNY and its members have repeatedly requested on numerous occasions (e.g., working group meetings and sector meetings with NYISO senior staff) that the NYISO publish its e-mail communications with PJM and any other documents it has received from PJM that allegedly reflect assurances that PJM will not curtail deliveries across the MTFs in accordance with Commission orders and the PJM

³¹ See NJBPU Order at P 59 & n.99 (citing Docket No. EL18-54-000, *N.J. Bd. of Pub. Utilities v. PJM Interconnection, L.L.C. et al.*, Answer of the NYISO (Mar. 12, 2018), at 5.

OATT, redacted in conformance with the NYISO's Code of Conduct. IPPNY renewed its request for this information as recently as late June after the NYISO's posting of the Default Reference Prices for the July capacity market revealed the NYISO had once again permitted Linden VFT capacity sales from PJM into New York. However, the NYISO has never provided any other information explaining why it has elected to accept PJM's blanket assurances that Linden VFT can continue to deliver ICAP to the NYISO despite its termination of its Firm TWRs and given PJM's obligation to curtail service for Non-Firm TWRs if flows into New York jeopardize reliability or cause operational problems in New Jersey or elsewhere on the PJM system, as underscored by the Commission in several orders addressing the Conversion. No PJM e-mail allegedly containing such assurances nor any other form of written evidence has ever been provided.

35. By seeking to use penalties as the policing mechanism when the NYISO is on notice that MTFs have no longer maintained arrangements for sufficient firm transmission for their customers to be Installed Capacity Suppliers in New York, and by continuing to permit ICAP sales from PJM using the Linden VFT and HTP MTFs when the NYISO knows that the transmission service is not sufficiently firm to ensure that the energy deliveries will not be cut to meet conditions in PJM, the NYISO is violating its Services Tariff and jeopardizing reliability. It is relying on a resource to meet reliability needs that is not capable of providing the service when needed.
36. The NYISO's position in this regard is particularly problematic given that, during this same time period, the NYISO advanced clarifications to its ICAP Manual to specify that entities that seek to import capacity over the AC interface must secure firm transmission

rights across the New York border into New York to make such ICAP sales. Those clarifications were approved by the Business Issues Committee at its January 2018 meeting and began being implemented by the NYISO effective May 1, 2018.³²

37. PJM's OATT specifies that Non-Firm TWRs have a lower priority of service:

Non-Firm Transmission Withdrawal Rights:

“No-Firm [sic]Transmission Withdrawal Rights” shall mean the rights to *schedule energy withdrawals* from a specified point on the Transmission System. Non-Firm Transmission Withdrawal Rights may be awarded only to a Merchant D.C. Transmission Facility that connects the Transmission System to another control area.

*Withdrawals scheduled using Non-Firm Transmission Withdrawal Rights have rights similar to those under Non-Firm Point-to-Point Transmission Service.*³³

38. As explained by Mr. Piascik, the key difference between the Firm TWR and Non-Firm TWR products is that Firm TWRs are defined as allowing “the rights to schedule energy and capacity withdrawals”³⁴ while Non-Firm TWRs only allow the scheduling of energy withdrawals.³⁵ Firm TWRs are accorded the same priority as Firm Point-to-Point service.
39. The provisions in the NYISO’s Services Tariff regarding external ICAP providers delivering via a UDR clearly provide that an entity is not eligible to supply ICAP into New York Zone J if PJM can recall or curtail the entity to satisfy PJM’s own loads, the very obligation and right accorded to PJM under its OATT when addressing Non-Firm TWR service. Section 5.12.2.1 of the NYISO’s Services Tariff provides as follows:

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 [New York

³² See NYISO January 17 Presentation at 5.

³³ PJM OATT § 1, Definitions L-M-N at 15 (emphasis added).

³⁴ Id. § 1, Definitions E-F at 8.

³⁵ Piascik Aff. ¶ 10.

Control Area (“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*, or, in the case of Control Area System Resources, if they demonstrate that the External Control Area will afford the NYCA Load the same curtailment priority that they afford their own Control Area Native Load Customers. (Emphasis added.)

40. To satisfy the NYISO’s eligibility requirement to import ICAP into New York, external capacity resources must be available and operating, and if sufficient resources are unavailable to meet the external area’s load, the external area must curtail load on its own system while delivering the capacity resource to the NYISO as long as doing so does not overload PJM’s transmission system.³⁶ In other words, if a resource in PJM sells capacity to the NYISO market, PJM must agree to curtail its own firm load customers to honor the requirement to deliver energy across the MTF with Non-Firm TWRs to NYISO.
41. The NYISO did not provide any evidentiary support for its assertion that MTFs that have replaced their Firm TWRs with Non-Firm TWRs can continue to deliver ICAP to New York. All the NYISO provided to its stakeholders was an opaque assertion that PJM said its treatment would comply with the NYISO Services Tariff.
42. As to that assertion itself, the Commission made it abundantly clear in the NJBPU Order that such an assertion—assuming for the sake of argument it was even given—was not an adequate basis to assume continued firm deliveries post-Conversion.³⁷

³⁶ In the case of Control Area System Resources, the curtailment of the NYISO delivery would be pro rata with curtailment of native load.

³⁷ See NJBPU Order at P 59 & n.99 (citation omitted).

43. As established by the Commission in orders addressing the rights of these MTFs and as further detailed by Mr. Piascik,³⁸ given the non-firm nature of the Non-Firm TWRs that Linden VFT and HTP now possess, PJM cannot assure the NYISO that the conditions in which the Non-Firm TWRs can be curtailed can meet the requirement that the delivery of energy across the transmission interconnection between PJM and the NYISO “will not be recalled or curtailed by an External Control Area to satisfy its own Control Area Loads” as required by Section 5.12.2.1 of the NYISO’s Services Tariff for Linden VFT to be eligible to be an Installed Capacity Supplier.
44. In light of: (i) the plain language in the PJM OATT; (ii) the requirements of the NYISO’s Services Tariff; (iii) the Commission’s series of orders; and (iv) the core distinction between firm and non-firm service, the NYISO’s decision to permit deliveries across a UDR with Non-Firm TWRs to qualify to deliver ICAP violates the NYISO’s Services Tariff.

Permitting MTFs to Continue to Deliver ICAP into the NYISO’s Markets after They Have Elected to Convert to Non-Firm TWR Service Harms Both the PJM and NYISO Markets.

45. PJM’s alleged assurance to the NYISO that it will not curtail energy deliveries over Linden VFT’s and HTP’s MTFs in the face of Linden VFT’s and HTP’s election to switch to Non-Firm TWR service will have adverse consequences for both the PJM and the NYISO markets. If customers are allowed to deliver ICAP over the Linden VFT and HTP MTFs to New York with the MTFs’ Non-Firm TWRs, the PJM markets would be harmed in three ways. First, these customers would effectively obtain firm service from

³⁸ Piascik Aff. ¶¶ 20–21.

PJM without Linden VFT and HTP being required to bear their fair allocation of RTEP costs that are required of all other firm customers.³⁹ Indeed, because the total pool of dollars remains unchanged, other customers are now forced to also bear their pro rata share of the costs that Linden VFT and HTP have avoided by converting to Non-Firm TWRs on top of the amounts that they had previously been allocated.

46. Second, allowing these impermissible ICAP sales artificially reduces the ICAP supplies that would otherwise be available to bid into the PJM market. In instances when this capacity would have cleared the PJM market, allowing the ICAP exports unjustly increases the capacity market clearing prices for PJM loads, all else equal.
47. Third, for ICAP to continue to be sold to New York across these MTFs, PJM must continue to attest that it will not curtail the exports even if its own control area loads are not able to be met by the remaining generation supplies available to PJM. This means that there is a greater risk of load not being served in PJM when curtailing this non-firm export would alleviate, or even eliminate, the load curtailment in PJM.
48. There is a flip-side to this reliability and operational risk that would harm New York. Specifically, should PJM ultimately (and correctly) determine that it cannot curtail its own loads in favor of these Non-Firm TWR transactions because doing so is expressly prohibited by its OATT, the energy backed by the ICAP New York was counting on to serve its load would not be delivered to New York. The Non-Firm TWRs are most likely to be curtailed on high load, high unit outage days. These are precisely the days that NYISO needs to rely upon deliveries from its ICAP resources the most.

