UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.) Docket No. ER10-3043-000

REQUEST FOR LEAVE TO ANSWER AND ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

In accordance with Rules 212 and 213 of the Commission's Rules of Practice and Procedure,[1] the New York Independent System Operator, Inc. ("NYISO") respectfully seeks leave to answer and answers: (i) the comments of its independent external Market Monitoring Unit ("MMU");[2] and (ii) certain other arguments in other comments and protests submitted in this proceeding.

For the reasons set forth in Sections II and III below, the Commission should accept all of the proposed revisions to the In-City Buyer Side Mitigation Measures[3] that were included in the NYISO's September 27, 2010 filing. For the reasons set forth in that filing, and as described herein, the proposed revisions represent improvements to the existing measures. All attempts by protestors to inject issues that are beyond the scope of this proceeding or to inappropriately bypass the stakeholder process should be rejected. The proposed minimum and maximum Offer Floor durations should be accepted because the independent expert judgment of the NYISO is that they establish reasonable outer limits that properly balance the need to deter uneconomic entry against the need to avoid

[1] 18 C.F.R. §§ 385.212 and .213 (2010).

[2] *Motion to Intervene and Comments of the New York ISO's Market Monitoring Unit,* Docket No. ER10-3043 (October 22, 2010) ("Independent MMU").

[3] As was explained in the September 27 filing, the In-City Buyer-Side Mitigation Measures are a series of market power mitigation rules set forth in Attachment H to the Market Administration and Control Area Services Tariff ("Services Tariff") that guard against the potential exercise of market power in the New York City ("In-City") market for "Installed Capacity" ("ICAP").

discouraging needed economic entry. Further, the independent MMU has stated that the Commission should accept this and nearly all of the other elements of the NYISO's proposals.[4] Finally, the Commission should reject claims that the NYISO's proposed tariff language is somehow unclear or unduly discriminatory.

Consistent with its earlier filings, the NYISO respectfully renews its request that the Commission act expeditiously to issue an order by November 10, and make most of the proposed tariff enhancements effective on November 11.[5] If the Commission rules by November 10 the NYISO could implement the new provisions in time for them to have the greatest benefit, *i.e.*, coincident with potential new entrants' consideration of Project Cost Allocations issued after the finalization of the Annual Transmission Reliability Assessment[6] and the Class Year Deliverability Study.

I. Motion for Leave to Answer

The Commission has discretion to accept answers to protests[7] and has often done so when it helps to clarify complex issues, provides additional information, or is

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[4] *See* Independent MMU at 5 ("[t]he filing by the NYISO … should be deemed just and reasonable by the Commission."). As discussed below, the independent MMU proposal of an alternative provision to the Total Cleared UCAP test is based on the MMU's view that the MMU's alternative is "more reliable and effective"; the MMU nowhere concludes or finds that the Total Cleared UCAP test is not just and reasonable.

[5] *See Answer to Motion for Extension of Time and Motion to Amend Request for Expedited Commission Action of the New York Independent System Operator, Inc.*, Docket No. ER10-3043-000 (October 1, 2010) at 3 (Updating the requested effective dates proposed in the September 27 filing so that most of tariff revisions would become effective on November 11 but preserving the September 27 filing's request for a September 28, 2010 effective for the portions of new Sections 23.4.5.7.3 and 23.4.5.7.3.3 that would establish information and data submission requirements and for new Section 23.4.5.7.3.4 (which would define the consequences for failing to comply with those obligations. The NYISO requested the September 28th effective date for those provisions in order to unambiguously establish its authority to collect necessary information in advance of the November 11 implementation date).

[6] Capitalized terms that are not otherwise defined herein shall have the meaning specified, as applicable, in Article 2 of the NYISO's Market Administration and Control Area Services Tariff, in Section 23.2.1 of Attachment H thereto, or in Section 25.1.2 of Attachment S to the NYISO's Open Access Transmission Tariff.

