

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

New York Public Service Commission,)
New York Power Authority, and)
New York State Energy Research)
and Development Authority)
)
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)
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v.)
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)
New York Independent System Operator, Inc.)

Docket No. EL15-64-000

ANSWER OF NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

In accordance with Federal Energy Regulatory Commission Rule 213 and the May 19, 2015 *Notice of Extension of Time*, the New York Independent System Operator, Inc. (“NYISO”) respectfully submits its answer to the May 8, 2015 complaint (“Complaint”) in this proceeding. The Complaint was filed by the New York Public Service Commission (“NYPSC”), the New York Power Authority, and the New York State Energy Research and Development Authority (together, the “Complainants”). It seeks to modify the buyer-side capacity market power mitigation measures (“BSM Rules”) set forth in section 23.4 of Attachment H to the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”). Complainants indicate that their proposed changes are needed because the existing BSM Rules are too broad in scope, which results in over-mitigation and the obstruction of public policy goals.¹

In principle, the NYISO supports many of the general concepts for changing the BSM Rules that are discussed in the Complaint. As discussed in this Answer, whether specific proposals in the Complaint are appropriate modifications of the BSM Rules will ultimately

¹ See, e.g., Complaint at 3-4.

depend on whether certain adjustments described in this Answer are included, and on the additional details that must be developed before conceptual proposals can be translated into tariff language. If the Commission concludes that the BSM Rules should be changed, and if Complainants' proposals are adjusted as discussed herein, then their adoption could be just, reasonable, and not unduly discriminatory.

Finally, the Complaint asks that the NYISO be given 90 days to file compliance tariff revisions.² In the alternative, it suggests that "should the Commission determine additional procedures are needed before all of the issues can be resolved, it could set the matter for hearing and provide for the appointment a settlement judge."³

The NYISO believes that its shared governance stakeholder process would have been the best route for the proposed changes in the first instance. That process requires the mutual assent of the Management Committee and the NYISO Board of Directors, and typically culminates in a Section 205 filing. Past experience has demonstrated that this process is well suited for identifying issues, interdependencies, and potential implications, and for developing the details of market rules that can be administered clearly, transparently, and objectively.

However, if the Commission determines that one of the alternative processes proposed by the Complainants would provide an adequate opportunity to work out the necessary details of the rules proposed in this docket and create an adequate record for Commission decision, the NYISO would not oppose either a further compliance filing or a settlement judge process.

² Complaint at 4.

³ *Id.*

I. BACKGROUND

Effective BSM Rules that balance against over- and under-mitigation are necessary to a well functioning capacity market. As the NYISO informed the Commission and NYPSC, “[t]he NYISO’s existing buyer-side market power mitigation rules have generally functioned well. They do not appear to have discouraged efficient investments and have resulted in the mitigation of both existing resources and new entrants when mitigation was warranted.”⁴

At the same time, the NYISO recognizes that there are opportunities to improve the BSM Rules. It has actively pursued various enhancements to them and to its capacity market design as a whole. For example, in 2010 it proposed enhancements to the BSM Rules to adopt more objective criteria and increase their integration with tariff procedures and timetables governing the Class Year interconnection cost process.⁵ Starting in 2012, it initiated a stakeholder process to explore a number of enhancements to the BSM Rules. These included a proposed renewables exemption limited to specified technology types, a “competitive entry exemption,” a repowering exemption, and a self-supply exemption with clearly defined bounds. It also informed the Commission of its support for an exemption for intermittent renewable resources.⁶

Ultimately, none of these proposals were approved by the requisite super-majority of

⁴ *Written Statement of Emilie Nelson, Vice President – Market Operations, on Behalf of the New York Independent System Operator, Inc.*, Docket No. AD14-18-000 (Nov. 3, 2014) at 27 (“Nelson Statement”).

⁵ *New York Independent System Operator, Inc., Proposed Enhancements to In-City Buyer-Side Capacity Mitigation Measures, Request for Expedited Commission Action, and Contingent Request for Waiver of Prior Notice Requirement*, Docket No. ER10-3043 (Sept. 27, 2010) (the “Post-Amendment Rule Filing”); *N.Y. Indep. Sys. Operator, Inc.*, 133 FERC ¶ 61,178 (2010), order on proposed revisions to In-City buyer-side mitigation measures; *N.Y. Indep. Sys. Operator, Inc.*, 134 FERC ¶ 61,083 (2011), order on compliance filing.