³⁹ See Linden VFT Complaint at 2–4.

49. In short, when presented with a potential loss of load risk in the PJM system as a result of insufficient generating capability, PJM must either curtail load or otherwise adversely affect the PJM system to accommodate non-firm deliveries over Linden VFT's and HTP's MTFs to the NYISO in accordance with its alleged assurance or comply with its OATT requirements and Commission orders and curtail the export to New York.
50. The NYISO market is further harmed by the fact that allowing resources that do not meet the NYISO ICAP eligibility requirements to be Installed Capacity Suppliers would artificially suppress the ICAP clearing prices across the entire State of New York. The NYISO market is composed of a statewide ICAP market (the "NYCA" market) and three sub-zones (Zone J, New York City ("NYC"); Zone K, Long Island; and Zones G-J, the "LHV" zone). The NYC zone is nested within the LHV zone, which is then nested within the entire NYCA market. ICAP that sells in NYC is therefore also cleared against the LHV and NYCA ICAP requirements. Thus, ICAP sold in Zone J across the Linden VFT and HTP MTFs will impact the clearing prices on the Zone J Curve, the LHV Zone Curve, and the NYCA Curve.
51. The slope of the Zone J unforced capacity demand curve for the 2018 Summer Capability Period is \$1.44/kW-month per 100 MW of supply while the slopes for the LHV Zone and NYCA Curves are \$0.83/kW-month per 100 MW supply and \$0.26/kW-month per 100 MW supply, respectively. Consequently, allowing customers to continue delivering ICAP to New York over the Linden VFT MTF despite its election to convert to Non-Firm TWRs will result in artificially suppressing the Zone J capacity clearing prices by as much as approximately \$4.32/kW-month and artificially suppressing the LHV Zone and NYCA prices by as much as approximately \$2.49/kW-month and \$0.78/kW-month,

respectively.⁴⁰ Ignoring the election made by Linden VFT and HTP and effectively continuing to treat these resources as if they still have firm service rights means that all other Installed Capacity Suppliers in New York that are complying with the tariff requirements to be Installed Capacity Suppliers are underpaid. It is well-documented that the lower energy prices, and consequently lower net energy revenues, resulting from the shale gas phenomenon and other factors have placed increasing pressure on the capacity market to account for the “missing money.” Such artificial capacity price suppression could be a major factor leading to premature retirement of some of those resources. Paradoxically, these at-risk resources are the types of facilities located in the Zone J load pocket that the NYISO has indicated, in separate filings with the Commission, are critical for system resiliency. Stressed system conditions experienced in the NYISO and PJM markets during events, such as the Polar Vortex, have revealed the sensitivity of both systems to increased reliance on natural gas-fired generation. Indeed, the NYISO found that New York and its neighbors were able to sustain operations economically during these periods due to the interconnections between the NYISO and its neighbors.⁴¹ The NYISO found that disruptions in natural gas supply to natural gas-fired generation resources are mitigated by the significant amount of dual-fuel generating capability that operates in

⁴⁰ If the clearing price on the demand curve for a more constrained zone, such as NYC, would be lower than the clearing price on a zone it is nested within, such as the LHV, the NYC resources will clear at the higher price of the zone within which it is nested. This nesting effect has occurred for the first three months (May, June, and July) of the Summer 2018 capability period. Without the capacity delivered by Linden VFT, the NYC clearing price would be above the LHV clearing price. The slope on the curve also changes slightly from capability period to capability period as a result of changes to the Locality average Equivalent Demand Forced Outage Rate (“EFORd”).

⁴¹ See Docket No. AD18-7-000, Response of the New York Independent System Operator, Inc. (Mar. 9, 2018), at 11;

the southeastern part of New York.⁴² In its recent order initiating a new proceeding to evaluate the resilience of the bulk power system in the regions operated by regional transmission organizations and independent system operators, the Commission's focus on the need to address system resilience was significantly driven by the increased reliance on natural gas operations.⁴³ Permitting ICAP sales across the now non-firm MTFs improperly harms the ability of this oil-fired generation to continue operations and will, therefore, have an adverse effect on system resilience.

52. It is important to understand that the impacts of these erroneous actions are already being felt in both markets. Based upon the ICAP market auction results for July 2018 published by the NYISO, it appears that, since the beginning of the year, customers have continued to sell the same level of ICAP from PJM to New York post-Conversion that they were selling pre-Conversion over the Linden VFT MTF.
53. Unless the Commission directs the NYISO to apply its Services Tariff , properly treat these sales as non-firm supply, and prohibit future capacity sales across MTFs with Non-Firm TWRs, it is highly likely these impacts will continue unabated. As a result, ICAP market clearing prices will continue to be artificially suppressed in New York and may be artificially inflated in PJM, and both regions will needlessly be exposed to heightened reliability and operational risks.
54. This concludes my affidavit.

⁴² See *id.* at 25.

⁴³ *Grid Reliability and Resilience Pricing*, 162 FERC ¶ 61,012, at P 12 (2018)

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Independent Power Producers of)
New York, Inc.,)
)
Complainant,)
)
v.)
)
New York Independent System)
Operator, Inc.,)
)
Respondent.)

Docket No. EL18-__-000

I declare under penalty of perjury that the forgoing is true and correct.

Executed on July 31, 2018

Mark D. Younger
Mark D. Younger

MARK D. YOUNGER

Mr. Younger is President of Hudson Energy Economics, LLC and has over thirty-five years of experience in energy analysis.

EDUCATION	MBA, Cornell University, 1983 M.E., Operations Research Cornell University, 1983 B.S., Engineering, Major - Operations Research Cornell University 1981
PROFESSIONAL EXPERIENCE	<p>President Hudson Energy Economics, LLC (2012 - Present) Specialist on electric deregulation, market structure issues and deregulated electric energy, ancillary service and capacity market design. Involved as an active participant in the working groups refining the New York Independent System Operator, Inc. (“NYISO”) market structure and developing methods to improve the market design, including all aspects of its energy, ancillary services and capacity markets.</p> <p>Vice President Slater Consulting (1994 - 2012) Involved as an active participant in the working groups refining the New York Independent System Operator, Inc. (“NYISO”) market structure and developing methods to improve the market design, including all aspects of its energy, ancillary services and capacity markets. One of the original architects of New York’s capacity demand curve.</p> <p>Senior Project Manager Morse, Richard, Weisenmiller & Associates, Inc. (1986-1994) Responsible for directing MRW’s projects on production cost modeling. Prepared extensive analysis and expert witness testimony on avoided costs in California, New York, Pennsylvania and New Jersey. Performed analyses of electric utility emissions reductions associated with cogeneration projects.</p> <p>Energy Economist Pacific Gas & Electric Company (1983-1986) Responsible for developing models and methods for integrated supply and demand-side resource analysis. Developed and performed an analysis of resource planning under uncertainty using Monte Carlo techniques.</p> <p>Research Specialist for Duane Chapman, Professor of Resource Economics Cornell University (1982-1983) Formulated the financial simulation section of the University Research Group on Energy’s (URGE) integrated model of the electric utility industry. Performed an analysis of the impact on New York Pollution levels and New York utilities of proposed acid rain abatement strategies.</p>