[7] 18 C.F.R. § 385.213(a)(2) (2010). Rule 213(a)(3) appears to allow the NYISO to answer the Independent MMU Comments, and other pleadings styled as "comments" as a matter of right.

otherwise helpful to the Commission's decision-making process.[8] The NYISO's answer should be accepted because it will help to clarify various complex issues while also correcting various misleading or inaccurate claims by other parties.

II. Answer to the Independent Market Monitoring Unit

The Independent MMU Comments recognize that the NYISO's proposed tariff improvements respond to the independent MMU's 2009 recommendation that the NYISO "review the details regarding its uneconomic entry mitigation for the capacity market to ensure that it will be effective without hindering efficient entry."[9] The NYISO consulted closely with the independent MMU in the development of the proposed tariff revisions and the independent MMU's general view is that they include "a number of improvements to the buyer-side mitigation measure that should be deemed just and reasonable by the Commission."[10]

As the September 27 filing noted,[11] there is only one difference between the NYISO and the independent MMU on the issues in this proceeding. It has to do with the proposed new Total Cleared UCAP test that would allow buyer-side mitigation to expire

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Nevertheless, the NYISO is also requesting leave to respond to those comments to the extent that the Commission may deem it necessary.

[8] *See e.g.*, *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044 at P 39 (2008) (accepting answers to answers because they provided information that aided the Commission's decision-making process); *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting the NYISO's answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was "helpful in the development of the record. . . .")

[9] Independent MMU at 2.

[10] *Id.* 5.

[11] *See* September 27 filing at n. 24.

when a resource[12] demonstrates through market performance that it is in fact economic. The Independent MMU Comments express "concern" that the test proposal "may not" always be a reliable indicator that a new resource is truly economic and might, in some circumstances, prematurely exempt resources that were wholly or partially uneconomic. The independent MMU asks that the Commission adopt an alternative rule under which mitigation would expire only with respect to the average portion of a resource that cleared in the prior like Capability Period.[13] The scope of the exemption would increase to the extent that the average portion of the resource clearing in subsequent like Capability Periods increased until all of the resource cleared and mitigation was eliminated entirely. Exemption levels would be determined separately for each of the two Capability Periods.

The NYISO affords great weight to the independent MMU's views but, in this instance, respectfully urges the Commission to approve the September 27 filing's version of the Total Cleared UCAP test. It was formally ratified by a super-majority of NYISO stakeholders after significant vetting, approved by the NYISO's Board of Directors, and was properly submitted for the Commission's consideration under the NYISO's Commission-approved rules for developing and filing tariff amendments under Section 205 of the Federal Power Act.[14] By contrast, the independent MMU's proposal was not

[12] The proposed revisions do not modify existing, or propose new, provisions applicable to Special Case Resources ("SCRs"). Accordingly, references herein to resources or Installed Capacity Suppliers do not, and should not be construed to, refer to SCRs.

[13] Independent MMU at 5. The NYISO has two six-month Capability Periods. The Summer Capability Period runs from May 1 through October 31 each year. The Winter Capability Period begins on November 1 each year and continues until April 30 of the following calendar year.

[14] 18 C.F.R. Part 35.

vetted with stakeholders, let alone approved by them.[15] The September 27 Filing is clearly not an instance where the independent MMU has identified a flaw in an existing rule that must be swiftly remedied. To the contrary, the independent MMU is proposing an alternative to a proposed rule that it acknowledges is an improvement over the status quo.[16]

Even if that were the case, however, it would not make the pending proposal unjust or unreasonable, or mean that it should not be accepted under Section 205 at this time. The independent MMU merely proposes an alternative that it believes is a " *more* reliable and effective provision than the provision approved by the NYISO stakeholders and filed by NYISO." Commission and judicial precedent is clear that the perfect need not be the enemy of the good in the design of market power mitigation measures. Multiple alternative proposals can simultaneously be just and reasonable without diminishing the justness and reasonableness of others.[17] Moreover, the independent MMU's statement of general concerns regarding this one aspect of the NYISO's proposal

