

150 FERC ¶ 61,140
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

TDI USA Holdings Corp.

Docket No. EL15-33-000

v.

New York Independent System Operator, Inc.

ORDER DISMISSING COMPLAINT

(Issued February 26, 2015)

1. On December 16, 2014, TDI USA Holdings Corp. (TDI) filed a complaint against the New York Independent System Operator, Inc. (NYISO) pursuant to sections 206 and 306 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's regulations.² TDI alleges that applying the buyer-side market power mitigation rules (buyer-side mitigation rules) in NYISO's Market Administration and Control Area Services Tariff (Services Tariff) to TDI's Champlain Hudson Express Project (Champlain Hudson) is unjust and unreasonable. TDI seeks a Commission order exempting Champlain Hudson from the mitigation exemption test contained in section 23 of the Services Tariff on a prospective basis. In this order, we dismiss TDI's complaint as moot for the reasons discussed below.

I. Background

A. NYISO's Buyer-Side Mitigation Rules

2. New York State's Installed Capacity (ICAP) market, which NYISO administers, is designed to send appropriate economic signals to investors to ensure there is sufficient capacity available to satisfy New York's peak demand along with its planning reserve

¹ 16 U.S.C. §§ 824e, 825e (2012).

² 18 C.F.R. § 385.206 (2014).

margin. NYISO's ICAP market uses administratively-determined demand curves for each ICAP pricing zone and includes market power mitigation rules in the New York City and G-J Locality zones to prevent the exercise of both buyer and seller market power. These mitigation rules ensure that market clearing capacity prices reflect a competitive outcome even when buyers and sellers may have the ability and incentive to exercise market power.³ The Commission approved NYISO's market power mitigation plan because it would prevent sellers with market power from artificially raising capacity prices and prevent net purchasers from artificially depressing capacity prices.⁴

3. NYISO's buyer-side mitigation rules provide that, unless exempt from mitigation, new capacity resources enter the New York City and G-J Locality markets at a price at or above the applicable offer floor and continue to meet the offer floor until their capacity clears twelve monthly auctions.⁵ A new entrant can be exempted from the offer floor if NYISO determines that it passes either part of the mitigation exemption test.⁶ NYISO's Market Monitoring Unit (MMU) describes the Part A test as "compar[ing] a forecast of capacity prices in the first year of an Examined Facility's operation to the Default Offer Floor, which is 75 percent of the net [cost of new entry (CONE)] of the hypothetical unit modeled in the most recent Demand Curve reset," such that a new entrant is exempted "if the price forecast for the first year is higher than the Default Offer Floor." Under the Part B test, NYISO "compares a forecast of capacity prices in the first three years of an Examined Facility's operation to the net CONE of the Examined Facility," such that a new entrant is exempted "if the price forecast for the three years is higher than the net CONE of the Examined Facility."⁷

4. Since the Commission approved NYISO's buyer-side mitigation tariff provisions, both NYISO and the MMU have proposed a competitive entry exemption to NYISO's mitigation exemption test, but NYISO's stakeholders have not approved the proposed

³ *New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,217, at P 3 (2013).

⁴ *New York Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211, at P 1 (2008), *order on reh'g*, 124 FERC ¶ 61,301 (2008), *order on clarification*, 131 FERC ¶ 61,170 (2010).

⁵ NYISO, Services Tariff, § 23.4.5.7 (9.0.0).

⁶ NYISO, Services Tariff, § 23.4.5.7.2 (9.0.0).

⁷ Potomac Economics, *Assessment of the Buyer-Side Mitigation Exemption Test for the Taylor Biomass Energy Project 2* (Mar. 7, 2014).

changes.⁸ NYISO developed proposed tariff revisions incorporating a competitive entry exemption, which its stakeholders discussed at meetings starting in 2012 until the final vote in 2014. Specifically, NYISO proposed to exempt projects that have “no direct or indirect (i) contracts with, (ii) financial support from, or (iii) in kind support from any NY electric distribution company, Municipal Utility, or any NY state or local governmental entity, including but not limited to Public Authorities.”⁹ On May 28, 2014, the stakeholders voted on NYISO’s proposal,¹⁰ but only thirty-two percent of the sector-weighted vote of the stakeholders supported the proposal, less than the fifty-eight percent support required to enable NYISO to submit the proposal to the Commission pursuant to section 205 of the FPA.¹¹

B. TDI’s Champlain Hudson Project

5. TDI states that it invested in Champlain Hudson in response to the Commission’s support for merchant transmission projects as “expanding competitive generation alternatives for customers.”¹² According to TDI, Champlain Hudson is a proposed 1,000 MW 333-mile underground and underwater high-voltage, direct current (HVDC) controllable merchant transmission facility that will interconnect at the Canada-United States border and deliver low-cost, low-emission power to New York City.¹³ It will be

⁸ See, e.g., Potomac Economics, *2012 State of the Market Report for the New York ISO Markets* 23-24 (Apr. 2013).