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- Affidavit on behalf of the Independent Power Producers of New York on why allowing Linden VFT and the Hudson Transmission Project to continue to sell capacity in NYISO markets after converting their Transmission Withdrawal Rights from Firm to Non-Firm violates the NYISO and PJM tariffs. (FERC Docket No. EL18-54-000) February 23, 2018.
- Affidavit on behalf of the Independent Power Producers of New York on the dollars that gas local distribution companies would collect annually by charging electric generator gas interruptible transportation customers in New York City a \$0.10 per Dth charge and the cost that would impose on electricity consumers in NYC. (NY PSC Docket No. 17-G-0011)
- Affidavit on behalf of Roseton Generating, LLC on the inappropriateness of blocking generators located in the NYISO Localities from selling capacity to the ISO-NE market during the 2017-2018 capability year (FERC Docket No. ER16-2451-000) September 23, 2016
- Affidavit on behalf of the Independent Power Producers of New York and the Electric Power Supply Association on the flaws in the NYISO's proposed implementation of a Renewable and Self Supply Exemption (FERC Docket No. ER16-1404-000) May 31, 2016.
- Affidavit on behalf of the Independent Power Producers of New York and the Electric Power Supply Association on the flaws in the NYISO's Information Response on the Deficiencies in Its Analysis of the Need for Uneconomic Retention Mitigation and NYCA wide Uneconomic Entry Mitigation (FERC Docket No. EL13-62-002) January 19, 2016.
- Affidavit on behalf of the Independent Power Producers of New York and the Electric Power Supply Association on the flaws in the NYISO's proposed Reliability Must Run compliance filing (FERC Docket No. ER16-120-000) November 30, 2015.
- Affidavit on behalf of the Independent Power Producers of New York regarding the flaws in claims that lightly regulated utilities claimed confidential information is already in the public domain and in the harm from releasing such data. (NY PSC Matter No. 13-01288) September 3, 2015.
- Affidavit on behalf of the Independent Power Producers of New York regarding the flaws in the NYISO Evaluation of the Need for Uneconomic Retention Mitigation in NYCA Rest of State Market. (FERC Docket No. EL13-62-002) July 17, 2015.
- Affidavit on behalf of the Independent Power Producers of New York regarding the flaws in the NY PSC, NYPA and NYSERDA proposed fundamental revisions to the NYISO's Buyer-Side Mitigation Rules. (FERC Docket No. EL15-64-000) June 29, 2015.
- Affidavit on behalf of the Independent Power Producers of New York regarding the need to maintain confidentiality for certain data submitted to the New York Public Service Commission by lightly regulated utilities. (NY PSC Matter No. 13-01288) June 17, 2015.
- Affidavit on behalf of the PSEG Companies regarding how market rules that affect price formation have developed within the NYISO and how those rules should be incorporated into PJM Interconnection L.L.C.'s ("PJM") market design. (FERC Docket No. AD14-14-000) March, 6, 2015.
- Affidavit on behalf of the Independent Power Producers of New York regarding the failure of TDI to show that they Champlain Hudson Power Express should be given a line specific

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exemption from Buyer-Side uneconomic entry mitigation and the failure of TDI to demonstrate that the existing NYISO tariff's application of mitigation to its project was not Just and Reasonable (FERC Docket No. EL15-33-000), January 15, 2015.

- Affidavit on behalf of the Independent Power Producers of New York regarding flaws in the NYISO's and Transmission Owners proposals for a Competitive Entry Exemption from Buyer-Side uneconomic entry mitigation and the failure of the Transmission Owners to demonstrate that the existing NYISO tariff was not Just and Reasonable (FERC Docket No. EL15-25-000), January 15, 2015.
- Affidavit on behalf of the Independent Power Producers of New York regarding the flaws in the NYISO's proposal to define generator outage states and associated requirements and calculations (FERC Docket No. ER14-2518-000), September 2, 2014.
- Affidavit on behalf of the Independent Power Producers of New York regarding the need to maintain confidentiality for certain data submitted to the New York Public Service Commission by lightly regulated utilities. (NY PSC Matter No. 13-01288) August 6, 2014.
- Second Supplemental Affidavit on behalf of the Independent Power Producers of New York regarding the need to mitigate the uneconomic retention of the Dunkirk Power Plant which is being retained pursuant to a 10 year out-of-market contract (FERC Docket No. EL13-62-000), March 25, 2014.
- Supplemental Affidavit on behalf of Entergy rebutting the claimed rate impacts associated with the implementation of the NYISO Lower Hudson Valley capacity zone. (FERC Docket No. ER14-500-000), January 6, 2014.
- Affidavit on behalf of Entergy regarding the need to reject a phase in for implementing the NYISO Lower Hudson Valley capacity zone Demand Curve. (FERC Docket No. ER14-500-000), December 20, 2013.
- Affidavit on behalf of the Independent Power Producers of New York regarding the appropriate values for determining the NYISO Installed Capacity Demand Curves. (FERC Docket No. ER14-500-000), December 20, 2013.
- Second Supplemental Affidavit on behalf of Entergy regarding why it is inappropriate to phase in capacity prices for the NYISO New Capacity Zone for the Lower Hudson Valley region and why the new information that the NYISO relied upon for their filing is neither new nor correct. (FERC Docket No. ER13-1380-000), November 12, 2013.
- Affidavit on behalf of the Independent Power Producers of New York before the Board of the NYISO regarding the proposed demand curves being set at too low a level to adequately address the risk of entering the New York electricity markets as a merchant facility. October 2, 2013.
- Supplemental Affidavit on behalf of the Independent Power Producers of New York regarding the why regulated RMR contracts must bid into the NYISO Installed Capacity Market at their full going forward costs. (FERC Docket No. EL13-62-000), June 14, 2013.
- Supplemental Affidavit on behalf of Entergy regarding the need to not delay in implementing a New Capacity Zone for the Lower Hudson Valley region and the flaws in arguments that a

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New Capacity Zone is not needed at this time. (FERC Docket No. ER13-1380-000), June 5, 2013.

- Affidavit on behalf of Entergy regarding the need to implement a New Capacity Zone for the Lower Hudson Valley region. (FERC Docket No. ER13-1380-000), May 21, 2013.
- Affidavit on behalf of the Independent Power Producers of New York regarding the need to revise the NYISO tariff to assure that generators with regulated RMR contracts bid into the NYISO Installed Capacity Market at their going forward costs. (FERC Docket No. EL13-62-000), May 10, 2013.
- Affidavit on behalf of the Independent Power Producers of New York to the NYISO Board of Directors regarding why a peaking unit should continue to be used as the Demand Curve Proxy Unit. April 17, 2013.
- Affidavit on behalf of the Independent Power Producers of New York regarding the inappropriate requirement that Cayuga bid into the NYISO Installed Capacity Market at a de minimis price while recovering its costs from a regulated RMR contract. (FERC Docket No. ER13-405-000), January 7, 2013.
- Affidavit on behalf of the New York City Suppliers rebutting Hudson Transmission Partners claims that their Buyer-Side Mitigation examination by the NYISO had been performed in a manner inconsistent with the NYISO Service Tariff Requirements. (FERC Docket No. EL12-98-000), November 13, 2012.
- Affidavit on behalf of Entergy Nuclear Power Marketing, LLC and the GenOn Parties concerning the NYISO's June 29, 2012 Compliance Filing proposing tariff revisions to its Market Administration and Control Area Services Tariff ("Services Tariff") to implement both buyer-side and supplier-side mitigation measures for New Capacity. (FERC Docket No. ER12-360-001), July 20, 2012.
- Rebuttal Testimony on behalf of the Independent Power Producers of New York on the flaws in the project sponsor's and the New York Department of Public Service's evaluation of the economics of the Champlain Hudson Power Express. (NYPSC Docket No. 10-T-0139), June 28, 2012.
- Testimony on behalf of the Independent Power Producers of New York on the economics of the Champlain Hudson Power Express. (NYPSC Docket No. 10-T-0139), June 7, 2012.
- Third Supplemental Affidavit on behalf of the New York City Suppliers rebutting Bayonne Energy Center's claims regarding their gas pricing advantage and the value of TCCs for their project. (FERC Docket No. EL11-50-000), October 10, 2011.
- Second Supplemental Affidavit on behalf of the New York City Suppliers on the New York Independent System Operator's flawed analysis in its mitigation determination for Astoria Energy II and the Bayonne Energy Center. (FERC Docket No. EL11-50-000), September 23, 2011.
- Supplemental Affidavit on behalf of the New York City Suppliers on the New York Independent System Operator's failure to properly apply its capacity market mitigation rules to Astoria Energy II and the Bayonne Energy Center. (FERC Docket No. EL11-50-000), July 11, 2011.

