

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

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

**MOTION FOR LEAVE TO ANSWER AND ANSWER
OF INDEPENDENT POWER PRODUCERS OF NEW YORK, INC.**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (the “Commission”) Rules of Practice and Procedure,¹ Independent Power Producers of New York, Inc. (“IPPNY”) hereby moves for leave to file the following answer to the answers, filed on March 12, 2018, that responded to IPPNY’s comments filed on February 23, 2018 in the above-captioned docket.² IPPNY’s comments responded to the complaint, filed with the Commission on December 22, 2017, by the New Jersey Board of Public Utilities (“NJBPU”) against PJM Interconnection, L.L.C. (“PJM”), the New York Independent System Operator, Inc. (“NYISO”), Consolidated Edison Company of New York, Inc., Linden VFT, LLC (“Linden VFT”), Hudson Transmission Partners, LLC (“HTP”), and the New York Power Authority (“NYPA”) (the

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

² Docket No. EL18-54-000, *N.J. Bd. Of Pub. Utilities v. PJM Interconnection, L.L.C. et al.*, Comments of Independent Power Producers of New York, Inc. (Feb. 23, 2018) (“IPPNY Comments”).

“Complaint”) challenging, *inter alia*, the right of Linden VFT and HTP to effectively retain the benefits of the same capacity export service under a different name while avoiding transmission costs.

IPPNY’s answer corrects material factual misstatements and other flaws in parties’ arguments that (i) the issues raised in IPPNY’s comments are either beyond the scope of the Complaint or are properly addressed in the NYISO stakeholder process; and (ii) installed capacity (“ICAP”) sales delivered over the Linden VFT transmission line, and potentially the HTP transmission line, into New York using non-firm transmission service purportedly complies with the NYISO’s tariffs. As established in the IPPNY Comments, and further supported by information provided in the PJM and Linden VFT answers in this proceeding, the Commission should: (i) determine that the threshold issue addressed in IPPNY’s comments is within the scope of the Complaint; (ii) rule that the NYISO is proscribed from securing capacity benefits in the form of ICAP sales over Unforced Capacity Deliverability Rights (“UDRs”) with non-firm transmission service under the terms of its tariff, and (iii) order the NYISO and PJM to prohibit further ICAP sales to New York over the Linden VFT and HTP transmission lines.

I. MOTION FOR LEAVE TO ANSWER

IPPNY requests leave to file this answer because it will help to clarify the issues before the Commission, provide additional information that will assist the Commission, or will otherwise be helpful in the development of the record in this proceeding. Although Rule 213(a)(2) generally prohibits certain types of answers, including answers to answers, the Commission has discretion to waive that prohibition for good cause shown. The basis for such waiver has included whether the answer leads to a more accurate and complete record, helps the Commission understand the issues, clarifies matters in dispute or errors, responds to new issues

raised, or provides information that will assist the Commission in its decision-making process.³ IPPNY's answer confirms the need to address the nature of capacity benefits following the termination of firm transmission withdrawal rights ("Firm TWRs") based upon new information provided and corrects misstatements regarding the deliverability of capacity from PJM in the absence of firm transmission service from the Linden bus to the New York border. It will, therefore, assist the Commission in reaching its decision.⁴ Accordingly, the Commission should accept IPPNY's answer.

II. ANSWER

A. **The Need to Address the Basis for New York to Continue to Receive Capacity Benefits in the Form of ICAP Sales, post-Conversion Addressed in IPPNY's Comments Is within the Scope of the Complaint.**

In its comments, IPPNY established NJBPU's allegations concerning capacity benefits from PJM to the NYISO could only be resolved by addressing the ramifications of Linden VFT and HTP's decision to convert their Firm TWRs to Non-Firm Transmission Withdrawal Rights ("Non-Firm TWRs") (the "Conversion"). Capacity sold from PJM to New York using UDRs must be deliverable over two distinct segments. Given the fact that, as the Commission held, the second segment was rendered non-firm by the Conversion,⁵ IPPNY demonstrated in its comments that capacity benefits in the form of ICAP sales were no longer available, and, thus,

³ See, e.g., *Mirant Energy Trading et al. v. PJM Interconnection, LLC*, 122 FERC ¶ 61,007 at P 33 (2008); *BP West Coast Prods. LLC et al. v. SFPP, L.P. et al.*, 121 FERC ¶ 61,239 at P 34 (2007); *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,254 at P 13 (2005); *Pinnacle West Energy Corp. v. Nevada Power Co. et al.*, 105 FERC ¶ 61,053 at P 34 (2003); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,309 at P 18 (2003).