⁹ Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric and Gas Corp., Rochester Gas and Electric Corp., and Central Hudson Gas and Electric Corp. December 4, 2014 Complaint (Indicated Transmission Owners Complaint), Exhibit D, NYISO, *Proposed ICAP Buyer-Side Mitigation Modifications* at 7 (May 28, 2014).

¹⁰ Indicated Transmission Owners Complaint, Exhibit A, Affidavit of Richard B. Miller ¶ 28, Exhibit C, Management Committee Meeting May 28, 2014 Final Motions (Management Committee Motions).

¹¹ Management Committee Motions; NYISO, NYISO Agreements, Foundation Agreements, ISO Agreement §§ 7.10, 19.01 (Mar. 5, 2013).

¹² TDI USA Holdings Corp. December 16, 2014 Complaint at 12 (TDI Complaint) (citing *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects*, 142 FERC ¶ 61,038, at P 2 (2013)).

¹³ TDI Complaint at 3.

the longest underground and underwater HVDC transmission line in the United States when it is complete.¹⁴ TDI began developing Champlain Hudson in 2008 and has invested approximately \$60 million in private capital since then, in addition to significant non-monetary resources. The project is expected to enter into service in late 2018. The Commission granted Champlain Hudson authority to sell transmission rights at negotiated rates on July 1, 2010.¹⁵ TDI has also secured necessary permitting and siting approvals from the New York State Public Service Commission (NYPSC) and the U.S. Department of Energy and expects permits from the U.S. Army Corps of Engineers to be issued by the end of 2014.¹⁶ TDI explains that Champlain Hudson is a \$2.2 billion merchant transmission project funded solely by private investment, which receives no subsidies either through state incentives or out-of-market contracts (including any power purchase agreements).¹⁷

6. As part of the Class Year 2012 study process, TDI states that NYISO informed it on November 13, 2014, that Champlain Hudson would be mitigated and subject to an offer floor.¹⁸ TDI decided to drop out of the Class Year 2012 and must inform NYISO within five business days of March 1, 2015, whether it will enter the Class Year 2015.¹⁹

¹⁴ TDI Complaint at 12 n.24.

¹⁵ TDI Complaint at 4 (citing *Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006 (2010)). TDI notes that, although authorized to bilaterally negotiate up to seventy-five percent of Champlain Hudson's capacity, it had not executed any transmission service agreements as of the date of the Complaint. TDI Complaint at 5 n.9.

¹⁶ TDI Complaint at 4 (citing *Champlain Hudson Power Express, Inc.*, Presidential Permit No. PP-362 (Oct. 6, 2014); Case 10-T-0139, *Application of Champlain Hudson Power Express, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the PSL for the Construction, Operation and Maintenance of a High Voltage Direct Current Circuit from the Canadian Border to New York City*, Order Granting Certification of Environmental Compatibility and Public Need (Apr. 18, 2013), *reh'g denied*, Order Denying Petition for Rehearing (Sept. 24, 2013), *aff'd*, *Entergy Nuclear Power Marketing LLC v. PSC*, 2014 N.Y. App. Div. LEXIS 7708 (3d Dept. 2014)).

¹⁷ TDI Complaint at 2, 12-13; TDI Complaint, Attachment C, Affidavit of Donald Jessome ¶ 6.

¹⁸ TDI Complaint at 5, 13.

¹⁹ TDI Complaint at 2.

