

169 FERC ¶ 61,209  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

Independent Power Producers of New York, Inc.

Docket No. EL18-189-000

v.

New York Independent System Operator, Inc.

ORDER DENYING COMPLAINT

(Issued December 19, 2019)

1. On July 31, 2018, the Independent Power Producers of New York, Inc. (IPPNY)<sup>1</sup> filed a complaint (Complaint), pursuant to sections 206 and 306 of the Federal Power Act (FPA)<sup>2</sup> and Rule 206 of the Commission's Rules of Practice and Procedure,<sup>3</sup> against the New York Independent System Operator, Inc. (NYISO). IPPNY alleges that NYISO is failing to comply with its Market Administration and Control Area Services Tariff (Services Tariff) by allowing resources in the PJM Interconnection, L.L.C. (PJM) region to schedule installed capacity withdrawals into NYISO across certain Merchant Transmission Facilities (MTF) that have elected to replace their Firm Transmission

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<sup>1</sup> IPPNY is a not-for-profit trade association representing the independent power industry in New York State, with members involved in the development and operation of electric generating facilities and the marketing and sale of electric power in New York and participating in the energy, capacity, and ancillary services markets in both the New York Independent System Operator, Inc. and PJM Interconnection, L.L.C. regions. Complaint at 26.

<sup>2</sup> 16 U.S.C. §§ 824e, 825e (2018).

<sup>3</sup> 18 C.F.R. § 385.206 (2019).

Withdrawal Rights<sup>4</sup> with Non-Firm Transmission Withdrawal Rights.<sup>5</sup> In this order, we deny the Complaint.

## I. Background

2. Linden VFT, LLC (Linden) and Hudson Transmission Partners, LLC (Hudson) are owners of MTFs that interconnect the transmission systems of PJM and NYISO.<sup>6</sup> Linden owns a controllable MTF that connects the PJM transmission system at the Linden switching station in Linden, New Jersey, to the Goethals substation in Staten Island, New York, which is owned and operated by Consolidated Edison Company of New York, Inc. (Con Edison).<sup>7</sup> Hudson owns a controllable, high-voltage, direct current MTF that connects the PJM transmission system at Public Service Electric and Gas Company's (PSEG) Bergen substation in Ridgefield, New Jersey, to the NYISO operating system at Con Edison's West 49th Street substation in New York City.<sup>8</sup> Both Linden and Hudson are under the operational control of PJM.<sup>9</sup>

3. On December 15, 2017, the Commission determined that Linden and Hudson had the right to convert their Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights.<sup>10</sup> Subsequently, Linden acquired Firm Point-to-Point

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<sup>4</sup> Firm Transmission Withdrawal Rights include the rights to schedule energy and capacity withdrawals. PJM, Intra-PJM Tariffs, OATT, E-F, OATT Definitions (22.0.0), § 1.

<sup>5</sup> Non-Firm Transmission Withdrawal Rights include the rights to schedule energy withdrawals. *Id.*

<sup>6</sup> Complaint at 4.

<sup>7</sup> *Id.* at 4-5.

<sup>8</sup> *Id.*

<sup>9</sup> Complaint, Ex. B, Piascik Aff. ¶ 8.

<sup>10</sup> See *Linden VFT, LLC v. Pub. Serv. Elec. & Gas Co.*, 161 FERC ¶ 61,264 (2017) (Linden Order); *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,262 (2017) (Hudson Order); see also *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,201 (2018) (accepting proposed revisions to Linden's Interconnection Service Agreement, effective December 31, 2017, to reflect the conversion of Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights); *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,200 (2018) (accepting proposed revisions to Hudson's Interconnection Service

Transmission Service on the PJM system to its point of interconnection with the PJM system.<sup>11</sup>

## II. IPPNY Complaint

4. IPPNY requests that the Commission direct NYISO to comply with its Services Tariff and prohibit resources in PJM from scheduling installed capacity withdrawals into NYISO across MTFs with Non-Firm Transmission Withdrawal Rights.<sup>12</sup> IPPNY contends that section 5.12.2.1 of the Services Tariff requires that external resources that seek to use MTFs to deliver capacity from PJM to NYISO must demonstrate deliverability across two separate and distinct paths. IPPNY identifies the first path as firm transmission service over the PJM system to the point of interconnection, transmission service, and the second path as service over the MTF facility, facility service.<sup>13</sup> In Linden's case,<sup>14</sup> IPPNY asserts that the transmission service runs from injection points in PJM to the PJM side of the Linden MTF, and facility service is transmission service on the MTF to NYISO at the New York border.<sup>15</sup> IPPNY asserts that, while Linden has obtained Firm Point-to-Point transmission service within PJM, Linden reduced its facility service to non-firm, energy-only service when it converted its Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights. IPPNY argues that, with Linden's conversion of its Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights, entities attempting to utilize the

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Agreement, effective December 15, 2017, to reflect the conversion of Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights).