⁴ IPPNY's silence with respect to other arguments that were made in answers filed in this docket should not be construed as IPPNY's acquiescence to such arguments.

⁵ Capacity exports from PJM over UDRs must demonstrate deliverability, i.e., firm service over two segments: (i) from the location internal to the PJM system to, e.g., the Linden bus; and (ii) from the Linden bus to the NYISO border.

the NYISO and PJM are violating their tariffs by allowing Linden VFT to continue such sales post-Conversion. Accordingly, IPPNY requested that the Commission confirm these capacity benefits could no longer be secured and order the NYISO and PJM to prohibit further ICAP sales to New York over the Linden VFT and HTP transmission lines.

In their answers, NYPA, HTP, Linden VFT, and the NYISO raise two procedural arguments.⁶ First, these parties argue that the Commission should dismiss IPPNY's request because it is beyond the scope of the Complaint. They claim that the issues addressed by IPPNY and its requested relief were not raised in the Complaint.⁷ Second, HTP and NYPA argue that IPPNY's request should be addressed through the NYISO stakeholder process.

The Commission should reject the first argument because these parties have characterized the issues raised in the Complaint far too narrowly. In its Complaint, NJBPU argues that it is impermissible for Linden VFT and HTP, by effectuating the Conversion, to avoid Regional Transmission Expansion Plan ("RTEP") project costs *because* the NYISO continues to receive the capacity benefits of these transmission lines without any associated party compensating PJM for these costs.⁸ In essence, NJBPU's argument is that *if* these capacity benefits are permitted post-Conversion, it would be unjust and unreasonable if RTEP cost allocation did not apply to these projects. Thus, the threshold issue the Commission must decide in this proceeding is

⁶ Docket No. EL18-54-000, *supra*, Motion for Leave to Answer and Answer of the New York Power Authority (Mar. 12, 2018) ("NYPA Answer"), at 15; Motion for Leave to Answer and Answer of Hudson Transmission Partners, LLC to Comments (Mar. 12, 2018) ("HTP Answer"), at 5; Motion for Leave to Answer and Answer of Linden VFT, LLC (Mar. 12, 2018) ("Linden VFT Answer"), at 13; Answer to Comments of the New York Independent System Operator, Inc. (Mar. 12, 2018) ("NYISO Answer"), at 2.

⁷ *Id.*

⁸ *See, e.g.*, Complaint at 2 ("This dispute lies with various parties' leaning on the PJM system to receive transmission and capacity benefits that are not paid for, and other parties' attempts to circumvent validly assigned cost allocation for Regional Transmission Expansion Plan ("RTEP") projects undertaken for their benefit.").

whether the Linden VFT and HTP transmission lines can continue to provide capacity benefits to New York post-Conversion. IPPNY's comments, as further supported by the Younger Affidavit, squarely addressed this issue.

Indisputably, the largest capacity benefit that the NYISO receives over the Linden VFT line is in the form of ICAP imported from PJM.⁹ IPPNY cited to the Commission's orders in the Linden VFT and HTP proceedings, holding that, post-Conversion, "the Linden facility is fully controllable by PJM so that PJM can shut off flows if those flows jeopardize reliability or cause operational problems in New Jersey or elsewhere on the PJM system."¹⁰ IPPNY's comments demonstrated that these lines can therefore no longer provide these capacity benefits post-Conversion because PJM, pursuant to its tariff, must curtail service over the transmission line to satisfy its own control area needs, and the NYISO's tariff prohibits the import of ICAP over these lines if PJM has the right to perform such curtailments.¹¹ IPPNY demonstrated that PJM's assurance that transactions over this line would not be curtailed violated its tariff and the NYISO's acceptance of that assurance in the face of Commission orders to the contrary violated the NYISO's tariff. IPPNY further demonstrated that their erroneous tariff interpretations jeopardize reliability in both markets due to the uncertainty of whether PJM will curtail ICAP deliveries to New York or its own load when faced with a reliability or operational issue.¹²

PJM's response provides new information that confirms IPPNY's reliability concerns are valid. In its response, PJM states, without qualification, that "it gave no assurances to NYISO,

⁹ IPPNY Comments at 4.