II. The Complaint

7. According to TDI, the Commission has long recognized the importance of balancing the need to mitigate buyer-side market power and the risk of over-mitigation.²⁰ TDI states that the MMU has repeatedly warned NYISO that its current rules “will likely understate the forecasted prices and over-mitigate competitive entry.”²¹ According to TDI, the MMU recommended that NYISO amend its market power mitigation rules “to grant exemptions to suppliers engaged in purely private investment.”²²

8. TDI argues that Champlain Hudson is a clear example of a new resource caught in the web of over-mitigation because, unlike other projects subject to mitigation, it has not received any state subsidies and does not have a power purchase agreement or other out-of-market contracts that could give it “‘irregular or anomalous’ cost advantages or sources of revenue that ‘do not reflect arm’s-length transactions, or that are not in the ordinary course of [business].’”²³ TDI contends that there is no policy or economic rationale for requiring mitigation; therefore, Champlain Hudson should be exempted from NYISO’s offer floor mitigation.²⁴

9. According to TDI, the fundamental principles the Commission applied in the PJM Interconnection, L.L.C. (PJM) region are equally applicable to Champlain Hudson and support its exemption from mitigation under NYISO’s construct.²⁵ TDI argues that

²⁰ TDI Complaint at 13-14 (citing *New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,217 at P 77, *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,043, at P 78 (2005), and *New Eng. Power Pool and ISO New Eng., Inc.*, 101 FERC ¶ 61,344, at P 28 (2002)).

²¹ TDI Complaint at 14 (quoting Potomac Economics, *2012 State of the Market Report for the New York ISO Markets* 24 (Apr. 2013)).

²² TDI Complaint at 14-15 (quoting Potomac Economics, *2012 State of the Market Report for the New York ISO Markets* 24 (Apr. 2013)) (citing Potomac Economics, *2013 State of the Market Report for the New York ISO Markets* xii (May 2014) and Written Statement of Dr. David B. Patton, Docket No. AD14-18-000, at 7 (Nov. 2014)).

²³ TDI Complaint at 15 (quoting *Astoria Generating Co. L.P. v. New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,189, at PP 134-35 (2012) (citation omitted)).

²⁴ TDI Complaint at 16.

²⁵ *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 at P 53.

Champlain Hudson's characteristics—a long-lead time, privately-funded project—indicate that it has “no ability to artificially impact market prices,” thereby negating the need for mitigation and justifying an exemption from NYISO's buyer-side mitigation rules.²⁶ TDI also states that, if the Commission denies TDI's requested relief, it would deter future merchant investments, especially long lead-time international transmission lines, where investors must put significant capital at risk and spend years diligently pursuing development.²⁷

10. TDI requests fast track processing of its complaint, pursuant to Rules 206(b)(11) and 206(h),²⁸ and requests that the Commission rule on the complaint by February 25, 2015, so that TDI can decide by March 1, 2015, whether to enter NYISO's Class Year 2015.²⁹

III. Notice of Filing and Responsive Pleadings

11. Notice of the complaint was published in the *Federal Register*, 80 Fed. Reg. 1,500 (2014) with answers, interventions, and comments due on or before January 15, 2015.³⁰ Timely motions to intervene were filed by Hudson Transmission Partners, LLC, Independent Power Producers of New York, Inc. (IPPNY), TC Ravenswood, LLC, Cogen Technologies Linden Venture, L.P. (Linden Cogen), Exelon Corporation, the New York Transmission Owners,³¹ the NRG Companies,³² Consolidated

²⁶ TDI Complaint at 18-19 (citing Staff Report on Capacity Market Design at 26).

²⁷ TDI Complaint at 19.

²⁸ 18 C.F.R. §§ 385.206(b)(11), 206(h) (2014).

²⁹ TDI Complaint at 21-22.

³⁰ TDI requested in its filing a shortened comment period on the complaint, making answers due by December 29, 2014. NYISO filed an answer opposing the shortened comment period and requesting that the Commission extend the comment period to January 23, 2015. The New York Transmission Owners also filed an answer in support of NYISO's motion to extend the comment period to January 23, 2015, or, in the alternative, for extension of time.

³¹ The New York Transmission Owners consist of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Power Supply Long Island, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

Edison Solutions, Inc. and Consolidated Edison Energy, Inc., the City of New York (City of NY), the Electric Power Supply Association (EPSA), the PSEG Companies,³³ the New York Power Authority and the Long Island Power Authority and its operating subsidiary, Long Island Lighting Company d/b/a Power Supply Long Island (jointly, NYPA/LIPA), the MMU, Entergy Nuclear Power Marketing, LLC (Entergy), and the New York State Department of State's Utility Intervention Unit. Brookfield Energy Marketing LP filed an out-of-time motion to intervene. The NYPSC filed a notice of intervention and comments. The City of NY, the MMU, NYPA/LIPA, and the Indicated Transmission Owners³⁴ filed comments. Entergy, IPPNY, and Linden Cogen filed protests.