<sup>11</sup> Complaint, Ex. A, Younger Aff. ¶ 25. Firm Point-to-Point Transmission Service is defined as "Transmission service under the Tariff that is reserved and/or scheduled between specified Points of Receipt and Delivery pursuant to Tariff, Part II." PJM, Intra-PJM Tariffs, OATT, E-F, OATT Definitions (22.0.0), § 1.

<sup>12</sup> Complaint at 1-2.

<sup>13</sup> IPPNY refers to transmission service from within PJM to the point of interconnection with the MTF as Path 1, and facility service on the MTF as Path 2. *Id.* at 5.

<sup>14</sup> As noted, Linden has obtained Firm Point-to-Point transmission service over the PJM transmission system. Therefore, the Complaint focuses on the Linden MTF, but the relief requested would apply to any MTF in PJM seeking to sell external capacity into NYISO from PJM without Firm Transmission Withdrawal Rights that obtains Firm Point-to Point transmission service.

<sup>15</sup> Complaint at 5.

MTFs to sell capacity into NYISO are prohibited from doing so by PJM's Open Access Transmission Tariff (OATT).<sup>16</sup>

5. In support of its argument, IPPNY points to the PJM OATT, and alleges that only Firm Transmission Withdrawal Rights in PJM confer the right to schedule capacity withdrawals. Specifically, IPPNY argues that the PJM OATT defines Firm Transmission Withdrawal Rights as “the rights to schedule energy *and* capacity withdrawals” and confer “rights similar to those under Firm Point-to-Point Transmission Service.”<sup>17</sup> On the other hand, IPPNY observes that the PJM OATT defines Non-Firm Transmission Withdrawal Rights as “the rights to schedule energy withdrawals” and confer “rights similar to those under Non-Firm Point-to-Point Transmission Service.”<sup>18</sup>

6. IPPNY argues that the definitions for firm and non-firm reservations contained in Schedules 16 and 17 of the PJM OATT capture the same distinction as in the definitions of Firm Transmission Withdrawal Rights and Non-Firm Transmission Withdrawal Rights (i.e., a firm reservation is defined as a right to schedule energy *and* capacity, whereas a non-firm reservation only provides for the scheduling of energy).<sup>19</sup> As a result, since Linden elected to rely solely on Non-Firm Transmission Withdrawal Rights, IPPNY asserts that entities attempting to utilize the Linden MTF to export capacity to NYISO fail the threshold eligibility requirement, such that NYISO has no legitimate basis to be satisfied that transactions over the Linden MTF “will not be recalled or curtailed by an External Control Area to satisfy its own Control Area Loads.”<sup>20</sup> Moreover, IPPNY argues that under the PJM OATT, resources in PJM cannot deliver capacity to NYISO

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<sup>16</sup> *Id.* at 11-13.

<sup>17</sup> *See supra* note 11 (defining Firm Point-to-Point Transmission Service in the PJM OATT).

<sup>18</sup> 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.” PJM, Intra-PJM Tariffs, OATT, E-F, OATT Definitions (22.0.0), § 1.

<sup>19</sup> Complaint at 12-13 (citing PJM, Intra-PJM Tariffs, OATT, Schedule 16 (1.0.0), §§ 1.1.1, 1.1.2; PJM, Intra-PJM Tariffs, OATT, Schedule 17 (1.0.0), §§ 1.1.1, 1.1.2).

<sup>20</sup> *Id.* at 13-14 (quoting NYISO, NYISO Tariffs, Services Tariff, § 5.12.2.1 (23.0.0)).

over the Linden or Hudson MTFs because Non-Firm Transmission Withdrawal Rights cannot be used to export capacity.<sup>21</sup>

7. IPPNY also claims that Commission precedent supports its argument that allowing capacity withdrawals over the Linden and Hudson MTFs is a violation of the PJM OATT, and that, as a result, NYISO is not meeting the requirements of its Services Tariff to the extent it is allowing installed capacity withdrawals across those MTFs to participate in its markets.<sup>22</sup> According to IPPNY, the Commission has recognized that, with the conversion of Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights, PJM, as the operator of the fully controllable MTFs, “can shut off flows if those flows jeopardize or cause operational problems in New Jersey or elsewhere on the PJM system.”<sup>23</sup> IPPNY states that the Commission found that, when Linden converted to Non-Firm Transmission Withdrawal Rights, the withdrawal service could be curtailed “for reliability and economic reasons, irrespective of the priority of any upstream firm transmission service.”<sup>24</sup> IPPNY also states that the Commission specified that Non-Firm Transmission Withdrawal Rights are subject to the North American Electric Reliability Corporation (NERC) Transmission Loading Relief (TLR) level 3 curtailment priority, as opposed to Firm Transmission Withdrawal Rights, which are subject to TLR level 5 curtailment priority.<sup>25</sup>