¹⁰ *Linden VFT, LLC v. Pub. Serv. Elec. & Gas Co. & PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,264 (2017), at P 25.

¹¹ IPPNY Comments at 8–13.

¹² IPPNY Comments at 13–15.

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.”¹³ PJM’s response raises the strong possibility that the NYISO may be relying on the delivery of ICAP across the line to meet its system requirements when during system shortages its access to the energy deliveries across the line from the ICAP source in PJM will be curtailed. Without assurance of delivering the energy during system shortages, the ICAP is of no value to New York. Thus, the NYISO’s access to the ICAP delivery across the line during system shortages is unlikely, which could jeopardize reliability under these operating conditions in the areas of both systems that are among the most heavily congested.

Likewise, Linden VFT’s continued avowal that it no longer has the rights to the same service post-Conversion further demonstrates the need for Commission action to resolve the threshold issue concerning capacity benefits in this proceeding. As IPPNY highlighted in its comments, in its pleadings in Docket No. EL17-90 (the “Linden VFT Proceeding”), Linden VFT pointed to the fact that the firm point-to-point service that it had procured only carried through to the Linden bus.¹⁴ From that point to the NYISO border, Linden VFT emphasized that it only possessed non-firm TWRs, post-Conversion. Linden VFT reaffirmed this point in its Answer in

¹³ Docket No. EL18-54-000, *supra*, Limited Response of PJM Interconnection, L.L.C. (Mar. 12, 2018) (“PJM Response”), at 2.

¹⁴ See IPPNY Comments at 5 & n.16. While Linden VFT is correct that IPPNY inadvertently cited to the wrong pleading in its footnote, Linden VFT did, in fact, make the points that IPPNY ascribed to it in the IPPNY Comments in the Linden VFT Proceeding. See Docket EL17-90-000, *Linden VFT, LLC v. Pub. Serv. Elec. & Gas Co. & PJM Interconnection, L.L.C.*, Answer of Linden VFT, LLC (Nov. 13, 2017), at 4–5 (“Linden Non-Firm TWR Answer”) (stating that “. . . Non-Firm TWRs are certainly not “exactly the same” as Firm TWRs, regardless of what transmission service Linden VFT or its customers currently have to get to Linden VFT’s facilities” and acknowledging that “[a]s Linden VFT would only hold Non-Firm TWRs after the conversion, it would face an increased risk that its exports over its facility to the NYISO border would be subject to interruption.”). Linden VFT is fully aware of the positions it has previously taken in the various proceedings addressing this issue, and, thus, Linden VFT has not been disadvantaged by this inadvertent error.

this proceeding.¹⁵ As Linden VFT itself appears to acknowledge, it can no longer ensure that transactions coming across its line into New York will not be curtailed because, in Linden VFT’s own words, it does not “continue[] to have the same service from PJM that it held prior to December 31, 2017.”¹⁶

Thus, the NYISO’s claim that IPPNY’s comments go beyond the scope of the Complaint ignores the fact that the NJBPU has squarely presented the issue of whether the NYISO system “leans” on the PJM system by continuing to secure capacity benefits post-Conversion and the IPPNY Comments address that very point. Likewise, the NYISO’s argument that IPPNY’s comments are beyond the scope of the Complaint because the Complaint does not address the impact of capacity sales over the Linden VFT and HTP lines ignores the fact that capacity deliveries made over these lines to New York impact the cost of capacity in PJM.¹⁷ Capacity cost impacts in PJM is an issue that was squarely raised in the Complaint.¹⁸ The NYISO has not pointed to any rule or precedent that requires the Commission to wear blinders when considering the scope of adverse impacts raised in a complaint.

The parties’ second procedural argument also lacks merit. NYPA and HTP assert, incorrectly, that the issues raised in IPPNY’s comments should be addressed in the NYISO stakeholder process.¹⁹ However, addressing these issues in the stakeholder process would be pointless because the NYISO tariff does not need to be changed and, thus, there is no need to

¹⁵ See Linden VFT Answer at 10.

¹⁶ *Id.*

¹⁷ NYISO Answer at 3.

¹⁸ Complaint at 33 (“The effect is for NYISO to receive a capacity benefit and for PJM (most significantly the PSEG LDA in New Jersey) to receive a staggering capacity cost impact. This effect is plainly preferential to New York, detrimental to New Jersey, contrary to the public interest, unjust and unreasonable.”).

¹⁹ NYPA Answer at 15–16; HTP Answer at 5.