⁶ *See New York Independent System Operator Inc., Report Regarding Buyer-Side Mitigation Rules for Small Suppliers, Renewable Resources, and Special Case Resources in New Capacity Zones*, Docket No. ER12-360-000 at 3-4 (Oct. 4, 2013), *Post-Technical Conference Comments of the New York Independent System Operator, Inc.*, Docket No. AD13-7-000 at 14-15 (January 8, 2014), and Nelson Statement at 28-29.

stakeholders to authorize the NYISO to make a filing under Section 205 of the Federal Power Act (“FPA”). The NYISO has previously explained why these issues proved difficult for the stakeholder process to resolve.⁷ In addition, earlier this year, the NYISO supported a complaint that proposed the adoption of a competitive entry exemption in New York. The Commission’s order granting that complaint directed the NYISO to adopt compliance tariff language very similar to what the NYISO developed in its stakeholder process from 2012 to 2014.⁸

II. ANSWER

The Complaint argues that the existing BSM Rules are overbroad and result in “over-mitigation that protects incumbents from competition, to the detriment of New York consumers and to the State’s ability to meet public policy goals and requirements in a reasonable manner.”⁹ The NYISO believes that most of the Complaint’s proposals could be suitable with the adjustments described herein and subject to the development of needed details. Consistent with Commission precedent, any changes in BSM Rules should continue to balance the need to avoid over-mitigation against the risk of under-mitigation.¹⁰ Both artificial capacity market price

⁷ See Nelson Statement at 28 (explaining that the NYISO “attributes the difficulty of resolving buyer-side mitigation issues [in the stakeholder process] in part to ongoing and possibly anticipated litigation, which can impede productive stakeholder discussions,” and that “[r]ecent challenges in achieving adequate support on these matters in the stakeholder process are also partially attributable to stakeholders’ disparate views on these issues”). The NYISO also notes that stakeholders voted on a package of proposals, so lack of supermajority support does not necessarily indicate that certain individual proposals lacked broad support.

⁸ *Consol. Edison Co. of N.Y. Inc., et al. v. N.Y. Indepen. Sys. Operator, Inc.*, 150 FERC ¶ 61,139 at PP 45, 53 (2015) (“CEE Order”).

⁹ Complaint at 16; *see also id.* at 18-19. In addition to their “public policy” arguments the Complainants also allege that there are other flaws in the existing BSM Rules including a supposed lack of objective criteria and defects in the forecasting methodology. *See* Complaint at 16-18. Because the Complaint does not propose tariff revisions on those matters, the NYISO is not taking a position on such assertions in this Answer.

¹⁰ *See, e.g., CEE Order* at P 4; *N.Y. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,217 at P 77 (2013) (noting that buyer-side market power mitigation rules must “appropriately balance the need for mitigation of buyer-side market power against the risk of over-mitigation”). *See also PJM Interconnection, L.L.C.*,

suppression¹¹ and unnecessary impediments to State policy initiatives should be avoided. Getting the balance right is essential because over- and under-mitigation are harmful both to markets and, ultimately, to consumers' long-term economic interests.

A. The NYISO Supports the Principle of Narrowing the BSM Rules to Address Certain Resource Types That Have the Greatest Practical Ability to Suppress Prices

The Complaint asks the Commission to remedy alleged flaws in the BSM Rules by “limiting their application to only those types of projects that would likely be involved in any strategy to improperly attempt to suppress capacity market prices.”¹² The Complaint proposes to limit the scope of the BSM Rules to “certain large (20 MW or greater) combined cycle or combustion turbine units powered by natural gas or oil.”¹³ Complainants argue that because “these types of generating units can be built relatively quickly, they are the only resources that a net buyer of capacity would be likely to deploy in a strategy to suppress near term market prices.”¹⁴

143 FERC ¶ 61,090 at P 26 (2013) (confirming that a PJM buyer-side mitigation tariff proposal “appropriately balances the need for mitigation of buyer-side market power against the risk of over-mitigation”).