8. Furthermore, IPPNY contends that NYISO’s determination that external capacity may rely on Non-Firm Transmission Withdrawal Rights over the MTFs to supply capacity to NYISO jeopardizes system resilience and reliability and causes significant financial harm to the NYISO and PJM markets. Specifically, IPPNY alleges that prices in NYISO’s New York City capacity zone are being artificially suppressed by the introduction of this external capacity, and PJM is experiencing artificially higher prices because supply that should be available within its system is bidding into NYISO’s

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<sup>21</sup> *Id.* at 18.

<sup>22</sup> *Id.* (citing *N.J. Bd. of Pub. Utils. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,139 (2018) (NJBPU Order); Linden Order, 161 FERC ¶ 61,264; Hudson Order, 161 FERC ¶ 61,262).

<sup>23</sup> *Id.* at 7 (quoting Linden Order, 161 FERC ¶ 61,264 at P 25).

<sup>24</sup> *Id.* at 18-19 (quoting NJBPU Order, 163 FERC ¶ 61,139 at P 59).

<sup>25</sup> *Id.* at 9 (citing NJBPU Order, 163 FERC ¶ 61,139 at P 59 n.100). TLR procedures dictate curtailment procedures on a scale of zero to six, with lower values being curtailed first. For example, a TLR level 5 event would result in curtailment of long-term firm transmission service, whereas a TLR level 3 event would result in the curtailment of non-firm transactions.

capacity market rather than PJM's capacity market.<sup>26</sup> In addition, IPPNY asserts that treating MTFs as if they can still guarantee non-interruptible service does not send the appropriate signal for necessary investment in resilience and reliability in NYISO.<sup>27</sup>

### **III. Notice, NYISO's Answer, and Responsive Pleadings**

9. Notice of the Complaint was published in the *Federal Register*, 83 Fed. Reg. 39,084 (2018), with NYISO's answer and any interventions, comments, or protests due on or before August 20, 2018.

10. Notices of intervention were filed by the New Jersey Board of Public Utilities (NJBP) and the New York State Public Service Commission. Timely motions to intervene were filed by American Electric Power Service Corporation; New Jersey Division of Rate Counsel; Consolidated Edison Energy, Inc.; Linden; City of New York; Hudson; Neptune Regional Transmission System, LLC; Calpine Corporation; Roseton Generating LLC; Monitoring Analytics, LLC, as the independent market monitor for PJM (PJM IMM); Helix Ravenswood, LLC (Helix Ravenswood); PJM; FirstEnergy Service Company; NRG Power Marketing LLC and GenOn Energy Management, LLC; Long Island Power Authority and its wholly-owned subsidiary Long Island Lighting Company d/b/a Power Supply Long Island; Direct Energy;<sup>28</sup> New York Power Authority (NYPA); Public Power Association of New Jersey; ITC Lake Erie Connector, LLC; PSEG;<sup>29</sup> Entergy Nuclear Power Marketing, LLC; Electric Power Supply Association; Indicated New York Transmission Owners;<sup>30</sup> and Astoria Generating Company, L.P.

11. On August 20, 2018, NYISO filed an answer to the Complaint.

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<sup>26</sup> *Id.* at 20-23.

<sup>27</sup> *Id.* at 23.

<sup>28</sup> Direct Energy includes Direct Energy – USA; Direct Energy Business Marketing, LLC; and Direct Energy Business, LLC.

<sup>29</sup> PSEG includes PSEG Companies, PSEG Energy Resources & Trade LLC, PSEG Power LLC, PSEG Fossil LLC, and PSEG Nuclear LLC.

<sup>30</sup> Indicated New York Transmission Owners include Orange and Rockland Utilities, Inc.; New York Electric & Gas Corporation; Consolidated Edison Company of New York, Inc.; Central Hudson Gas & Electric Corporation; Rochester Gas and Electric Corporation; and Niagara Mohawk Power Corporation.

12. Linden, and Hudson and NYPA (jointly, Hudson/NYPA) filed protests. The PJM IMM, New Jersey Parties,<sup>31</sup> and Helix Ravenswood filed comments supporting the Complaint.

13. On September 4, 2018, Hudson filed an answer to the PJM IMM's and New Jersey Parties' comments, and Linden filed an answer to Helix Ravenswood's comments.

14. On September 5, 2018, IPPNY filed an answer to NYISO's August 20, 2018 answer and to the protests, and PJM filed an answer to the protests and to New Jersey Parties' comments.