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- Second Supplemental Affidavit on behalf of the New York City Suppliers on the tight correlation between natural gas pricing and LBMPs and the inability of the NERA model to represent this relationship. (FERC Docket No. EL11-42-000), July 21, 2011.
- Affidavit on behalf of the New York City Suppliers on the New York Independent System Operator's failure to properly apply its capacity market mitigation rules to Astoria Energy II and the Bayonne Energy Center. (FERC Docket No. EL11-50-000), July 11, 2011.
- Supplemental Affidavit on behalf of the New York City Suppliers on the flaws and inconsistencies shown in the New York Independent System Operator release of data to use for the New York City uneconomic entry mitigation exemption test. (FERC Docket No. EL11-42-000), June 15, 2011.
- Affidavit on behalf of the New York City Suppliers on the proper way to apply the New York City uneconomic entry mitigation exemption test. (FERC Docket No. EL11-42-000), May 31, 2011.
- Affidavit on behalf of the Independent Power Producers of New York in response to the NYISO's Compliance Filing on the Capacity Demand Curve on the appropriate level of average excess to assume in setting the Capacity Demand Curve. (FERC Docket No. ER11-2224-004), April 19, 2011.
- Affidavit on behalf of New York City Suppliers on the need to revise the Baseline for Special Case Resources. (FERC Docket No. ER11-2906-000). March 4, 2011.
- Reply Affidavit on behalf of the Independent Power Producers of New York on New York Installed Capacity Demand Curve on the arguments against including System Deliverability Upgrade costs in the Demand Curves, on the inappropriateness of using a Long Island unit as a proxy for the NYCA demand curve and set the Demand Curve based upon inaccurately and the flaws of using historic auction results to determine the amount of excess capability due to winter unit ratings. (FERC Docket No. ER11-2224-000), January 7, 2011.
- Affidavit on behalf of the Independent Power Producers of New York on New York Installed Capacity Demand Curve on the need for accurate representation of the average excess capacity levels, System Deliverability Upgrade costs and New York City interconnection costs in the development of the Demand Curves. (FERC Docket No. ER11-2224-000), December 21, 2010.
- Affidavit on behalf of New York City Suppliers on the New York Independent System Operator's proposed revisions to the New York City Installed Capacity Mitigation measures on the impact of the NYISO's changes on reducing the effectiveness of the mitigation. (FERC Docket No. ER10-3043), November 22, 2010.
- Affidavit on behalf of the Independent Power Producers of New York in response to the Comments of the New York Transmission Owners on the NYISO's Second Tariff Compliance Filing ad Request for Waiver of the NYISO on the inappropriateness of using the price at the 104% point on the New York City Demand Curve as the Net CONE value. (FERC Docket No. ER08-695-001), June 21, 2010.
- Affidavit on behalf of AES Eastern Energy, L.P., Constellation Energy Nuclear Group, LLC, Empire Generating Co., LLC, GDF SUEZ Energy North America, NRG Companies, PSEG Companies, Shell Energy North America (US), L.P., and TC Ravenswood, LLC on the New

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York Independent System Operator and New York Transmission Owner compliance filing to implement the Comprehensive Deliverability Plan on the need to apply a deliverability test to capacity imports. (FERC Docket No. ER04-449-019), May 18, 2009.

- Affidavit on behalf of the Independent Power Producers of New York on the NYISO's October 30, 2008 Tariff Compliance Filing on the In-City Capacity Mitigation on the inappropriateness of the NYISO's proposed Special Case Resource uneconomic entry mitigation and test for uneconomic exports. (FERC Docket No. EL07-39), December 2, 2008.
- Affidavit on behalf of the In City Capacity Suppliers in support of their Section 206 filing to restate the New York City Installed Capacity Demand Curve pursuant to expiration of the New York City ICIP Tax Abatement Program. (FERC Docket No. EL09-4), October 14, 2008.
- Affidavit on behalf of the Independent Power Producers of New York in support of their motion for leave to file answer, and answer to the New York Transmission Owner's Comments on the Commission decision implementing New York City Capacity Market Mitigation on the appropriateness of using the Net CONE as shown at 100% of the minimum capacity requirement as the basis for the mitigation offer floor. (FERC Docket No. ER08-695), June 11, 2008.
- Affidavit in support of the limited protest being submitted by Astoria Generating Company, L.P. to address the New York Independent System Operator's ("NYISO") Second Tariff Compliance Filing of and Request for Waiver of the New York Independent System Operator Inc. Implementing New York City ICAP Market Mitigation Measures ("NYISO Compliance Filing") to address appropriate recognition of opportunity costs associated with exports and appropriate thresholds and penalties for determining mitigation. (FERC Docket No. ER08-695-001), May 27, 2008.
- Testimony on behalf of the Independent Power Producers of New York on the Vertical Market Power concerns on the Acquisition of Energy East Corporation by Iberdrola, S.A. (NY PSC Case 07-M-0906). January 11, 2008.
- Affidavit on behalf of AES Eastern Energy, L.P., Astoria Generating Company, L.P., a US Power Generating Company, Entergy Nuclear Power Marketing, LLC and the Mirant Parties on New York Installed Capacity Demand Curve on the appropriate values for the Demand Curve. (FERC Docket No. ER08-283-000), December 31, 2007.
- Affidavit on behalf of AES Eastern Energy on the New York State Department of Environmental Conservation's and New York State Energy Research Development Authority's proposed regulations to implement the Regional Greenhouse Gas Initiative (6 NYCRR Part 242, 6 NYCRR Part 200 and 21 NYCRR Part 507), December 19, 2007
- Affidavit on behalf of Astoria Generating Company, L.P., a U.S. Power Generating Company on the NYISO's proposed Capacity Market Mitigation Measures on the appropriate design of New York City Installed Capacity mitigation measures. (FERC Docket No. EL07-39-000), December 10, 2007.

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- Affidavit on behalf of Astoria Generating Company, L.P., a U.S. Power Generating Company on the NYISO's proposed Capacity Market Mitigation Measures. (FERC Docket No. EL07-39-000), November 19, 2007.
- Affidavit on behalf of AES Eastern Energy, LP., Astoria Generating Company, L.P., a U.S. Power Generating Company, Dynegy Northeast Generation, Inc., Entergy Nuclear Power Marketing, LLC, the Indeck Companies, and the Mirant Parties to NYISO Board of Directors on NYISO Staff proposed Installed Capacity Demand Curves on the appropriate values for the Demand Curves. October 1, 2007.
- Affidavit on behalf of the Independent Power Producers of New York to NYISO Board of Directors on NYISO Staff proposed Installed Capacity Demand Curves on the appropriate values for the Demand Curves. October 1, 2007.
- Affidavit on behalf of the Independent Power Producers of New York on the Vertical Market Power concerns in the Merger of National Grid PLC and KeySpan Corporation. (NY PSC Case 06-M-0878), July 11, 2007.
- Affidavit on behalf of the Independent Power Producers of New York on the proper determination of Location Based Marginal Costs on May 8 and 9, 2000 (FERC Docket No. EL01-19-006), July 8, 2005.
- Affidavit on behalf of Entergy Corporation, Mirant Bowline, LLC, Mirant Lovett, LLC, Mirant NY-Gen, LLC, Mirant Americas Energy Marketing, and Sithe Energies, Inc. to NYISO Board of Directors on NYISO Staff proposed Installed Capacity Demand Curves. October 15, 2004
- Affidavit on behalf of the Independent Power Producers of New York to NYISO Board of Directors on NYISO Staff proposed Installed Capacity Demand Curves. October 15, 2004
- Affidavit on behalf of the Independent Power Producers of New York on New York Installed Capacity Demand Curve (FERC Docket No. ER03-647-000) on the need to implement an Installed Capacity Demand Curve for the NYISO. April 10, 2003.
- Affidavit on behalf of AES, Mirant & Sithe to NYISO Board of Directors on Appeal of the Management Committee Decision on the ICAP Demand Curve on the need to implement an Installed Capacity Demand Curve for the NYISO. March 7, 2003.
- Affidavit on behalf of the Independent Power Producers of New York to NYISO Board of Directors on Appeal of the Management Committee Decision on the ICAP Demand Curve on the need to implement an Installed Capacity Demand Curve for the NYISO. March 7, 2003.
- Affidavit on behalf of the Independent Power Producers on the ICAP Demand Curve under Appeal of the NYISO Business Issues Committee decision at the NYISO Management Committee on the need to implement an Installed Capacity Demand Curve for the NYISO. December 27, 2002.
- Affidavit on behalf of Reliant Energy Power Generation on Setting the Conduct and Impact Thresholds for in-City Generating Units. (FERC Docket No. ER01-3155-002 et. al.), May 15, 2002.