12. On January 15, 2015, NYISO filed an answer to the complaint.

13. On January 23, 2015, TDI filed an answer to NYISO's answer and to the comments and protests. IPPNY, Entergy, the NYPSC, and Linden Cogen also filed answers.

A. Comments and Protests

14. The City of NY and the NYPSC assert that the Commission should modify the buyer-side mitigation rules to prevent them from being a barrier to new entry or being applied in a manner that hinders competition. The City of NY argues that, in 2013, the Commission approved a competitive entry exemption in PJM on the basis that the "exemption will remove an unnecessary barrier to entry for merchant projects and other projects that are procured on a competitive basis."³⁵ The City of NY further states that there is no basis to treat NYISO differently than PJM and to retain a rule that the Commission has already determined to be unwarranted.

³² The NRG Companies consist of NRG Power Marketing LLC and GenOn Energy Management, LLC.

³³ The PSEG Companies consists of PSEG Power, LLC, PSEG Energy Resources and Trade, LLC, and PSEG Power New York, LLC.

³⁴ The Indicated Transmission Owners consist of Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, and Central Hudson Gas and Electric Corporation.

³⁵ City of NY January 15, 2015 Comments at 4 (citing *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 at P 53).

15. The City of NY and the NYPSC both argue that TDI and its investors made a business decision that the development of a new high-voltage line from Canada to New York City was economically justifiable and feasible. The NYPSC also argues that subjecting TDI to buyer-side mitigation would be irrational and unjust and unreasonable.³⁶ The NYPSC and the City of NY explain that Champlain Hudson cannot exercise buyer-side market power because it is a purely merchant operation that bears the full risk of its investment assumptions.

16. The NYPSC asserts that it expects that the generation Champlain Hudson will transmit to New York City will consist primarily of clean hydroelectric power, which could displace fossil-fueled generation resources. Therefore, the NYPSC states that Champlain Hudson should be exempt from mitigation because it is furthering a public policy goal of obtaining cleaner, cheaper resources.³⁷

17. NYISO's MMU recommends that the Commission reject TDI's request for waiver from NYISO's market power mitigation rules, and instead grant the competitive entry exemption as proposed by the Indicated Transmission Owners in Docket No. EL15-26-000.³⁸ The MMU argues that, if an entrant can demonstrate and attest to the absence of subsidies for its project, then the interest of market efficiency is served if such an entrant can freely offer its resource into the NYISO capacity market without an offer floor.³⁹ The MMU contends that buyer-side mitigation rules may hinder the entry of competitive supply when competitive entrants have views of future market conditions that are inconsistent with the assumptions NYISO makes when performing its mitigation exemption test, which can cause NYISO to conclude erroneously that a competitive project is uneconomic.

18. The MMU argues that the Commission should reject TDI's request for an exemption for two reasons.⁴⁰ First, the MMU contends that the information required to determine whether Champlain Hudson is receiving direct or indirect subsidies has not been provided or evaluated. Second, the MMU states that a competitive entry exemption

³⁶ NYPSC January 15, 2015 Comments at 4.

³⁷ NYPSC January 15, 2015 Comments at 6-7.

³⁸ The Indicated Transmission Owners that filed comments in this proceeding are the same entities that filed the complaint in Docket No. EL15-26-000.

³⁹ MMU January 15, 2015 Comments at 4.

⁴⁰ MMU January 15, 2015 Comments at 5.

should be available to all developers on a non-discriminatory basis, which is exactly what the Indicated Transmission Owners' complaint proceeding in Docket No. EL15-26-000 is considering. The MMU argues that, while controllable transmission lines are not subject to PJM's minimum offer price rule, the buyer-side mitigation rules have always applied to controllable transmission lines in New York and are important because of the lack of a three-year forward market, like the one in PJM.