15. On September 10, 2018, PJM filed an answer to Hudson's September 4, 2018 answer.

16. On September 20, 2018, Hudson/NYPA and Linden filed answers to IPPNY's September 5, 2018 answer, and NYISO filed an answer to IPPNY's September 5, 2018 answer and PJM's September 10, 2018 answer.

**A. NYISO's August 20, 2018 Answer**

17. NYISO argues that IPPNY incorrectly assumes that transfers along the Linden and Hudson MTFs can be curtailed on the same basis as non-firm transmission service within PJM.<sup>32</sup> According to NYISO, all reliability coordinators in the eastern interconnection follow NERC's TLR procedures and apply them using the NERC interchange distribution calculator (IDC).<sup>33</sup> NYISO states that, based on its review of the NERC TLR procedures, testing of the NERC IDC model, examination of the NYISO-PJM operating protocols, and discussions confirming its understanding with PJM, transmission service along the Linden and Hudson MTFs will be curtailed only during a TLR level 5 event.<sup>34</sup>

18. NYISO disputes IPPNY's argument that the Services Tariff requires external capacity to have both firm transmission service to the MTF and firm service over the

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<sup>31</sup> New Jersey Parties include NJBPU, New Jersey Division of Rate Counsel, and Public Power Association of New Jersey.

<sup>32</sup> NYISO August 20, 2018 Answer at 2.

<sup>33</sup> *Id.* The IDC is an analytical tool developed by EIDSN, Inc., a consortium of Eastern and Quebec Interconnections used to implement the NERC TLR procedures for the eastern interconnection. Some parties refer to this calculator as the NERC IDC.

<sup>34</sup> *Id.* at 3-4.

MTF.<sup>35</sup> NYISO contends that section 5.12.2.1 of its Services Tariff is fundamentally about reliability, i.e., whether capacity will in fact be delivered to the New York Control Area and under what circumstances an external control area will curtail it.<sup>36</sup> As such, NYISO asserts that the Services Tariff does not require firm service over both paths if having firm service over one is sufficient to ensure deliverability. NYISO states that, because the NERC TLR procedures only look to transmission service and not to facility service, the firmness of transmission service is controlling, and NYISO need not consider the firmness of facility service.<sup>37</sup> NYISO contends that, under section 5.12.2.1 of the Services Tariff, external capacity resources may qualify to supply installed capacity in NYISO if they demonstrate “to the satisfaction of the ISO” that their capacity is deliverable to the New York interface associated with an MTF.<sup>38</sup> Specifically, NYISO states that capacity exports to the NYISO over the MTF “would be curtailed based on the firmness of the “[transmission service]” not based on the firmness of the “facility service”.”<sup>39</sup> NYISO states that it is satisfied that, given its understanding of how the TLR procedures apply to the Linden and Hudson MTFs, capacity imports across those MTFs continue to be permissible if they are supported by long-term firm transmission service, notwithstanding the conversion of Linden’s and Hudson’s Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights.<sup>40</sup>

19. Curtailment priority under the NRC TLR procedures, according to NYISO, is determined solely by the type of transmission service held on the portion of the PJM system from the point at which the resource exporting into NYISO delivers its output onto the PJM system to the point at which PJM’s system interconnects with an MTF per the NERC TLR procedures. Thus, NYISO contends that if an exporter has Firm Point-to-Point transmission service to the point of interconnection with the MTF, it is no different than long-term firm transmission reservations, which would only be curtailed as a result of a TLR level 5 event.<sup>41</sup>

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<sup>35</sup> *Id.* at 13.

<sup>36</sup> *Id.* at 22.

<sup>37</sup> *Id.* at 14.

<sup>38</sup> *Id.* at 7.

<sup>39</sup> *Id.* at 14.

<sup>40</sup> *Id.* at 14-15.

<sup>41</sup> *Id.* at 15.



20. In support of its understanding, NYISO describes the modeling of MTFs in the NERC IDC, contending that the “facility service” portion of the interchange transaction has no impact on any system constraints and is not considered when PJM follows the NERC TLR procedures.<sup>42</sup> Accordingly, NYISO asserts that it understands that PJM will not take into account the facility service because the Linden and Hudson MTFs are controllable and do not affect power flows from generators in PJM to PJM load.<sup>43</sup> NYISO therefore asserts that it reasonably concluded that the conversions of Linden’s and Hudson’s Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights do not impact the deliverability of external capacity transfers into NYISO across those MTFs.<sup>44</sup>

21. NYISO also argues that the Commission precedent relied on by IPPNY is not controlling here because the Commission did not address the issues presented here,<sup>45</sup> and concludes that the language in the Commission precedent does not implicate NYISO’s interpretation of section 5.12.2.1 of the Services Tariff.<sup>46</sup> Lastly, NYISO argues that IPPNY’s alleged harm is exaggerated because it is based on the premise that capacity imports over the Linden and Hudson MTFs are not authorized.<sup>47</sup> NYISO argues that, in contrast, NYISO consumers would be harmed by the resulting higher capacity prices if capacity imports over the Linden and Hudson MTFs were not allowed even though they

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<sup>42</sup> *Id.* (citing NYISO August 20, 2018 Answer, Attach. II, Markham Aff. ¶ 20).