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- Testimony on behalf of TransGas Energy Systems in their Article 10 Citing proceeding (NY PSC Case 01-F-1276) on the energy and pollutant savings associated the TransGas Energy Systems proposed 1000 MW Combined Cycle facility.
- Affidavit on behalf of Reliant Energy Power Generation on New York Independent System Operator's Compliance Filing Regarding Comprehensive Market Mitigation Measures. (FERC Docket No. ER01-3155-002 et. al.), April 23, 2002
- Testimony on behalf of Orion Power New York GP, Inc. on Con Edison Company of New York, Inc.'s Proposal to Revise the Localized Market Power Mitigation Measures (FERC Docket No. ER98-3169-000), April 3, 2001.
- Affidavit on behalf of Southern Energy North America, Inc., AES NY, L. L. C., Sithe Power Marketing, L. P., & FPL Energy LLC on the need to retain the PJM Installed Capacity Market. (FERC Docket No. EL01-3-000), October, 25, 2000.
- Testimony on behalf of the Mid-Atlantic Power Supply Association on the Baltimore Gas & Electric Company stranded costs. (Maryland PSC Case No. 8794), December 22, 1998.
- Testimony on behalf of Enron Power Marketing, Inc on New York Electricity Companies' request for market-based rate authority. (FERC Docket No. ER97-1523 et al.), October 31, 1997.
- Testimony on behalf of Sithe Energies, Inc on Petition of Niagara Mohawk Power Corporation to Employ 1996 Fuel Adjustment Clause Targets in 1997 (NY PSC Case 96-E-0928) on the inappropriateness of using the outdated targets to determine the 1997 avoided costs.
- Testimony on behalf of the Independent Power Producers of New York and Enron Capital & Trade Resources on Central Hudson Gas & Electric Corporation rate/restructuring proceeding (NY PSC Case 96-E-0909) on the problems with the proposed settlement associated with the proposal that Central Hudson continue to be a vertically integrated utility holding company and to propose interim rate treatment until the time that Central Hudson divests its generation assets.
- Testimony on behalf of the Independent Power Producers of New York and Enron Capital & Trade Resources on Orange & Rockland Utilities, Inc. rate/restructuring proceeding (NY PSC Case 96-E-0900) on the problems in the proposed settlement associated with Orange and Rockland continuing to own generation resources in the deregulated competitive generation market, propose incentives for Orange and Rockland to divest, and, to propose interim rate treatment until the time that Orange and Rockland divests its generation assets..
- Testimony on behalf of the Independent Power Producers of New York and Enron Capital & Trade Resources on Consolidated Edison Company of New York, Inc. rate/restructuring proceeding (NY PSC Case 96-E-0897) on the problems in the propose settlement associated with Con Edison continuing to be a vertically integrated utility owning generation resources in the developing competitive generation market, to propose stronger incentives for divestiture of Con Edison's fossil generation and to propose interim regulatory treatment until the time that Con Edison divests its generation assets.

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- Testimony on behalf of the Independent Power Producers of New York and Enron Capital & Trade Resources on New York State Electric & Gas Corporation rate/restructuring proceeding (NY PSC Case 96-E-0891) on the problems with NYSEG's proposal to continue owning generation under a utility holding structure, the manner in which the proposed structure shielded the generating company from competition, and the need to divest the generating assets.
- Testimony on behalf of Sithe Energies, Inc on Consolidated Edison Company of New York, Inc. rate proceeding (NY PSC Case 96-E-0798) on the appropriate bases for calculating the short run avoided energy costs for Qualifying Facilities for Con Ed.
- Testimony on behalf of California Cogeneration Council on Southern California Edison 1995 Energy Cost Adjustment Clause (CPUC Application No. 95-05-049) on the value of Qualifying Facilities for SCE
- Testimony on behalf of California Cogeneration Council on Pacific Gas & Electric Company 1995 Energy Cost Adjustment Clause (CPUC Application No. 95-04-002) on the value of Qualifying Facilities for PG&E and the O&M costs avoided by QFs
- Testimony on behalf of Sithe Energies, Inc on Consolidated Edison Company of New York, Inc. rate proceeding (NY PSC Case 94-E-0334) on the appropriate bases for calculating the short run avoided energy costs for Qualifying Facilities for Con Ed.
- Testimony on behalf of the Independent Power Producers of New York on Niagara Mohawk Power Corporation rate proceeding, (NY PSC Cases 94-E-0098 and 94-E-0099) on need to retire certain generating units that are part of their portfolio or in the alternative to introduce rate making that puts Niagara Mohawk at risk for the units being economic.
- Testimony on behalf of California Cogeneration Council on San Diego Gas & Electric Company 1994 Energy Cost Adjustment Clause (CPUC Application No. 94-10-023) on the value of Qualifying Facilities for SDG&E and the O&M costs avoided by QFs
- Testimony on behalf of California Cogeneration Council on Pacific Gas & Electric Company 1994 Energy Cost Adjustment Clause (CPUC Application No. 94-04-002) on the value of Qualifying Facilities for PG&E and the O&M costs avoided by QFs
- Testimony on behalf of Sithe Energies, Inc on Combined Long Run Avoided Cost and Generic Fuel Adjustment Clause proceeding (NY PSC Cases 93-E-0912 and 93-E-1075) on the appropriate long and short run avoided energy costs for Qualifying Facilities.
- Testimony on behalf of Sithe Energies, Inc on Niagara Mohawk Power Corporation 1993 Rate Case (NY PSC Cases 93-E-0376, et al.) on the appropriate bases for calculating the short run avoided energy costs for Qualifying Facilities for NMPC.
- Testimony on behalf of Kamine and Besicorp Companies on New York Public Service Commission Curtailment Proceeding (NY PSC Case Nos. 92-E-0814 and 88-E-081) on the need for Niagara Mohawk Power Corporation to curtail Qualifying Facilities

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- Testimony on behalf of KELCO Division of MERCK & Co., Inc. on San Diego Gas & Electric Company 1992 Energy Cost Adjustment Clause (CPUC Application No. 92-09-078) on the value of Qualifying Facilities for SDG&E and the O&M costs avoided by QFs
- Testimony on behalf of California Cogeneration Council on Southern California Edison 1992 Energy Cost Adjustment Clause (CPUC Application No. 92-05-047) on the value of Qualifying Facilities for SCE
- Testimony on behalf of California Cogeneration Council on Pacific Gas & Electric Company 1992 Energy Cost Adjustment Clause (CPUC Application No. 92-04-001) on the value of Qualifying Facilities for PG&E and the O&M costs avoided by QFs
- Testimony on behalf of KELCO Division of MERCK & Co., Inc. on San Diego Gas & Electric Company 1991 Energy Cost Adjustment Clause (CPUC Application No. 91-09-059) on the value of Qualifying Facilities for SDG&E and the O&M costs avoided by QFs
- Testimony on behalf of California Cogeneration Council on Pacific Gas & Electric Company 1991 Energy Cost Adjustment Clause (CPUC Application No. 91-04-003) on the value of Qualifying Facilities for PG&E
- Testimony on behalf of California Cogeneration Council on Pacific Gas & Electric Company 1990 Energy Cost Adjustment Clause (CPUC Application No. 90-04-003) on the value of Qualifying Facilities for PG&E
- Testimony on behalf of California Cogeneration Council on San Diego Gas & Electric Company 1989 Energy Cost Adjustment Clause (CPUC Application No. 89-09-031) on the value of Qualifying Facilities for SDG&E
- Testimony on behalf of California Cogeneration Council on Pacific Gas & Electric Company 1989 Energy Cost Adjustment Clause (CPUC Application No. 89-04-001) on the value of Qualifying Facilities for PG&E (1989, Phases I and II)
- Testimony on behalf of California Cogeneration Council on Pacific Gas & Electric Company 1990 Test Year General Rate Case (CPUC Application No. 88-12-005) on the amount of utility operations and maintenance costs avoided by the presence of QF generation.
- Testimony on behalf of California Cogeneration Council on San Diego Gas & Electric Company 1988 Energy Cost Adjustment Clause (CPUC Application No. 88-07-003) on the value of Qualifying Facilities for SDG&E.
- Testimony on behalf of California Cogeneration Council on Pacific Gas & Electric Company 1988 Energy Cost Adjustment Clause (CPUC Applications Nos. 88-04-020 and 88-04-057) on the value of Qualifying Facilities for PG&E (1988, Phases I and II).