¹¹ The Complaint suggests that the BSM Rules should not apply to Resources if they lack the ability (or intent) to exercise monopsony or oligopsony market power. *See* Complaint at 17. The NYISO clarifies that even though the BSM Rules are referred to as “buyer-side” tests they are focused on actions that could artificially suppress capacity market prices not on detecting or preventing the exercise of monopsony or oligopsony power.

¹² Complaint at 22.

¹³ *Id.* at 22-23.

¹⁴ *Id.* At 23. The Complaint often also suggests that mitigation under the BSM Rules should be limited to entrants that have the intent to suppress prices and/or are supported by “net buyers.” In May 2008, the Commission conditionally accepted a proposal that limited the applicability of the original version of the BSM Rules to “net buyers.” *New York Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211 (2008). A “net buyer” was defined as “a market participant whose capacity purchase obligation as an LSE outweighs the amount of capacity supply it owns or controls.” *Id.* at n5. The Commission ultimately concluded on rehearing, that the net buyer requirement should be eliminated, principally because it would be impractical to implement and vulnerable to gaming. *New York Indep. Sys. Operator, Inc.*, 124 FERC ¶ 61,301 at P 29 (2008); *order on reh'g*, 131 FERC ¶ 61,170 (2010). *See also* CEE Order

The NYISO believes that it may be reasonable to limit the application of the BSM Rules to those technology types that could effectively and practically be used to suppress prices. Focusing on those technology types would, in principle, preserve the ability to guard against uneconomic entry and artificial price suppression without unnecessarily impacting projects with no cost effective ability to suppress prices. This approach could also simplify the structure of buyer-side mitigation by appropriately identifying those resources that should be evaluated in the first instance, rather than applying a broadly-applicable rule coupled with numerous exemptions.

In considering Complainants' proposed modification of NYISO's BSM Rules, it is critical to properly identify the resource types that should remain subject to evaluation. The NYISO agrees with the Complainants that combined cycle or combustion turbine units powered by natural gas or oil should remain subject to evaluation under the BSM Rules. The Complaint, however, does not provide support for its assertion that the BSM Rules should exclude combined cycle or combustion turbine units powered by natural gas or oil below 20 MW,¹⁵ and does not address the fact that more than one unit can be built at a station. Whether other resource types should be subject to evaluation must be reviewed as the details of this approach are developed. The NYISO's preliminary view regarding other resource types is discussed below.

at P 2. The Complaint does not appear to be asking that an "intent test" be included in the BSM Rules. For example, it acknowledges that "intent to exercise buyer-side market power can be difficult to detect" and instead emphasizes the need to exclude capacity projects where a lack of intent can be inferred because the resources lack the ability to suppress prices. The Commission should not require the NYISO to add an intent requirement to the BSM Rules because intent would be impracticable to prove in most cases. Complaint at 24. The Commission has repeatedly held that "it is not reasonable for buyer-side mitigation to depend on the intent of the seller because an artificially low offer price can unreasonably suppress market prices regardless of the seller's intent. *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199 at P 69 (2012). *See also ISO New England, Inc., et al*, 135 FERC 61,029 at P 170 (2011) (finding that uneconomic entry, regardless of resource and regardless of intent, "can produce unjust and unreasonable prices by artificially depressing capacity prices").

¹⁵ See Complaint at n. 49.

The NYISO supports excluding certain categories of renewable resources from evaluation under the BSM Rules. The NYISO would support such an exclusion either as part of this Complaint proceeding or as a stand-alone proposal. Excluding these resources is appropriate because they are likely to be ineffective at suppressing capacity market prices. Specifically, the NYISO supports excluding purely intermittent renewable resources, including current wind technology and solar, which have low capacity factors and high fixed costs for installation.¹⁶ The NYISO also supports excluding up to a size limit (*e.g.*, 50 MW) renewable technology types that are eligible for New York’s Renewable Portfolio Standard. For these reasons, in 2014 the NYISO pursued a renewable exemption in the stakeholder process that included those features.¹⁷

The NYISO proposal also addressed how to apply the exemption to a plant that is expected to only partially be powered by renewable fuel. That parameter is an example of the details that would need to be addressed by a detailed renewable exemption rule. While the NYISO-proposed exemption ultimately did not receive the requisite 58% stakeholder vote to be filed under Section 205 of the FPA, it provides a foundation from which to develop a renewable exemption rule in response to any Commission directive.