<sup>43</sup> *Id.* NYISO states that the controllable nature of the MTF is consistent with the IDC’s modeling of a transmission distribution factor of zero for the MTF, and that PJM has confirmed NYISO’s curtailment analysis. *Id.* at 15-17.

<sup>44</sup> *Id.* at 13.

<sup>45</sup> *Id.* at 10. Specifically, NYISO states that in the NJBPU Order, the Commission did not grant the relief sought by IPPNY here, but instead found that “[w]hether parties holding upstream firm transmission service and Non-Firm Transmission Withdrawal Rights can receive capacity payments from the NYISO can be determined only by examination of the NYISO tariff and is outside the scope of this complaint.” *Id.* (quoting NJBPU Order, 163 FERC ¶ 61,139 at P 50).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 21-23.

are deliverable.<sup>48</sup> Moreover, NYISO adds that interregional connections improve resilience.<sup>49</sup>

## **B. Comments and Protests**

22. Linden argues that NYISO has discretion to determine what qualifies as capacity in New York and explains the requirements that generation resources must demonstrate to qualify as said capacity.<sup>50</sup> Linden further explains, like NYISO, that the proper way to evaluate NYISO's determination is to consider the applicable NERC and NAESB standards and processes that govern how and when control area operators decide to curtail transmission service consistent with applicable TLR procedures, which do not consider the firmness of transmission withdrawal rights.<sup>51</sup> Linden states that, as long as it has long-term Firm Point-to-Point transmission service for its customers in PJM to its facility, PJM would not need to choose between its native load and service over the Linden facility.<sup>52</sup> Linden argues that IPPNY's interpretations of PJM's OATT are irrelevant to answer whether capacity can be sold into NYISO.<sup>53</sup>

23. In a joint protest, Hudson/NYPA argue that IPPNY has failed to demonstrate that NYISO has misapplied its Services Tariff by permitting MTFs without Firm Transmission Withdrawal Rights to sell capacity into NYISO.<sup>54</sup> Hudson/NYPA argue that NYISO has done the necessary detailed review under its Services Tariff to reasonably conclude that service on an MTF combined with long-term Firm Point-to-Point transmission service to the MTF meets the minimum deliverability requirements to sell capacity.<sup>55</sup>

24. The PJM IMM does not take a position on NYISO's rules, but states that PJM's OATT does not permit PJM to export capacity over the Linden and Hudson MTFs as

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<sup>48</sup> *Id.* at 21.

<sup>49</sup> *Id.* at 23.

<sup>50</sup> Linden Protest at 6-9.

<sup>51</sup> *Id.* at 9-11.

<sup>52</sup> *Id.* at 11-12.

<sup>53</sup> *Id.* at 13-15.

<sup>54</sup> Hudson/NYPA Protest at 7-9.

<sup>55</sup> *Id.* at 9.

those lines are currently defined.<sup>56</sup> The PJM IMM points to the definitions for Firm- and Non-Firm Transmission Withdrawal Rights in the PJM OATT to support its contention that capacity exports are not permitted to be scheduled across MTFs that only hold Non-Firm Transmission Withdrawal Rights.<sup>57</sup> The PJM IMM argues that capacity exports have an impact on PJM's capacity market in that sellers may offer capacity exports based on the opportunity cost of such sellers, which in turn has a significant impact on other sellers and buyers in PJM.<sup>58</sup>

25. The New Jersey Parties argue that NYISO cannot rely on assurances from PJM that are contrary to Commission guidance regarding the curtailment and interruption priority of Linden's service.<sup>59</sup> The New Jersey Parties assert that Firm Transmission Withdrawal Rights confer the right to schedule energy and capacity withdrawals from PJM and are similar to Firm Point-to-Point transmission service, and that Non-Firm Transmission Withdrawal Rights are interruptible and subject to curtailment.<sup>60</sup> NYISO's treatment of the Linden facility, according to the New Jersey Parties, effectively restores the Linden facility to its prior level of service before converting to Non-Firm Transmission Withdrawal Rights.<sup>61</sup> The New Jersey Parties explain that this harms ratepayers in PJM because Linden is receiving a free ride on the transmission system upgrades and it should be required to pay its fair share of these upgrades.<sup>62</sup>

26. Similarly, Helix Ravenswood argues that NYISO's erroneous interpretation of the Services Tariff is unjust and unreasonable, and negatively impacts reliability, resilience, and competitive wholesale markets.<sup>63</sup> Helix Ravenswood argues that the Commission needs to address the apparent inconsistency and lack of transparency that currently exists

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<sup>56</sup> PJM IMM Comments at 2.