EXHIBIT B

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

**Independent Power Producers of)
New York, Inc.,)
Complainant,)
v.) Docket No. EL18-__-000
New York Independent System)
Operator, Inc.,)
Respondent.)**

AFFIDAVIT OF THOMAS M. PIASCIK

1. My name is Thomas M. Piascik. I am employed as Senior Project Manager of Tangibl Group, Inc. (“Tangibl”). My business address is 201 King of Prussia Road, Suite 650, Radnor, PA 19087. My primary work at Tangibl is performing power system modeling, system reliability studies, and transmission planning studies for electric utilities, municipalities, electric cooperatives, independent power producers and transmission owners. I have experience performing these tasks in both the PJM Interconnection, L.L.C. (“PJM”) and New York Independent System Operator, Inc. (“NYISO”) markets.
2. Prior to joining Tangibl, I spent 38 years at various utility and power production affiliates of Public Service Enterprise Group (“PSEG”) in New Jersey. My duties there included electrical network and market simulation studies, managing transmission system planning for the electric utility, and representing PSEG Power LLC and/or Public Service Electric & Gas Company (“PSE&G”) on several Regional Transmission Owner (“RTO”) and Independent System Operator (“ISO”) stakeholder committees, including the PJM

Planning Committee, the PJM Transmission Expansion Advisory Committee, and the NYISO Transmission Planning Advisory Subcommittee. I have provided expert witness testimony in regulatory proceedings at the Federal Energy Regulatory Commission (“Commission”). My resume is attached as Exhibit TMP-1.

3. I write this affidavit in support of Independent Power Producers of New York, Inc.’s (“IPPNY”) Complaint Requesting Fast Track Processing against the NYISO (the “Complaint”).
4. Linden VFT, LLC (“Linden VFT”) and Hudson Transmission Partner, LLC (“HTP”) respectively own the Linden VFT facility and the HTP facility, two Merchant Transmission Facilities (“MTFs”).¹ Initially, Linden VFT and HTP applied for, and made the then necessary upgrades to secure, Firm Transmission Withdrawal Rights (“Firm TWRs”). However, recently Linden VFT and HTP elected to convert their Firm TWRs to Non-Firm Transmission Withdrawal Rights (“Non-Firm TWRs”).
5. IPPNY asked me to address whether: (i) the export of installed capacity (“ICAP”) from resources in PJM to the NYISO over these MTFs after they converted their Firm TWRs to Non-Firm TWRs is permissible under PJM’s OATT; and (ii) whether energy that is exported on a non-firm basis can be recalled or curtailed by PJM to satisfy its own control area load, for other operational reasons, or to address any other reliability or economic issues.
6. As established below, the export of ICAP from PJM to the NYISO over MTFs that have converted their Firm TWRs to Non-Firm TWRs, such as the MTFs owned by Linden

¹ This and other capitalized terms herein have the meanings given in the PJM’s Open Access Transmission Tariff (“OATT”).

VFT and HTP, violates PJM's OATT and manuals and is contrary to Commission precedent and longstanding Good Utility Practice recognizing the core distinction between firm and non-firm service. As the Commission has ruled with respect to the non-firm nature of the MTFs owned by Linden VFT and HTP, the decision to convert Firm TWRs to Non-Firm TWRs eliminated the requirement for PJM to account for and accommodate these resources in its planning studies. As the Commission further established, PJM, thus, must curtail energy exports over these non-firm MTFs to serve its own loads, for operational reasons, reliability, or economics as mandated by its OATT.

Background

7. HTP owns a controllable, high voltage, direct current MTF that runs between the Point of Receipt (“POR”) at the PSE&G Bergen Substation in Ridgefield, New Jersey to the Point of Delivery (“POD”) and interchange between PJM and the NYISO at the Con Edison West 49th Street Substation in New York, New York. Linden VFT owns a controllable MTF that runs between the POR at the Linden VFT Switching Station in Linden, New Jersey to the POD and interchange between PJM and the NYISO at the 345 kV Linden Cogen ring bus in Linden, New Jersey and where it is then further transmitted by the NYISO to the Con Edison Goethals substation in Staten Island, New York. It is important to understand that transactions involving these MTFs involve two distinct paths. First, customers utilizing these MTFs must secure rights (or have rights secured for them) to the POR in the form of internal PJM point-to-point transmission service. Second, rights must be secured from the POR across the line to the POD. If supported by firm rights across both segments, as was the case until January 1, 2018, these additional transmission facilities are able to allow for the export of both capacity and energy out of

New Jersey and into New York subject only to curtailment in the very limited circumstances when transmission security issues are triggered (*e.g.*, a Transmission Loading Relief (“TLR”) Level 5 curtailment). However, if either path is supported by non-firm rights, then only energy, on an as available and curtailable basis, may flow from PJM to the NYISO.

8. Both the Linden VFT and HTP MTFs are controllable by PJM and provide service to customers pursuant to PJM’s OATT under Schedule 16 (Transmission Service on the Linden VFT Facility) and Schedule 17 (Transmission Service on the Hudson Line). Each Schedule provides that transmission customers can use a Firm Reservation service or a Non-Firm Reservation service. The OATT provides that a transmission customer selecting a Firm Reservation can “schedule capacity and energy on a firm basis,” while a Non-Firm Reservation customer can only “schedule energy on a non-firm, as available, basis.”²
9. As with the distinction between Firm and Non-Firm Reservations, Firm TWRs allow the transmission customer to schedule energy *and* capacity withdrawals from the PJM system to the New York border while Non-Firm TWRs permit the transmission customer to schedule only energy on an as-available basis.³

Impact of Determination to Convert Firm TWRs to Non-Firm TWRs

10. PJM’s OATT defines Firm TWRs as:

“Firm Transmission Withdrawal Rights” shall mean the rights to schedule energy and capacity withdrawals from a Point of Interconnection of a Merchant Transmission Facility with the

² PJM OATT, Schedule 16 at 1; PJM OATT, Schedule 17 at 1.

³ See PJM OATT § 1, OATT Definitions E-F at 8, OATT Definitions L-M-N at 15.

Transmission System. Firm Transmission Withdrawal Rights may be awarded only to a Merchant D.C. Transmission Facility that connects the Transmission System with another control area. Withdrawals scheduled using Firm Transmission Withdrawal Rights have rights similar to those under Firm Point-to-Point Transmission Service.⁴

PJM's OATT specifies that Non-Firm TWRs have a lower priority of service compared to Firm TWRs:

“No-Firm [sic] Transmission Withdrawal Rights” shall mean the rights to *schedule energy withdrawals* from a specified point on the Transmission System. Non-Firm Transmission Withdrawal Rights may be awarded only to a Merchant D.C. Transmission Facility that connects the Transmission System to another control area. *Withdrawals scheduled using Non-Firm Transmission Withdrawal Rights have rights similar to those under Non-Firm Point-to-Point Transmission Service.*⁵

Thus, there is a clear distinction between Firm TWRs and Non-Firm TWRs in that capacity can only be scheduled with Firm TWRs.