19. NYPA/LIPA generally support TDI's request for an exemption from the buyer-side mitigation rules for Champlain Hudson. In addition, NYPA/LIPA surmise that Champlain Hudson would qualify for the competitive entry exemption requested in the Indicated Transmission Owners' complaint proceeding in Docket No. EL15-26-000.⁴¹ However, NYPA/LIPA state that, if the exemption request is granted, the Commission must require NYISO to implement a vintaging rule to avoid unjust and unreasonable impacts on currently mitigated units. In addition, NYPA/LIPA state that the current process of the Commission engaging in case-by-case review of specific exemption requests from NYISO's buyer-side mitigation rules is an inefficient and unproductive way to address the current flaws with the NYISO ICAP market and buyer-side mitigation rules.⁴²

20. The Indicated Transmission Owners request that the Commission stay TDI's complaint, and, in the alternative, approve the generic competitive entry exemption requested in the complaint they filed in Docket No. EL15-26-000, and direct NYISO to apply this exemption, if applicable, to Champlain Hudson. The Indicated Transmission Owners state that if TDI chooses to enter the Class Year 2015 process, its material financial obligations would most likely not be triggered until March 2016, if not later, and the competitive entry exemption proceeding will most likely be resolved prior to NYISO's Class Year 2015 initial decision on cost allocation.

21. In their protests, Linden Cogen, Entergy, and IPPNY argue that TDI has not demonstrated that there has been a significant change in circumstances that warrants the Commission revisiting its prior orders finding that the mitigation exemption test it previously approved is no longer just and reasonable. Entergy asserts that the Commission has previously rejected the same claim made by TDI—that controllable transmission lines must be given special accommodations—in the In City ICAP and HTP

⁴¹ NYPA/LIPA January 15, 2015 Comments at 7.

⁴² NYPA/LIPA January 15, 2015 Comments at 8.

proceedings.⁴³ Further, Linden Cogen and Entergy state that TDI does not differentiate itself from these two proceedings.⁴⁴ IPPNY also argues that the Commission rejected arguments that the buyer-side mitigation rules should not apply to controllable transmission lines.

22. Linden Cogen, Entergy, and IPPNY assert that TDI's reference to the competitive entry exemption in the PJM tariff does not provide any support for its assertion that TDI should be granted blanket exemption here for Champlain Hudson. Entergy states that grafting one provision of the PJM tariff onto one project in New York despite years of Commission determinations in the NYISO markets on these very issues, and clear NYISO tariff provisions to the contrary, would undercut the ongoing sustainability of the New York markets.⁴⁵

23. Linden Cogen argues that the current mitigation exemption test process does not discourage competitive entry and investment from different types of entry and allows developers to demonstrate characteristics that are unique to each project. Linden Cogen also states that mitigated projects are not forced from the market, but are free to make assessments of future retirements and their impact on capacity prices and clear the auction when the retirements occur. Linden Cogen states that the Commission has found that, regardless of resource or intent, it has an obligation to deter uneconomic entry without consideration of whether there is intent to manipulate prices. Further, Linden Cogen states that TDI has not provided any persuasive evidence that NYISO misapplied the mitigation exemption test to Champlain Hudson, only stating that it is caught in a "web of over-mitigation."⁴⁶

24. Entergy asserts that TDI ignores the Commission's determination that all uneconomic in-city entry must be mitigated, not just net buyers.⁴⁷ Entergy states that because Champlain Hudson failed both prongs of the mitigation exemption test it is

⁴³ The In City ICAP proceeding was Docket No. EL07-39 and the HTP proceeding was Docket No. EL12-98. Entergy January 15, 2015 Protest at 2 n.4, 15 n.52.

⁴⁴ Entergy January 15, 2015 Protest at 15.

⁴⁵ Entergy January 15, 2015 Protest at 28.

⁴⁶ Linden Cogen January 15, 2015 Protest at 26 (citing TDI Complaint at 15).

⁴⁷ Entergy January 15, 2015 Protest at 13.

uneconomic under the structure devised by NYISO and the MMU, approved by the Commission, and expressly defined in the NYISO Services Tariff.⁴⁸

25. Entergy disagrees with TDI that the Commission-approved buyer-side mitigation rules will have significant adverse financial consequences or impair TDI's ability to market and sell transmission capacity. In addition, IPPNY argues that TDI is judicially estopped from requesting an exemption from the buyer-side mitigation rules because TDI and the NYPSC relied on the application of the buyer-side mitigation rules to Champlain Hudson in the transmission siting case before the NYPSC.⁴⁹

26. IPPNY also asserts that there is no evidence that application of the buyer-side mitigation rules impede the development of truly economic projects.

27. IPPNY further claims that TDI has failed to demonstrate that Champlain Hudson is truly economic and will be constructed and operated in the absence of extra-market subsidies. IPPNY also states that TDI has made no commitment that it would forego entering into subsidized contracts at some future date.