<sup>57</sup> *Id.* at 3.

<sup>58</sup> *Id.*

<sup>59</sup> New Jersey Parties Comments at 2-3 (citing NJBPU Order, 163 FERC ¶ 61,139 at P 59).

<sup>60</sup> *Id.* at 3 (citing NJBPU Order, 163 FERC ¶ 61,139 at P 59).

<sup>61</sup> *Id.* at 4.

<sup>62</sup> *Id.* at 6.

<sup>63</sup> Helix Ravenswood Comments at 2.

between NYISO and PJM.<sup>64</sup> Helix Ravenswood argues that NYISO is not owed unfettered discretion to determine what counts as capacity in its service territory, and any decisions should be supported by extensive probabilistic planning metrics over a long-term basis.<sup>65</sup>

**C. Additional Answers**

27. Hudson responds to the New Jersey Parties, arguing that customers of the Linden and Hudson MTFs selling capacity into NYISO are subject to regional transmission expansion plan costs under Schedule 12 of the PJM OATT because they take long-term Firm Point-to-Point transmission service from PJM.<sup>66</sup> Linden argues that the Commission should reject the New Jersey Parties' attempt to re-litigate the NJBPU's denied complaint as beyond the scope of this proceeding.<sup>67</sup> Linden also argues that the PJM IMM's comments should be dismissed because they fail to interpret the Services Tariff, which is the only document that defines capacity in NYISO.<sup>68</sup> Lastly, Linden argues that Helix Ravenswood's comments ignore the thorough and detailed analysis that NYISO undertook to determine that the capacity was deliverable and, accordingly, the comments should be dismissed.<sup>69</sup>

28. PJM responds to the protests, explaining that the priority of the transmission withdrawal rights on an MTF determines the priority of transmission service reservations available on the MTF.<sup>70</sup> For example, PJM states that, as a result of converting all of its Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights, only non-firm Linden reservations may be used to schedule transactions on the Linden MTF.<sup>71</sup> PJM further responds to the New Jersey Parties by stating that PJM would not curtail load in PJM prior to the curtailment of interchange transactions, but, instead,

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<sup>64</sup> *Id.* at 2-3.

<sup>65</sup> *Id.* at 6-7.

<sup>66</sup> Hudson September 4, 2018 Answer at 2.

<sup>67</sup> Linden September 4, 2018 Answer at 3-4.

<sup>68</sup> *Id.* at 4-5.

<sup>69</sup> *Id.* at 5-6.

<sup>70</sup> PJM September 5, 2018 Answer at 2-3.

<sup>71</sup> *Id.* at 3.

would concurrently curtail Firm Point-to-Point transmission service transactions and PJM load that negatively affect a constrained transmission facility on a *pro rata* basis.<sup>72</sup>

29. IPPNY responds that the Commission should reject NYISO's, Linden's, and Hudson/NYPA's arguments because they contradict previous Commission orders.<sup>73</sup> IPPNY argues that the Commission should reject arguments that MTFs without Firm Transmission Withdrawal Rights are eligible to deliver capacity into NYISO based on NERC TLR procedures and the PJM OATT because they misinterpret NERC Standards and the PJM OATT by selectively quoting favorable text.<sup>74</sup> IPPNY once again points to the definitions in the PJM OATT for Firm and Non-Firm Transmission Withdrawal Rights and firm and non-firm Linden reservations.<sup>75</sup>

30. PJM responds that neither Hudson nor Linden is currently subject to regional transmission expansion plan costs in PJM since converting all of their Firm Transmission Withdrawal Rights on their respective MTFs to Non-Firm Transmission Withdrawal Rights.<sup>76</sup> Moreover, PJM supports and agrees with the concerns raised by the New Jersey Parties relating to the inequity of the cost allocation approach among point-to-point transmission service, Firm Transmission Withdrawal Rights, and network native load transmission customers.<sup>77</sup>

31. Hudson/NYPA respond to PJM, arguing that they support NYISO's determination that capacity transactions over an MTF using long-term Firm Point-to-Point transmission service are subject to the same curtailment priority as PJM's own load.<sup>78</sup> Hudson/NYPA further argue that the key distinction between Firm Transmission Withdrawal Rights and Non-Firm Transmission Withdrawal Rights is PJM's planning obligation, and that NYPA takes the acknowledged risk that, in the long run, PJM's system planning might not allow for Firm Point-to-Point transmission service to the point of receipt of the Hudson MTF.<sup>79</sup>

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<sup>72</sup> *Id.* at 3-4.