11. Pursuant to Section 2.1 of Schedules 16 and 17, HTP and Linden VFT are required to allocate their respective available transmission capability pursuant to allocation processes approved by the Commission (Docket No. ER07-543-000 for Linden VFT and Docket No. ER11-3017 et al. for HTP). The allocation of these transmission capability rights to their respective transmission customers “shall include the allocation of the Firm and Non-Firm Transmission Withdrawal Rights, as applicable, which have been assigned” to each MTF owner, *i.e.*, Linden VFT and HTP can only convey to customers of their MTFs the level of service the MTF owner itself holds.⁶ By making the decision to convert their Firm TWRs to Non-Firm TWRs, Linden VFT and HTP no longer have Firm TWRs to

⁴ PJM OATT § 1, Definitions E-F at 8.

⁵ PJM OATT § 1, Definitions L-M-N at 15 (emphasis added).

⁶ PJM OATT, Schedule 16 at 2.1; PJM OATT, Schedule 17 at 2.1.

allocate, and therefore their MTF customers have no ability to acquire a Firm Reservation and correspondingly no ability to schedule ICAP across these MTFs to the NYISO. Put simply, a transmission customer can select a Firm Reservation on an MTF and use it to sell ICAP to the NYISO only to the extent the MTF also has Firm TWRs.

12. The logic underlying this distinction between firm and non-firm service is as simple as it is irrefutable. Unlike firm service, non-firm service cannot be counted on in high demand situations because it will be curtailed first. This distinction between these two levels of service, a bedrock principle universally recognized as Good Utility Practice throughout the power generation and electric transmission systems in the United States, thus serves as the basis for the requirements set forth in PJM's OATT. Delivery of ICAP over an MTF requires Firm TWRs and Firm Reservations while the delivery of energy requires only Non-Firm TWRs and Non-Firm Reservations, and non-firm energy is curtailable under less stringent system conditions and prior to taking other emergency measures.
13. To understand the importance of this distinction, the distinction between energy service and ICAP service must also be discussed. Energy is the market product constituting the actual flow of power delivered on an as available, economic basis with minimal restrictions placed on the energy supplier other than ensuring market pricing is just and reasonable. On the other hand, ICAP is the capability to provide energy under the most adverse conditions when it is most in need. It is the product that is instrumental to the security and reliability of the bulk electric system. Significant system planning activities and ongoing investment are required to ensure energy can flow throughout the system under the most adverse conditions. Non-firm energy does not provide the capability required to ensure the delivery of ICAP. In the case of an ICAP supplier in PJM relying

on an MTF to export ICAP to the NYISO, the ICAP supplier must secure Firm Point-to-Point out service to the POR (or have it secured for them as Linden VFT has recently done for customers using its line) *and* Firm Reservation rights from the POR to the POD. The capability to secure Firm Reservation rights from the POR to the POD is, however, only available if an MTF holds Firm TWRs.

14. Notwithstanding that the PORs and PODs of the Linden VFT and HTP MTFs are in relatively close proximity, the Commission correctly recognized that having internal Firm Point-to-Point service to the POR does not address the need for firm delivery to the final POD and interchange between PJM and NYISO.⁷ Additionally, having non-firm service across these MTFs subjects any energy deliveries over these MTFs to PJM's curtailment. If PJM ignored this limitation and allowed energy to be delivered to New York over the MTF when it was otherwise needed to meet its own system loads or economics, it would violate its OATT and provide New York undue preferential treatment. According to Mr. Younger, this disqualifies a transmission customer's eligibility to export ICAP to the NYISO because, by definition, it does not provide adequate assurance that the associated energy will reliably be delivered into the NYISO.⁸
15. The detailed description of curtailment procedures set forth in Section 4.5 in Schedules 16 and 17 of the PJM OATT identifies these distinct differences between Firm and Non-Firm Reservations and further establishes the fact that firm service clearly takes higher priority over non-firm service. Specifically, the PJM OATT grants PJM the right to curtail even firm export transactions in certain, limited, and extreme instances to maintain

⁷ See N.J. Bd. of Pub. Utilities v. PJM Interconnection, L.L.C. et al., 163 FERC ¶ 61,139, at P 59 n.100 (2018) (“NJBPU Order”).

⁸ Younger Aff. ¶ 43.

PJM system integrity and reliability. Typically, this type of interruption would be driven by the implementation of NERC Transmission Loading Relief (“TLR”) efforts by Reliability Coordinators. However, a Firm Reservation is not curtailed until a TLR Level 5b (out of 6). Importantly, in contrast, a Non-Firm Reservation would be exposed to curtailment risk under far less severe system conditions—specifically, during a TLR Level 3b event—a point the Commission has already highlighted.⁹

16. Beyond NERC TLR directives, it is important to understand that PJM’s own operating procedures would require curtailment and interruption of Non-Firm exports before significant emergency conditions exist. PJM Manual 13 (Emergency Operations) requires PJM Members to initiate significant actions during emergency conditions, which include voluntary and mandatory load shedding, deferral of power plant or transmission line maintenance activities, public appeals for energy conservation, and requests for environmental waivers to allow power generation facilities to operate outside of their permitted limitations.¹⁰ However, before any such actions are requested and prior to entering Emergency Procedures, PJM will first 1) review weather projections, load forecasts, reserve projections and generation performance; 2) ensure LMPs are reflective of system conditions; 3) *curtail all Non-Firm exports* and issue an EEA1, as required by EOP-011 Attachment 1, via the RCIS and Emergency Procedures webpage; and 4) may elect to implement an interchange cap to stabilize the amount of interchange during peak hours to protect against volatility.¹¹ If PJM were to allow Non-Firm energy to export to

⁹ NJBPU Order at ¶ 59, note 100.

¹⁰ See generally *Manual 13*, PJM Interconnection, L.L.C. (Jan. 1, 2018), <http://www.pjm.com/-/media/documents/manuals/m13.ashx>.

¹¹ *Id.* at 30 (emphasis added).

the NYISO while also implementing any of the other Emergency Procedures, it would violate the directives in Manual 13.

17. The Commission orders addressing the ability to convert the transmission rights of the Linden VFT and HTP MTFs from Firm TWRs to Non-Firm TWRs have uniformly upheld the applicability of PJM's OATT and rules. Specifically, in its order confirming the Firm TWRs of these MTFs could be tendered back to PJM, the Commission held that, “[a]s of the effective date of Linden’s conversion of its Firm TWRs to Non-Firm TWRs, PJM is no longer required to provide firm service and can curtail non-firm service whenever necessary to preserve reliability.”¹² Subsequently, addressing IPPNY’s protest in the recent NJBPU Proceeding, the Commission further established:

The premise of these arguments is 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. We do not agree with this premise. As we have explained in our prior orders, 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.¹³

18. In fact, Linden VFT itself has repeatedly acknowledged PJM’s control of Linden VFT’s MTF and PJM’s ability to curtail Non-Firm transactions. When it initiated its complaint proceeding seeking to tender back its Firm TWRs, Linden VFT expressly identified the two paths necessary to deliver electricity, recognized PJM would have no obligation to

¹² See *Linden VFT, LLC v. Pub. Serv. Elec. & Gas Co. & PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,264, at P 32 (2017) (emphasis added) (citations omitted) (“Linden VFT Order”).

¹³ NJBPU Order at P 59 (citations omitted).

plan its system for its facility if Linden VFT converted to Non-Firm TWRs, and acknowledged Non-Firm TWR service was a lower level of service that would only allow its facility to be eligible to deliver output on an as available basis.¹⁴ In support of its request to convert its Firm TWRs to Non-Firm TWRs, Linden VFT further acknowledged that its transmission facility will remain fully controllable by PJM, and in the event of a reliability or other operational issue, flow can be shut off consistent with applicable rules and procedures.¹⁵

Continued ICAP Sales Following Conversion to Non-Firm TWRs.