¹⁶ When developing the details and parameters of rules applying to wind and solar Resources, consideration will need to be given to the potential size and capacity factor of those projects. It will also need to consider the future evolution of the technologies, and the potential for intermittent resources to have high capacity factors (*e.g.*, offshore wind,) that may warrant limits on an exclusion or exemption.

¹⁷ See *Proposed ICAP Buyer-Side Mitigation Modifications*, presented by the NYISO, at the May 28, 2014 Management Committee Meeting, at 4; available at: <http://www.nyiso.com/public/webdocs/markets_operations/committees/mc/meeting_materials/2014-05-28/Agenda%2006_CompetitiveEntryExemption.pdf>. See also Motion # 4, *Final Motions, Management Committee Meeting* (May 28, 2014), available at: <http://www.nyiso.com/public/webdocs/markets_operations/committees/mc/meeting_materials/2014-05-28/052814_MC_Final_Motions.pdf> (“May 2014 Management Committee Final Motions”); and Affidavit of Adam Evans (May 7, 2015), Exhibit C to Complaint. As mentioned above, the NYISO’s stakeholder proposal did not garner sufficient stakeholder support as part of a package of exemptions to be included in a filing pursuant to Section 205 of the FPA.

As Complainants note, the Commission has previously accepted rules that limit the application of buyer-side market mitigation measures to renewable resources. For example, PJM Interconnection, LLC does not subject these resources to review,¹⁸ and ISO New England, Inc. exempts them up to annual limits.¹⁹ These exemptions were created because it was understood that intermittent renewables could not practicably be used to suppress capacity prices. The NYISO's proposal in its stakeholder process was based on the same premise.²⁰

The NYISO also agrees with the Complainants that the recently approved competitive entry exemption under the BSM Rules²¹ should remain in place even if the applicability of the mitigation measures is narrowed.²²

The NYISO does not support excluding transmission assets that are seeking Unforced Capacity Deliverability Rights ("UDR facilities") from the resource types that are evaluated under the BSM Rules. The Complaint claims that "[t]ransmission lines are unlikely to serve as a resource that could support the exercise of buyer-side market power" because transmission lines have lengthy development times.²³ However, the Complaint provides no other support for its assertion that UDR facilities cannot be an effective vehicle for suppressing prices. It also has not

¹⁸ PJM Open Access Transmission Tariff, Attachment DD, Section 5.14(h)(2). *See also PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (2013) at P 166.

¹⁹ ISO New England Inc. Transmission, Markets and Services Tariff, Section III.13.2.3.2(a)(iv). *See also ISO New England Inc. and New England Power Pool Participants Committee*, 147 FERC ¶ 61,173 (2014) at P81; 150 FERC ¶ 61,065 (2015), denying rehearing, providing clarification and directing compliance filing; *ISO New England Inc. and New England Power Pool Participants Committee, Compliance Filing Concerning the Renewable Technology Resource Exemption*, Docket No. ER14-1639-003 (March 2, 2015); and Letter Order (May 1, 2015), accepting compliance filing. An appeal of the Commission's holding in the 2014 Order regarding ISO-NE's renewable exemption is currently pending before the D.C. Circuit. *NextEra Energy Resources, LLC v. FERC*, No. 15-1070 (D.C. Cir. filed March 30, 2015).

²⁰ Complaint at 25.

²¹ *See* CEE Order.

²² *See* Complaint at 28-29.

²³ *Id.*

demonstrated why a facility’s construction time reduces its effectiveness to suppress prices in the NYISO’s capacity market.

The NYISO is concerned that UDR facilities do have the potential to suppress prices. UDR facilities are often associated with large amounts of capacity and might be used to suppress prices even though they generally cannot be constructed as quickly as combined cycle or simple cycle combustion turbines. Without a justification for treating UDR facilities differently than Generators, there is no basis to depart from the NYISO-specific Commission precedent that “[c]ontrollable transmission and generating capacity should be subject to the same mitigation.”²⁴ Accordingly, the Commission should not exclude them from the BSM Rules.