<sup>73</sup> IPPNY September 5, 2018 Answer at 5.

<sup>74</sup> *Id.* at 29-31.

<sup>75</sup> *Id.* at 31-32.

<sup>76</sup> PJM September 10, 2018 Answer at 2.

<sup>77</sup> *Id.*

<sup>78</sup> Hudson/NYPA September 20, 2018 Answer at 2-4.

<sup>79</sup> *Id.* at 4.

However, Hudson/NYPA again allege that the firmness of the transmission withdrawal rights does not affect the firmness of the transmission service over the MTF.

32. Linden contends that none of the Commission orders cited by IPPNY impose any limitation on NYISO in determining capacity under the NYISO Services Tariff. Linden further argues that PJM confirms NYISO's statements that Linden's long-term Firm Point-to-Point transmission service will be curtailed based on TLR level 5, and not TLR level 3.<sup>80</sup> Additionally, Linden argues that IPPNY is misinterpreting the PJM OATT to the extent that IPPNY believes that transmission withdrawal rights dictate curtailment priority.<sup>81</sup>

33. NYISO responds that IPPNY's assertion that the "MTF customers are authorized to only transmit energy, not capacity because they have only [non-firm transmission withdrawal rights]" is wrong.<sup>82</sup> NYISO argues that the Linden and Hudson MTFs continue to be eligible to support capacity imports under section 5.12.1.1 of the Services Tariff based on NYISO's understanding of the NERC TLR procedures, as validated by NYISO's testing using the NERC IDC and supported by the joint PJM-NYISO Local Operating Procedures.<sup>83</sup> Furthermore, NYISO claims this was corroborated in its discussions with PJM.<sup>84</sup>

34. NYISO also argues that IPPNY does not accurately describe the application of the NERC TLR procedures to the Linden and Hudson MTFs and IPPNY's understanding is inconsistent with NYISO's, and presumably PJM's, understanding of the NERC TLR procedures.<sup>85</sup> Specifically, NYISO claims that a variable frequency transformer (such as Linden), like a high-voltage direct current device (such as Hudson), is continuously controllable and not affected by the conditions of the rest of the system and is therefore correctly assigned a transmission distribution factor of zero in the NERC IDC.<sup>86</sup> NYISO

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<sup>80</sup> Linden September 20, 2018 Answer at 8 (citing PJM September 5, 2018 Answer at 4).

<sup>81</sup> *Id.* at 10-12.

<sup>82</sup> NYISO September 20, 2018 Answer at 4 (citing IPPNY September 5, 2018 Answer, Ex. A, Piascik Aff. ¶ 5).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* (citing PJM September 4, 2018 Answer at 4).

<sup>85</sup> *Id.* at 11.

<sup>86</sup> *Id.* at 12-13.

further argues that PJM's statements in this proceeding are consistent with prior NYISO-PJM discussions and the common understanding that the firmness of the transmission withdrawal rights are irrelevant under the NERC TLR procedures.<sup>87</sup> NYISO also claims that PJM's statements are consistent with NYISO's understanding that firm transmission service from points within PJM to PJM's interfaces with the Linden and Hudson MTFs have curtailment priority as native load in PJM, and support NYISO's determination that the Linden and Hudson MTFs are eligible to support capacity imports into NYISO.<sup>88</sup>

35. NYISO argues that IPPNY should not be allowed to override NYISO's independent operational judgement.<sup>89</sup> Furthermore, NYISO claims that there is no reliability risk to allow capacity imports over the Linden and Hudson MTFs because those facilities using the MTFs have the same curtailment priority as other firm transactions, as long as they have long-term Firm Point-to-Point transmission service in PJM.<sup>90</sup> NYISO also argues that IPPNY's requested relief would shield IPPNY's members from competition from imports from PJM and inflate capacity prices.<sup>91</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

36. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>92</sup> the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

37. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority.<sup>93</sup> We accept all answers filed in this proceeding because they provided information that assisted us in our decision-making process.

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<sup>87</sup> *Id.* at 15.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 16.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> 18 C.F.R. § 385.214 (2019).

<sup>93</sup> *Id.* § 385.213(a)(2).

**B. Substantive Matters**

38. We find that IPPNY has failed to satisfy its burden under section 206 of the FPA to demonstrate that NYISO has acted in an unjust or unreasonable manner in administering the Services Tariff. We therefore deny the Complaint.