[15] In fact ,the NYISO's stakeholder Business Issues Committee ("BIC") rejected an amendment to the proposed tariff revisions that would have included separate tracking of resources' performance during the Summer and Winter Capability Periods, which is an important feature of the independent MMU's alternative proposal. *See http://www.nyiso.com/public/webdocs/committees/bic/meeting_materials/2010-08-04/Final_Motions_revised.pdf (*summarizing the NYISO's August 4, 2010 BIC meeting where Motion 4b, which would have added a "seasonal" component to the Total Cleared UCAP test, was rejected by nearly sixty percent of NYISO stakeholders.)

[16] Independent MMU at 3, 5.

[17] *PJM Interconnection, LLC*, 119 FERC ¶ 61,063 at P 41 (2007) (stating that "on the same set of facts there can be 'multiple just and reasonable rate designs'"); *California Independent System Operator Corporation*, 119 FERC ¶ 61,076 (2007) (stating that "there can be more than just and reasonable proposal, and the proposal under consideration will be selected unless it is found unjust and unreasonable"); *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,241 (2006) (stating that "[u]nder the FPA, if we find that the Midwest ISO has successfully supported the justness and reasonableness of its proposal, we must approve it even if there are other just and reasonable ways…"); *Cities of Bethany v. FERC*, 727 F.2d 1131 at 1136 (finding that "[t]he Federal Power Act requires that all rates charged by public utilities be 'just and reasonable.' In the past FERC has interpreted is authority to review rates under this provision of the Act as limited to an inquiry into whether the rates proposed by a utility are reasonable - and not to extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs").

does not establish, nor does it state, that the Total Cleared UCAP test or any other provision or the proposal as a whole, is unjust or unreasonable.[18] The NYISO did not propose the Total Cleared UCAP test in isolation. It is complemented by another proposed rule that would require mitigation to continue for at least six Capability Periods, regardless of a resource's course of performance under the Total Cleared UCAP test. The September 27 filing explained that the minimum mitigation period was meant to serve as a "reasonable check against the possibility that the [proposed] provisions might allow some projects to escape mitigation prematurely under circumstances that are not currently foreseen."[19] Thus, even if the Commission were to conclude, as the NYISO contends it should not, that the independent MMU has identified a possible scenario in which the NYISO's proposed economic demonstration rule might not be optimal, the proposed minimum mitigation period provides protection. Again, this is especially true given that the Offer Floor would not be lifted under the Total Cleared UCAP test for some time and it is a high hurdle.

III. Answer to Other Comments and Protests

Consistent with the Commission's precedent regarding answers to protests, the NYISO's answer focuses on identifying issues that are not outside the scope of this proceeding, correcting false or misleading statements, and clarifying complex issues that the protests try to obscure. The fact that the NYISO has not addressed other arguments should not be construed as implicit agreement with them. The NYISO's position continues to be that its proposed tariff revisions are just and reasonable and should be

[18] To avoid any possible confusion on this point, although the September 27 filing acknowledged that the independent MMU had a concern regarding the Total Cleared UCAP test, the NYISO continues to believe that the version of the test proposed in that filing is both sound, and just and reasonable.

[19] September 27 filing at 9.

accepted in their entirety, with no modifications, by November 10, 2010, with the effective dates that were previously requested.

A. The Commission Should Reject Arguments, and Decline to Issue Directives, that Are Outside the Scope of this Proceeding

Certain protestors make arguments and request relief that must be rejected because they are beyond the scope of this proceeding. Commission precedent is clear that Section 205 proceedings should only consider issues that relate directly to the proposed tariff revisions that are actually before the Commission.[20] Extraneous questions should be left for consideration in other venues, such as the NYISO stakeholder process.

First, Professor Peter Cramton argues, on behalf of the "Indicated LSEs," that the In-City Buyer-Side Mitigation Measures "should be eliminated."[21] That argument is unquestionably a collateral attack on multiple Commission orders that, correctly, approved the existing measures.[22] Professor Cramton's argument cannot be considered in a proceeding concerned solely with proposed improvements to the In-City Buyer Side Mitigation Measures.