Finally, the NYISO believes an appropriately structured approach that would exclude the repowering of certain facilities from evaluation for mitigation can be developed. The Complainants suggest that a blanket exclusion for repowered facilities is appropriate because “[r]epowering of existing resources is unlikely to support the exercise of buyer-side market power for the simple reason that a repowering typically does not add new capacity.” However, under certain circumstances, repowering a unit can result in the market having more capacity than it otherwise would have, *e.g.*, when the existing, original unit is uneconomic and should otherwise retire. In those circumstances, evaluating the repowering under the BSM Rules is warranted.²⁵ This concern was reflected in the proposed repowering exemption that the NYISO

²⁴ *See, e.g., N.Y. Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211 at P 121 (2008) (“because both transmission and generating capacity are paid based on the same principle of making capacity available in-City, there should be no special exemption”).

²⁵ The BSM Rules currently apply to all entrants in Mitigated Capacity Zones that were not “existing facilities” prior to dates specified in the Services Tariff. *See* Services Tariff Section 23.4.5.7.6 (with renumbering to change to Section 23.4.5.7.6.7 accepted by Commission Delegated Letter Order, issued May 6, 2015 in Docket No. ER15-1281-000, *New York Independent System Operator, Inc.*, effective May 12, 2015, subject to the outcome of the tariff revisions to be ultimately accepted in Docket Nos. ER10-2371). It is the NYISO’s view that the existing rules are already applicable to repowering

developed through its stakeholder process. That proposal included an “economic viability” test to determine if the repowering was replacing capacity that otherwise would not have been expected to retire and thus did not add new capacity.²⁶

The NYISO notes that the concept of a repowering exemption intersects with issues being considered in other pending proceedings. First, as part of the compliance filing in response to the Commission’s order addressing Reliability-Must-Run (“RMR”) units (the “RMR Compliance Filing”), the NYISO intends to address mitigation issues related to repowering projects proposed to address reliability issues.²⁷ In a separate proceeding, the NYISO has recently requested that the Commission permit it to file a further report by January 19, 2016 addressing additional analyses on repowerings pursuant to agreements that are not principally driven by reliability needs.²⁸

projects that have certain characteristics that would make them more like new resources than “existing facilities. For example, repowerings that trigger the interconnection process and seek Capacity Resource Interconnection Service would currently be subject to the BSM Rules. However, the NYISO has explained to the Commission that the BSM Rules do not specifically address repowering and that it would be preferable for them to do so more clearly. *See* Post-Amendment Rule Filing at n. 12. *See also Indep. Power Producers of N.Y. Inc. v. N.Y. Indep. System Operator, Inc.*, 150 FERC ¶ 61,124 (2015) (the “March 19 Order”) at P 70 (suggesting that “there is no existing policy in NYISO for how buyer-side market power mitigation would apply to repowering agreements, and especially not to an agreement that purportedly resolves, at least in part, a short-term reliability need”).

²⁶ The NYISO’s proposal did not garner sufficient stakeholder support to proceed to file the proposed rule change pursuant to Section 205 of the FPA. *See* Motion # 3 and Motion #3a, May 2014 Management Committee Final Motions.

²⁷ *New York Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,116 (2015) (“RMR Order”). *See also* discussion in Section II.C below on the Complaint’s proposed reliability exemption.

²⁸ On June 17, 2015, in Docket No. EL13-62-002, the NYISO filed a compliance report (the “June 17 Report”) describing the analysis it had performed as of that date on “whether resources under repowering agreements similar to [Dunkirk Power, LLC] have the characteristics of new rather than existing resources, triggering a buyer-side market power evaluation because of their potential to suppress [capacity] prices.”²⁸ The June 17 Report explained that the NYISO intended to propose any necessary measures related to the treatment of repowering projects that address a reliability need, in its RMR Compliance Filing in Docket No. EL15-37-000.

In short, the NYISO believes that some form of repowering exemption is appropriate and should be a component of the BSM Rules. But it also believes that the development of such an exemption should be informed by the NYISO's work on the RMR Compliance Filing and the further report the NYISO may file in Docket No. EL13-62. The exemption that the NYISO previously proposed in its stakeholder process could serve as the starting point for any repowering exemption that the Commission might direct the NYISO to develop.