“allow for the negotiation of mutually agreeable outcomes.”²⁰ Further, based on the NYISO’s Answer to IPPNY’s comments, the NYISO shows no sign of changing its position in light of the overwhelming evidence presented in IPPNY’s comments that the NYISO is violating its tariff.²¹ Only the Commission can order the NYISO to comply with its tariff.

As the other State Commissions noted in their comments to the Commission, the Complaint raises broad issues that need to be addressed comprehensively to eliminate the uncertainty surrounding the current markets and reliability as soon as possible.²² IPPNY’s comments demonstrate that the NYISO interpretation of Linden VFT’s rights post-Conversion creates unjust and unreasonable rates and threatens reliability. Requiring these issues to be resolved piecemeal in a separate complaint or the stakeholder process as advocated by the parties in their answers to IPPNY’s comments will unjustifiably continue to expose both systems to this significant threat to reliability and harm administrative efficiency by requiring the expenditure of additional resources unnecessarily by the Commission, the NYISO, PJM, and market participants. Therefore, the Commission should determine that the issues IPPNY raised in its comments are within the scope of the Complaint.

²⁰ See NYPA Answer at 16. Linden VFT’s argument that IPPNY and the Indicated NY Generators “seek new limitations on capacity imports” also has no basis. See Linden VFT Answer at 14. IPPNY is requesting that the Commission direct the NYISO to comply with *existing* tariff provisions.

²¹ NYISO Answer at 6 (stating that the NYISO is satisfied at this time that holder of UDRs associated with the Linden VFT line are in compliance with the NYISO tariff requirement to import ICAP from PJM into New York without addressing the fact that, post-Conversion, firm service over the second segment has been lost).

²² Docket No. EL18-54-000, *supra*, Comments of the Indicated State Commissions (Feb. 6, 2018), at 2 (“Aside from potential cost and equity impacts, the Indicated State Commissions are concerned with the level of uncertainty introduced in the region. The RTEP process has been challenged, grid operations may have been altered and markets are potentially impacted.”).

B. Summary Claims that Linden VFT’s Capacity Sales, post-Conversion, Are Permissible Are Belied by the Evidence.

Only Linden VFT and the NYISO made any attempt to rebut IPPNY’s demonstration that the NYISO is violating its tariff by allowing Linden VFT to continue delivering ICAP to New York post-Conversion. These rebuttals, however, are merely conclusory statements.

To support its position, the NYISO begins by noting, correctly, that Section 5.12.2.1 of the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”) requires that UDR holders demonstrate to the satisfaction of the NYISO that their ICAP deliveries over the transmission lines “will not be recalled or curtailed by an External Control Area to satisfy its own Control Area Loads.”²³ The NYISO then states that it “is satisfied at this time that holders of UDRs associated with the Linden VFT facility” are in compliance with Section 5.12.2.1 requirements to sell ICAP to New York.²⁴ The NYISO, however, does not provide any explanation *how* the UDR holders associated with the Linden VFT line have satisfied this requirement.

No party to this proceeding has contested the fact that capacity exports from PJM that use UDRs must provide firm service over two segments. No party has contested the fact that Linden VFT and HTP have non-firm service over the second segment, post-Conversion. In fact, as noted *supra*, Linden VFT has repeatedly emphasized these points in its pleadings in various proceedings to argue the nature of its service has changed post-Conversion. In the face of the evidence provided by Mr. Younger in his Affidavit, the NYISO provides no explanation or evidence as to how the non-firm service Linden VFT now possesses over the second segment from the Linden bus to the NYISO border will *not* be curtailed by PJM for reliability or any

²³ NYISO Answer at 5–6.

²⁴ *Id.* at 6.

other operational means. And, in the face of PJM's definitive statement in its response that it gave *no assurances* that Linden VFT could continue its ICAP sales to New York, the NYISO's reliance on its "current understanding and its discussions with PJM" no longer holds water. Indeed, the evidence in this proceeding only further begs the question how the NYISO could possibly reach the conclusion that *energy service* backed by *non-firm rights* constitutes ICAP that is not curtailable. The NYISO also asserts that Linden VFT has used this right since 2010.²⁵ Once again, the NYISO has ignored the fact that, post-Conversion, the nature of those rights has changed.