B. NYISO Answer

28. NYISO states that, while individual exemptions might be appropriate under certain circumstances, the competitive entry exemption issue raised by TDI in this proceeding should be addressed through the adoption of the generally applicable rules now pending in the Indicated Transmission Owners' proceeding.⁵⁰ NYISO argues that the proposed competitive entry exemption rules establish detailed and transparent procedures for NYISO to analyze competitive entry exemption requests. NYISO states that potential developers with projects in the Interconnection Queue or Examined Facilities in a current Class Year would benefit from predictable rules that are applied fairly to all proposed entrants. NYISO also contends that these rules would advance the Commission's interests in promoting market stability and transparency.

29. NYISO argues that the complaint did not include the information, documentation, and certifications that would be required under the competitive entry exemption rules, and therefore, TDI has not properly demonstrated that it should receive an individual exemption. NYISO further asserts that TDI's reliance on the Commission's approval of

⁴⁸ Entergy January 15, 2015 Protest at 14.

⁴⁹ IPPNY January 15, 2015 Protest at 13.

⁵⁰ NYISO January 15, 2015 Answer at 3.

PJM's minimum offer price rule is misplaced for two reasons. First, NYISO states that PJM and NYISO have different capacity market designs, auction structures, and market rules. Second, NYISO states that PJM is a much larger market than the New York Control Area, let alone the New York City or G-J Locality Mitigated Capacity Zones. Therefore, NYISO contends, competition is more limited and the potential market impact of new entry is greater, requiring more stringent market power mitigation rules than those that exist in PJM.

C. Answers to NYISO's Answer, Comments, and Protests

30. In its January 23 answer, TDI asserts that the evaluation of a project's economics should remain with the market and the project's investors; the purpose of buyer-side mitigation is to protect the integrity of capacity markets, "not to protect a merchant resource from making a poor investment decision with its own capital."⁵¹

31. TDI asserts that, in the absence of a Commission decision by February 25, 2015, the harm suffered by TDI will be compounded because NYISO's Tariff only permits TDI to enter one more class year (either Class Year 2015 or Class Year 2016) before it will be compelled to file another interconnection request with NYISO and begin the interconnection process anew. Other parties allege that TDI has no financial obligations until the end of the Class Year process, but TDI argues that this is only true with regard to the security required for interconnection costs and significantly under represents the costs associated with the development process and the need to timely complete development and construction milestones in order to bring the project to market.

32. TDI disagrees that the exemption TDI seeks should be resolved as part of the complaint proceeding in Docket No. EL15-26-000. Rather, TDI asserts that the Commission can both grant timely relief to TDI and ensure that TDI's project-specific exemption is consistent with the competitive entry exemption ultimately implemented by NYISO.

33. TDI also wishes to clarify a few points for the record. First, TDI clarifies that, while it only seeks a project-specific exemption in this proceeding, it believes that the Commission should revisit the issue of whether controllable transmission lines should be subject to NYISO's buyer-side mitigation rules. Second, TDI acknowledges that there are differences between the PJM and NYISO capacity markets; however, TDI believes that the principles and findings articulated by the Commission in the context of the ruling on revisions to PJM's buyer-side mitigation rules have general applicability and should

⁵¹ TDI January 23, 2015 Answer at 4 (citing *PJM Interconnection, LLC*, 143 FERC ¶ 61,090 at P 57).

be considered in this proceeding. Third, TDI asserts that the positions it adopted in this proceeding and in the NYPSC state siting proceeding are not inconsistent. Last, TDI argues that because TDI has requested a project-specific exemption rather than a rule change, the issue of whether to implement vintaging rules would be more appropriately addressed in the Indicated Transmission Owners' complaint proceeding.

34. In its answer, IPPNY states that, despite the concerns raised in protests, TDI still has not stated that it will not secure subsidies at some future time if the complaint is granted. IPPNY also argues that TDI has admitted that it will bid its costs and that its offer floor is no greater than its costs. Therefore, IPPNY asserts that the complaint has no basis and must be dismissed. IPPNY contends that the arguments made by the NYPSC and the City of NY are only an attempt to undermine NYISO's buyer-side mitigation rules and prior Commission orders. Further, IPPNY explains that a NYISO stakeholder process has begun in response to the MMU's recommendation in its State of the Market report to address potential enhancements to the market rules for forecasting retirements and mothballing.