B. The NYISO Is Not Opposed, in Principle, to a Self-Supply Exemption

Complainants argue that “[t]he BSM Rules should reflect [a Self-Supply Exemption] that permits a load serving entity to build or contract for capacity resources, within specific limits, in order to meet its own reasonably anticipated ICAP obligations.”²⁹ The Complaint includes recommended “specific limits” on self-supply in the form of proposed net long and net short thresholds. The thresholds would define when self-supply by Load Serving Entities (“LSEs”) in particular Localities would be unlikely to artificially suppress capacity market prices.³⁰

The NYISO is not opposed in principle to a self-supply exemption for LSEs that continue to possess substantial capacity resources (*e.g.*, generation) to serve their current Load. To be clear, the NYISO does not support the application of the Complainants' proposed formula³¹ to LSEs that have divested substantially all of their capacity resources. Any Self-Supply Exemption also must include rules addressing the self-supplying LSE's bilateral power purchase

²⁹ Complaint at 29.

³⁰ *See, e.g., Id.* at 31-32.

³¹ *See Id.* at 31-33, and Affidavit of Michael D. Cadwalader at P 42 *et seq.*, Exhibit B to Complaint.

agreements, and must define limitations so that a LSE does not receive an exemption for more resources than its expected Load.³²

C. The NYISO Supports, in Principle, a Reliability Exemption

The Complaint proposes that “[t]he BSM Rules should also include a Reliability Exemption for a new gas or oil-fired generating unit that is being developed as a solution to a reliability need identified by the NYISO . . .” under the reliability planning provisions set forth in Attachment Y to the NYISO’s Open-Access Transmission Tariff (“OATT”).³³ Complainants contend that “[a] gas- or oil-fired unit that is developed in response to the NYISO’s solicitation and evaluation of solutions to reliability needs does not implicate any suspect motive to manipulate the market.”³⁴

The NYISO supports, in principle, a “Reliability Exemption” from the current BSM Rules. In order to implement an approach that excludes certain units needed for reliability from a mitigation evaluation, it would be necessary to develop several aspects of the underlying concept and to explicitly identify the circumstances under which the exclusion would apply.³⁵

Specifically, reliability solutions should only be eligible for an exemption to the extent that they are actually necessary to address a reliability need, *i.e.*, they are the “right” size, viable, and least cost way, to address the need. As described above, the NYISO is considering market

³² The NYISO had begun to develop a Self-Supply Exemption in its stakeholder process. However, like the NYISO’s renewable and repowering proposals, the NYISO’s self-supply exemption proposal was part of a package that did not achieve sufficient stakeholder support to permit a filing under Section 205 of the FPA.

³³ Complaint at 33.

³⁴ *Id.*

³⁵ Issues associated with a proposed Reliability Exemption are being evaluated as the NYISO develops, with input from its stakeholders, its RMR Compliance Filing.

mitigation issues as it develops its RMR Compliance Filing.³⁶ It would be inappropriate to exempt new capacity that is not needed for reliability reasons and that could suppress capacity market prices.

D. If the Commission Determines that Additional Procedures Are Needed, the NYISO Believes That Either of Complainants' Procedural Suggestions Could Provide an Appropriate Means to Address Any Issues That Cannot Be Resolved Based on the Pleadings

The Complaint requests that the NYISO be required to make a compliance filing to implement its proposed changes within 90 days of a Commission order granting the Complaint. Complainants suggest that a 90 day filing period would allow the NYISO time to obtain and consider stakeholder input without undue delay.³⁷ In the alternative, they suggest that if the Commission determines that “additional procedures are needed before all of the issues can be resolved” it “set the matter for hearing and provide for the appointment of a settlement judge” to ensure prompt action.³⁸ Complainants argue that the NYISO’s normal stakeholder process is too “overburdened” to address their concerns in a timely manner.

As noted above, NYISO generally believes that market rule changes should, in the first instance, be developed through the shared governance process, and after mutual approval by the Management Committee and the NYISO Board of Directors be filed under Section 205 of the FPA. Where the shared governance process fails to produce economically rational markets rules and where stakeholders put “pocketbook” concerns ahead of reliability and long-term economic efficiency, the NYISO may act unilaterally to amend the tariff.