19. As the Commission found in its orders addressing Linden VFT and HTP's conversions to Non-Firm TWRs, the distinction between taking firm and non-firm service, by definition, means that PJM must curtail the export of energy across the now non-firm MTFs to protect against and otherwise address reliability, and any other operational issues that may be experienced across the PJM system, to meet load or for economics.¹⁶
20. If PJM were to allow non-firm export power to flow and cuts its own load, non-firm New York load and customers would receive service while firm load and customers in PJM would be curtailed. Such action would violate PJM's OATT, contravene recent Commission orders, and contradict years of Commission precedent addressing the core distinction between firm and non-firm service.

¹⁴ See Docket No. EL17-90-000, *Linden VFT, LLC v. Pub. Serv. Elec. & Gas Co. et al.*, Complaint and Request for Fast Track Processing and Motion for Expedition, or in the Alternative, Stay of Certain RTEP Charges of Linden VFT, LLC (Sept. 18, 2017), at 18–19 (“Linden VFT Complaint”).

¹⁵ *Id.* at 11.

¹⁶ Linden VFT Order at P 32; *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,262, at P 50 (2017); NJBPU Order at P 59.

21. For ICAP to continue to be sold to New York across these MTFs, one of two outcomes would have to occur. Option 1: PJM would have to attest that it would not curtail the exports to serve its own load, to address other operational issues, for reliability, or for economics as the Commission has established—a violation of the PJM OATT. Option 2: the NYISO would have to attest that it is knowingly accepting ICAP from resources both in violation of the PJM OATT and incapable of guaranteeing that ICAP in a manner consistent with Good Utility Practices. The former means that there is a greater risk of load not being served in PJM or other issues manifesting themselves on the PJM system when curtailing this non-firm export would alleviate, or even eliminate, the circumstances presented in PJM. The latter means there is a greater risk of load not being served in the NYISO's most constrained region (Zone J). Either option would constitute a tariff violation in one region; the two tariff requirements cannot both be satisfied in light of Linden VFT's and HTP's decision to convert Firm TWRs to Non-Firm TWRs.
22. This concludes my affidavit.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Independent Power Producers of)
New York, Inc.,)
)
Complainant,)
)
v.)
)
New York Independent System)
Operator, Inc.,)
)
Respondent.)

Docket No. EL18-__-000

I declare under penalty of perjury that the forgoing is true and correct.

Executed on July 31, 2018

Thomas M. Piascik
Thomas M. Piascik



THOMAS M. PIASCIK / Senior Project Manager

Mr. Piascik has over forty years' experience in transmission planning and operations, including advanced knowledge of network and market simulation tools and analysis. He has been a key member of project development teams, with particular expertise in economic justification, technical analysis, contract negotiations and federal regulatory filings. Mr. Piascik has had significant experience with NERC and Reliability First Corporation (RFC) standards development, and is experienced with operations and procedures of RTOs and ISOs including PJM, New York ISO, ISO New England and Electric Reliability Council of Texas (ERCOT).

Mr. Piascik holds a Bachelors of Science degree in Electrical Engineering from the Newark College of Engineering, and a Master of Electric Power Engineering from Rensselaer Polytechnic Institute.

Professional Experience

2011 – PRESENT..... SENIOR PROJECT MANAGER
TANGIBL

Project Manager for transmission and generation development projects:

- Responsible for key aspects of project development, including project economics, power system modeling, and participation in working groups and committees at PJM, NYISO and ISO New England.
- Represented client and affiliate development project companies at PJM Interconnection.
- Performed load flow analyses using Power World for client and affiliate development project companies.
- Provided expert witness testimony in regulatory proceedings at FERC:
 - Docket No. EL18-183-000 Radford's Run Wind Farm v PJM.

2001 – 2011..... INTERCONNECTION MANAGER
PSEG POWER LLC

Supported transmission interconnection of PSEG Power's development projects, including coordination and review of interconnection studies, contract negotiations, coordination of RTO/ISO procedures, and participation in regulatory filings:

- Led development of electrical interconnections for various generation projects including system reliability studies and interconnection contract negotiations. Examples of projects include the Cross Hudson 550 MW connection to New York, the Linden 1186 MW combined-cycle unit and the Kearny peaking units.
- Conducted electric network and market simulation studies in support of PSEG Power's generation assets.
- Represented PSEG Power on various RTO/ISO stakeholder committees including the PJM Planning Committee, the PJM Transmission Expansion Advisory Committee (TEAC), and the NYISO Transmission Planning Advisory Subcommittee (TPAS).
- Provided expert witness testimony in regulatory proceedings at FERC:
 - Docket No. EL02-125-000 KeySpan Energy Development et al v NYISO.
- Represented PSEG Power in the development of NERC reliability standards, and supported PSEG Power's compliance audit readiness preparation for NERC standards.

1988– 2001..... MANAGER – TRANSMISSION PLANNING
PUBLIC SERVICE ELECTRIC AND GAS COMPANY

Managed the transmission planning group and optimized the value of the PSE&G transmission system by directing the development of a least cost transmission enhancement plan. Guided the analysis of transmission utilization and constraints, and led the organizational development of the transmission planning staff:

- Oversaw preparation and administration of the capital budget, from project justification and authorization through closeout.
- Led dynamic simulation studies and developed an operating guide to significantly restore the electric transmission capability at PSEG Power's nuclear complex after a major long term transmission outage.
- Developed a plan to restore the interconnection capability between PSE&G and Con Edison following the failure of an interconnection transformer.
- Developed a transmission plan to supply the significant load growth along the Hudson River waterfront.

1986– 1988.....INTERCONNECTION PLANNING MANAGER
PUBLIC SERVICE ELECTRIC AND GAS COMPANY

Optimized the value of PSE&G's investment in jointly owned transmission facilities by managing the interconnection planning group:

- Supported the planning and engineering of the PJM/MAAC bulk power system.
- Represented PSE&G on the PJM Capacity and Transmission Planning Subcommittee.
- As chairman of the MAAC-ECAR-NPCC Study Committee, directed the dynamic simulation studies to assess the interregional impact of the HVDC tie between Hydro Quebec and New England. These studies led to operating procedures to protect the reliability of the PJM system.

1983– 1986.....PRINCIPAL ENGINEER
PUBLIC SERVICE ELECTRIC AND GAS COMPANY

- Responsible for analysis and coordination of the activities associated with cogeneration and small power production facilities (Qualifying Facilities).
- Negotiated contract terms and conditions and analyzed impacts of Qualifying Facility contracts.
- Provided documentation and analysis to support management in contract dispute resolution.
- Prepared business proposals for cogeneration development at customer sites.

1973– 1983.....SENIOR ENGINEER
PUBLIC SERVICE ELECTRIC AND GAS COMPANY

- Conducted load flow, short circuit and stability studies of the PSE&G and PJM systems in support of transmission planning activities.

1969– 1973.....ENGINEER
AMERICAN ELECTRIC POWER SERVICE CORPORATION

- Engineer, Transmission Planning Department

Computer Skills

- Power System Modeling and Engineering Simulation Tools – PSSE, ProMod, MAPS, GEBGE
- Oracle Databases - Q&E, SQL
- Accounting and Budgeting – SAP
- Microsoft Office - Excel, Word, Access, Power Point, MS Project, Visio

Continuing Education

- Electric Power Systems Engineering Course – PTI

EXHIBIT C

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

NOTICE OF COMPLAINT

(July __, 2018)

Take notice that on July 31, 2018, Independent Power Producers of New York, Inc. (“Complainant”) filed a Complaint Requesting Fast Track Processing against the New York Independent System Operator, Inc. (“NYISO”) pursuant to Sections 206 and 306 of the Federal Power Act alleging that the NYISO is improperly applying its Market Administration and Control Area Services Tariff by allowing resources in the PJM Interconnection, L.L.C. (“PJM”) market to deliver installed capacity (“ICAP”) to New York across merchant transmission facilities that are not qualified to deliver ICAP to New York.

Complainant certifies that copies of the complaint were served on the contacts for the NYISO, as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, DC. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Kimberly D. Bose
Secretary