39. NYISO's Services Tariff states:

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 Control Area (NYCA)]; in the case of an entity using a[n Unforced Capacity Deliverability Right (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; . . .* 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.<sup>94</sup>

40. NYISO's Services Tariff does not require that MTFs, as external capacity suppliers, have Firm Transmission Withdrawal Rights in the external control area to qualify to supply capacity to NYISO. Rather, the Services Tariff requires only that the external capacity supplier show to NYISO's "satisfaction" that its capacity is deliverable to NYISO and "will not be recalled or curtailed."<sup>95</sup> IPPNY has failed to satisfy its burden of showing that NYISO acted unjustly and unreasonably in determining that Linden's transmission service will not be curtailed. Based on its review of the NERC TLR procedures and the nature of the external capacity transmission service, NYISO determined that firm transmission service to the Linden or Hudson MTF is sufficient to satisfy the requirement that external capacity be deliverable and will not be recalled or curtailed by an external control area (in this case, PJM). We find that this analysis is reasonable and therefore that NYISO has complied with the requirements of the Services Tariff that governs installed capacity in NYISO.

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<sup>94</sup> NYISO, NYISO Tariffs, Services Tariff, Additional Provisions Applicable to External Installed Capacity Suppliers, § 5.12.2.1 (23.0.0) (emphasis added).

<sup>95</sup> *Id.*



41. As NYISO explains, reliability coordinators in the eastern interconnection follow the NERC TLR procedures and use the IDC in assigning curtailment priority of external transactions under those procedures. NYISO made the determination that, if Linden or its customer acquired firm transmission service from PJM generation sources to the interconnection with the Linden MTF, external capacity suppliers with facility service over the MTF to serve NYISO's load would be curtailed only at TLR level 5. NYISO's evaluation was based on its review of IDC documentation indicating that, because the flow over the MTFs is controllable, the portion of the transmission path over the MTF has no impact on any system constraint and is not considered when PJM follows the NERC TLR procedures.<sup>96</sup> IPPNY contests NYISO's evaluation, contending that NYISO is incorrectly modeling the Linden MTF.<sup>97</sup> However, we find that the important characteristic for the IDC curtailment analysis in this case is that the Linden MTF is controllable. IPPNY does not dispute that the Linden MTF is controllable but rather suggests a different approach to conducting the IDC curtailment analysis.<sup>98</sup> Accordingly, we find that IPPNY has failed to show that NYISO's determination was unreasonable or inconsistent with its Services Tariff.

42. Contrary to IPPNY's assertion, the fact that the Commission made statements in connection with the conversion of Linden's and Hudson's Firm Transmission Withdrawal Rights to Non-Firm Transmission Withdrawal Rights acknowledging the possibility that PJM could curtail service on the Linden and Hudson MTFs does not render NYISO's determination as to the Linden and Hudson MTFs unreasonable.<sup>99</sup> The Commission correctly recognized in those prior orders that the PJM OATT provides that a MTF with Non-Firm Transmission Withdrawal Rights may be curtailed pursuant to TLR level 3. However, the Commission also recognized that "[w]hether parties holding upstream firm transmission service and Non-Firm Transmission Withdrawal Rights can receive capacity

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<sup>96</sup> See NYISO August 20, 2018 Answer, Attach. II, Markham Aff. ¶¶ 20-21.

<sup>97</sup> IPPNY September 5, 2018 Answer, Ex. A, Piascik Aff. ¶ 24.

<sup>98</sup> NYISO September 20, 2018 Answer at 3, 14; IPPNY September 5, 2018 Answer, Ex. A, Piascik Aff. ¶ 24.

<sup>99</sup> Complaint at 18-19; see Linden Order, 161 FERC ¶ 61,264 at PP 25, 32 (noting that PJM, as the operator of the fully controllable Linden MTF, "can shut off flows if those flows jeopardize or cause operational problems in New Jersey or elsewhere on the PJM system"); NJBPU Order, 163 FERC ¶ 61,139 at P 59 (stating that the withdrawal service could be curtailed "for reliability and economic reasons, irrespective of the priority of any upstream firm transmission service") & n.100 (observing that Non-Firm Transmission Withdrawal Rights are subject to NERC TLR level 3 curtailment priority, as opposed to Firm Transmission Withdrawal Rights, which are subject to TLR level 5 curtailment priority).

payments from the NYISO can be determined only by examination of the NYISO tariff.”<sup>100</sup> Based on our examination of the NYISO Services Tariff here, we deny the Complaint.

43. IPPNY asserts that allowing external capacity across the Linden MTF will suppress prices in the New York City capacity zone. But any price effects of allowing external capacity are the result of normal competitive forces acting within the constraints of the NYISO Services Tariff. Further, we find that arguments related to cost allocation in PJM are beyond the scope of this proceeding, which is limited to whether NYISO is appropriately allowing resources in PJM to schedule installed capacity withdrawals into NYISO across MTFs that have elected to replace their Firm Transmission Withdrawal Rights with Non-Firm Transmission Withdrawal Rights.

The Commission orders:

IPPNY’s Complaint is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>100</sup> *Id.* P 50.