³⁶ Also as noted in Section II.B above, certain repowerings may be principally driven to address a reliability need.

³⁷ Complaint at 36.

³⁸ *Id.* at 36-37.

It is true that the NYISO stakeholder process is currently engaged in numerous significant capacity market projects, including the ICAP Demand Curve reset process. Nevertheless, it is not so “overburdened” as to make it impossible to comply with a Commission directive to address the Complaint’s proposals or to address new issues that may arise in the future.³⁹

It is important to note, however, that the NYISO has already held stakeholder discussions relevant to a number of the Complaint’s proposed tariff changes and to the modifications or additions NYISO has outlined above (*e.g.*, self supply, repowering, renewables, and reliability exemptions). None of these prior stakeholder discussions culminated in a consensus sufficient to support tariff changes that could be filed under Section 205. Moreover, it seems unlikely that stakeholders will reach a voluntary consensus any time soon on the need for additional enhancements to the BSM rules.

Thus, if the Commission agrees that some or all of the concepts proposed in the Complaint are economically rational and necessary, then the NYISO has no objection to either a further compliance filing, or a hearing or settlement judge process, for developing appropriate tariff revisions.

III. COMMUNICATIONS

Communications regarding this proceeding should be addressed to:

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³⁹ The NYISO notes that if a directive is received in this Docket, it would need to adjust the stakeholder-driven project prioritization plan, as it has in response to prior Commission orders.

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IV. COMPLIANCE WITH RULE 213(c)(2)(i)

Attachment 1 to this Answer addresses the formal requirements of Commission Rule 213(c)(2).

V. CONCLUSION

The NYISO respectfully requests that if the Commission decides to grant the Complaint, it also requires the adjustments proposed by the NYISO above. In addition, to the extent that the Commission determines that additional procedures are needed to address matters raised by the Complaint, the NYISO believes that its shared governance stakeholder process is well suited to respond, but is also amenable to a hearing or settlement judge process as suggested in the Complaint.

Respectfully submitted,

/s/ Ted J. Murphy
Ted J. Murphy
Counsel for
the New York Independent System Operator, Inc.

June 29, 2015

⁴⁰ The NYISO respectfully requests waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3) (2014) to the extent necessary to permit service on counsel for the NYISO in both Miami and Washington, D.C.

cc: Michael Bardee
Gregory Berson
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Attachment 1

Attachment 1

Compliance with Commission Rule 213(c)(2)

A. Specific Admissions and Denials of Material Allegations

In accordance with Commission Rule 213(c)(2)(i), to the extent practicable and to the best of the NYISO's knowledge and belief at this time, the NYISO admits or denies below the factual allegations in the Complaint.¹ To the extent that any fact or allegation in the Complaint is not specifically admitted below, it is denied. Except as specifically stated below, the NYISO does not admit any facts in the form or manner stated in the Complaint.

In general, the NYISO does not oppose in principle, and supports, many of the Complaint's proposed changes to the BSM Rules provided that they have the features discussed in the NYISO's Answer, and appropriate details are developed.

1. Denials

- The NYISO denies that its implementation of the BSM Rules to date has been unjust, unreasonable, or unduly discriminatory. Complaint at 5, 13, 16.
- The NYISO denies that it has assumed unrealistic entry dates or has understated the effects of delay in applying the BSM Rules to date. Complaint at 17.
- The NYISO denies that there has been unjust, unreasonable, or unduly discriminatory subjectivity or uncertainty in its application of the BSM Rules to date. Complaint at 16, 18, 20.

The NYISO denies that its stakeholder process is so "overburdened" as to make it impossible for the NYISO to comply with a Commission directive to address the Complaint's proposals or to address new issues that may arise in the future. Complaint at 36-37.

- The NYISO denies that transmission assets coupled with UDRs should be excluded from evaluation under the BSM Rules. Complaint at 25-26.