35. Entergy states in its answer that, in the NYPSC's, the City of NY's, and NYPA/LIPA's comments, they relied on material mischaracterizations concerning the structure of NYISO's buyer-side mitigation rules and misstated the facts as well as ignored past Commission determinations. Entergy explains that no party has refuted the fact that the Commission has adopted the "all economic entry" rule in New York. Entergy further states that the rules already allow for a new entrant to make investment decisions based on the entrant's own market analyses and expectations. Entergy asserts that, while TDI is unwilling to take the bet on its own expectations, it does not demonstrate that applying the buyer-side mitigation rules to Champlain Hudson is unjust and unreasonable.

36. In its answer, the NYPSC rejects IPPNY's argument that the NYPSC concluded buyer-side mitigation should be applied to Champlain Hudson in the transmission siting proceeding.⁵² The NYPSC states that its orders in the siting case merely acknowledge and rely on the stated and intended purpose of the buyer-side mitigation rules, which is to prevent the abuse of market power. The NYPSC reiterates, however, that the mitigation of TDI is not appropriate given that it is a competitive entrant that lacks the ability and incentive to exert market power.

37. Linden Cogen reiterates in its answer that no evidence was introduced that shows the mitigation exemption test has impeded legitimate, economic entry into the in-City

⁵² NYPSC February 18, 2015 Answer at 2.

market or that anything has changed such that the Commission should deviate from its prior application of the mitigation exemption test to merchant projects.⁵³

IV. Discussion

A. Procedural Matters

38. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵⁴ the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

39. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,⁵⁵ the Commission will grant Brookfield Energy Marketing LP's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

40. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁵⁶ prohibits an answer to an answer or protest unless otherwise ordered by the decisional authority. We will accept the answers filed by TDI, IPPNY, Entergy, the NYPSC, and Linden Cogen because they have provided information that assisted us in our decision-making process.

B. Commission Determination

41. We dismiss as moot TDI's request for an individual exemption for the Champlain Hudson project from NYISO's buyer-side mitigation exemption test. In a concurrently-issued order regarding a complaint by the Indicated Transmission Owners against NYISO in Docket No. EL15-26-000, the Commission is granting that complaint, in part, and requiring NYISO to revise its Services Tariff to include a competitive entry exemption to its buyer-side mitigation rules, to be effective as of this date. There the Commission also directs that NYISO change the existing buyer-side mitigation rules in its tariff to provide

⁵³ Linden Cogen February 24, 2015 Answer at 6.

⁵⁴ 18 C.F.R. § 385.214 (2014).

⁵⁵ 18 C.F.R. § 385.214(d) (2014).

⁵⁶ 18 C.F.R. § 385.213(a)(2) (2014).

a process by which resources such as TDI may seek to obtain the same relief it seeks here. Accordingly, TDI's request for an individual exemption is moot.⁵⁷

42. As to TDI's request for fast-track processing, because we are contemporaneously granting in part the complaint in Docket No. EL15-26-000 and directing NYISO to file tariff provisions implementing a competitive entry exemption to be effective this date, TDI will be able to timely inform NYISO of its intention to enter Class Year 2015 if it so chooses knowing that a competitive entry exemption will be available if it can meet the Service Tariff's requirements for the exemption. Specifically, according to section 25.5.9 of NYISO's Open Access Transmission Tariff,⁵⁸ TDI must inform NYISO within five business days of March 1, 2015, whether it intends to enter the Class Year 2015 process. In the order in Docket No. EL15-26-000, we are extending that deadline by five additional business days to ensure entrants to the Class Year 2015 have time to notify NYISO whether they intend to enter the Class Year and apply for the competitive entry exemption. Moreover, the Class Year cost allocation process takes at least a year to complete, during which time TDI can apply for the NYISO Services Tariff's newly-created competitive entry exemption and receive notification from NYISO regarding its eligibility for the exemption before any financial obligation is triggered. In addition, TDI can elect to wait until the next Class Year to enter the market and apply for the competitive entry exemption. As TDI notes, it can either enter the Class Year 2015 or the following Class Year before it is required to complete a new interconnection request.

The Commission orders:

The complaint is hereby dismissed as moot, as discussed in the body of this order. By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵⁷ We note that, in any event, TDI has not provided sufficient information that would allow us to rule on its proposed exemption. We cannot approve such an exemption in a vacuum, solely on the basis of economic theory, without facts supporting the specific exemption.

⁵⁸ NYISO, OATT, § 25.5.9 (4.0.0).