Linden VFT similarly provides only a conclusory statement that the NYISO's interpretation of its capacity import rules has been "done correctly and consistently with its Tariff."²⁶ This statement is directly at odds with its own pleadings, which acknowledged that conversion of Firm TWRs to Non-Firm TWRs allows PJM to curtail its service. Linden VFT's own expert testified to the Commission that "if PJM operators were faced with a problem on the system, they would likely curtail Linden VFT's flows prior to shedding a transmission Zone's load (and have, in fact, done so in the past)."²⁷ This statement by Linden VFT alone shows that deliveries of capacity across Linden VFT can no longer meet the NYISO tariff requirement that such deliveries must ensure that they "will not be recalled or curtailed by an External Control Area to satisfy its own Control Area Loads." Linden VFT cannot have its cake in the Linden

²⁵ *Id.* at 7. Along these same lines, the NYISO argues that IPPNY failed to provide evidence of capacity market price suppression either before Linden VFT relinquished its Firm TWRs or post-Conversion. IPPNY is not challenging Linden VFT's capacity sales pre-Conversion. As to the latter time period, the NYISO's point is specious. As Mr. Younger demonstrated, allowing capacity sales to occur that are not authorized directly results in the suppression of capacity prices, which, in this case, is occurring across all NYISO capacity markets.

²⁶ Linden VFT Answer at 15.

²⁷ See Docket No. EL15-67-000, *Linden VFT, LLC v. PJM Interconnection, L.L.C.*, Affidavit of John J. Marczewski ¶ 17 (attached to Linden VFT Answer). Linden VFT reiterated the same point in the Linden VFT Proceeding. See Linden Non-Firm TWR Answer at 5.

VFT Proceeding by being permitted to avoid RTEP costs and then eat it too in this proceeding by being permitted to continue its ICAP sales.

The NYISO's and Linden VFT's positions are even more troubling in light of PJM's statement in its answer to the IPPNY Comments that it provided no assurances to the NYISO that Linden VFT or HTP could continue selling ICAP to New York post-Conversion.²⁸ PJM stated that it informed "the NYISO that if Linden VFT secured long-term firm Point-to-Point transmission out service to deliver energy to the receipt of the Linden VFT Facility, the firm service" could be subject to the same curtailment priority "of other firm transmission service reservations."²⁹ However, PJM's statement only addresses the first segment of service. As explained in the IPPNY Comments and the Linden VFT Answer, there are two separate segments of transmission services that are required to deliver energy and ICAP from PJM to New York over a merchant transmission line.³⁰ First, Firm Point-to-Point service is required to deliver energy and ICAP to the receipt point of the line on the PJM side. Second, Firm TWRs are required to deliver energy and ICAP over the line from the receipt point to New York.

PJM's statement that long-term firm Point-to-Point transmission out service to deliver energy to the receipt of the Linden VFT facility will be subject to the same curtailment priority of other firm transmission service reservations solely addresses the first segment, transmission service to the receipt point. PJM said nothing with respect to the second required transmission

²⁸ PJM Response at 2.

²⁹ *Id.*

³⁰ IPPNY Comments at 12–13; Linden VFT Answer at 10. Linden VFT claims that "IPPNY mistakenly states that Linden VFT previously argued that the long-term firm transmission service to Linden VFT means that such service would effectively continue Linden VFT's service to New York 'without any responsibility for the RTEP project costs.'" Linden VFT Answer at 10. IPPNY's statement is correct but its citation in footnote 16 of its comments mistakenly referenced comments filed by the IMM in Docket No. EL17-90 on November 13, 2017. IPPNY submitted an errata filing today correcting the citation in footnote 16 to reference the comments that were filed by Linden VFT in Docket No. EL17-90 on November 13, 2017.

service, which, as IPPNY explained in its comments, can only be used to deliver energy, not ICAP, now that Linden VFT and HTP only have Non-Firm TWRs. In accordance with the Commission's orders, these transactions are now subject to curtailment by PJM when it faces reliability or any other operational issues on its system, as acknowledged by Linden VFT.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, IPPNY respectfully requests that the Commission grant its motion for leave to answer in the above-captioned proceeding, reject the arguments in the answers that IPPNY's issues are beyond the scope of the Complaint, and rule that the NYISO must prohibit future ICAP sales over the Linden VFT and HTP lines to New York post-Conversion.

Respectfully submitted,
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Dated: March 16, 2018

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion of Independent Power Producers of New York, Inc. has been served upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Albany, New York, this 16th day of March, 2018.

David B. Johnson
David B. Johnson