2. Admissions

- The NYISO admits that it should be possible to revise the BSM Rules to limit their applicability only to those Resources that could effectively and practically be used to suppress prices (as discussed in the Answer) without undermining the ability of the BSM Rules to prevent artificial price suppression in the capacity market. Complaint at 22-23.
- The NYISO admits that it should be possible to revise the BSM Rules so that current technology of certain renewable resources would not be subject to evaluation under them

¹ Capitalized terms that are not otherwise defined in this Attachment or the Answer shall have the meaning specified in the Services Tariff, and if not defined therein, then as defined in the NYISO's Open Access Transmission Tariff ("OATT").

(as discussed in the Answer) without undermining the ability of the BSM Rules to prevent artificial price suppression in the capacity market. Complaint at 23-24.

- The NYISO admits that it should be possible to revise the BSM Rules so that repowerings that satisfy an economic viability test and meet other conditions would not be subject to a further evaluation (as discussed in the Answer,) without undermining the ability of the BSM rules to prevent artificial price suppression in the capacity market. Complaint at 26.
- The NYISO admits that the BSM Rules should continue to contain a competitive entry exemption even if revisions proposed by the Complaint are granted. Complaint at 28-29.
- The NYISO admits that it should be possible to revise the BSM Rules to include a form of “Self-Supply Exemption” (as discussed in the Answer) without undermining the ability of the BSM Rules to prevent artificial price suppression in the capacity market. Complaint at 29-33.
- The NYISO admits that it should be possible to revise the BSM Rules to include a form of “Reliability Exemption” (as discussed in the Answer) without undermining the ability of the BSM Rules to prevent artificial price suppression in the capacity market. Complaint at 33.
- The NYISO admits that, in accordance with the Services Tariff and OATT, it is the entity responsible for providing non-discriminatory open access transmission service, maintaining reliability, and administering competitive wholesale markets for electricity, capacity, and ancillary services in New York State. Complaint at 9.
- The NYISO admits that is responsible for implementing the BSM Rules pursuant to the Services Tariff. Complaint at 9.
- The NYISO admits that the capacity market is designed to encourage new investment and to inform retirement decisions by providing a price signal that indicates when sufficient capacity is available or when additional Resources are needed to meet New York’s peak demand and maintain its planning reserve margin. Complaint at 9-10.
- The NYISO admits that there are currently only two Mitigated Capacity Zones: New York City and the G-J Locality, and that the capacity market power mitigation rules are applied only in Mitigated Capacity Zones. Complaint at 10.
- The NYISO admits that capacity market power mitigation is not imposed in NYCA Load Zones that are not within a Mitigated Capacity Zone because to date, there has been no finding that mitigation measures are needed in them. Complaint at 10.
- The NYISO admits that the capacity market power mitigation measures in effect in the Mitigated Capacity Zones include both “offer cap” mitigation and Offer Floor mitigation. Complaint at 10.
- The NYISO admits that the current BSM Rules require it to review every new entrant in a Mitigated Capacity Zone to determine whether it is subject to an Offer Floor. Complaint at 11.

- The NYISO admits that to determine if a project is exempt from the Offer Floor, it performs two tests under the BSM Rules, which are sometimes referred to as “Part A” and “Part B” tests. Complaint at 11.
- The NYISO admits that capacity offers from a Resource subject to an Offer Floor must be at a price no lower than the applicable Offer Floor, unless the resource was determined to be economic under the Part A test or the Part B test, or it was determined to be qualified for a specific exemption. Complaint at 11.

B. Defenses

Commission Rule 213(c)(2)(ii) requires answers to set forth every defense “to the extent practicable.” The NYISO does not oppose, and with certain modifications described in the Answer, and assuming that the necessary additional details to be developed are reasonable, could support, most of the Complaint’s proposed changes to the BSM Rules. The NYISO therefore sets forth no defenses at this time but reserves its rights with respect to the development of specific tariff language to implement any compliance directives issued by the Commission.

C. Proposed Resolution Process

Commission Rule 213(c)(4) states that an answer “is also required to describe the formal or consensual process it proposes for resolving the complaint.” As explained in the Answer, either the NYISO’s normal stakeholder process, or hearing or settlement judge procedures, could be used to develop compliance tariff revisions in a timely manner if the Commission decides in response to the Complaint that the BSM Rules should be modified.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 29th day of June, 2015.

/s/ Joy A. Zimmerlin

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