Mr. James Gallagher's unsupported claims on behalf of Indicated LSEs, that the In-City Buyer Side Mitigation Measures "act primarily as a barrier to entry . . . ."[23] and

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[20] *See, e.g., Midwest Independent Transmission System Operator, Inc.*, 129 FERC ¶ 61,268 at P 24 (2009) (finding that an issue raised with respect to language that was not modified by the Section 205 filing was outside the scope of the proceeding); *Southwest Power Pool, Inc.*, 132 FERC ¶ 61,042 at P 107 (finding that revisions were not proposed to a certain portion of the tariff and therefore issues raised on those provisions were outside the scope, and stating that entities have "discretion under Section 205 of the FPA to determine what to propose in [their] filing"); *California Independent System Operator Corp.*, 132 FERC ¶ 61,211 at P 28 (2010) (rejecting arguments regarding the reasonableness of tariff provisions that were not modified in the filing because they were beyond the scope of the proceeding).

[21] Affidavit of Peter Cramton at 3.

[22] *See New York Independent System Operator, Inc.*, 131 FERC ¶ 61,170 (2010); *New York Independent System Operator, Inc.*, 124 FERC ¶ 61,301 (2008); *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,211 (2008).

[23] Affidavit of James T. Gallagher at P 10.

have harmed consumers are outside the scope of this proceeding for the same reason. In addition, his recommendation that the Commission begin incorporating "public policy" considerations, such as air quality and residential health, into its market power mitigation policies[24] should not be taken up in this proceeding. As Mr. Gallagher noted the Commission recently issued a Notice of Proposed Rulemaking that would require all Transmission Providers to consider such public policy factors in their transmission planning processes.[25] That proposal was generally supported by the NYISO although it raised a number of complex issues, some of which the NYISO noted in its comments in that proceeding. More generally, the proposal has proven to be extremely controversial with many other stakeholders across the country. If the Commission were interested in revising its market power mitigation policies to explicitly incorporate "public policy" factors, the issue would impact non-NYISO stakeholders and should be addressed in a generic proceeding, *e.g.*, a rulemaking, rather than a NYISO-specific docket.

Third, the Incumbent Suppliers' claims that the widespread stakeholder support for the September 27 filing should be ignored because of supposed deficiencies in the NYISO stakeholder process raises issues that were fully resolved in the NYISO's Order No. 719 compliance docket or through a separate proceeding. In an order issued just before the Incumbent Suppliers filed their protest,[26] the Commission expressly found that the NYISO's "shared governance" model fully satisfied Order No. 719's "fairness in balancing diverse interests" requirement. If the Incumbent Suppliers were concerned that

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[24] *Id.* at PP 14-16.

[25] *See Id.* at P 20, Indicated LSEs at 12-13. *See also Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Notice of Proposed Rulemaking, 75 Fed. Reg. 37884 (June 30, 2010), 131 FERC ¶ 61,253 (2010).

[26] *New York Independent System Operator, Inc.*, 131 FERC ¶ 61,072 (2010).

the NYISO stakeholder process was biased against "traditional suppliers," notwithstanding the Commission's recent policy emphasis on ensuring that ISOs/RTOs are more responsive to consumers, they should have raised those concerns in the Order No. 719 compliance docket.

B. The Commission Should Reject Generators' Numerous Misrepresentations Regarding the NYISO Stakeholder Process and the Nature of the September 27 Filing

Even though the Incumbent Suppliers' attacks on the NYISO stakeholder process are outside the scope of this proceeding, the NYISO takes great exception to the false allegations that accompany them. The Incumbent Suppliers imply that the NYISO misled the Commission when it asked that the September 27 filing receive the deference normally shown to proposals that enjoy super-majority stakeholder support.[27] As the Incumbent Suppliers begrudgingly acknowledge in a footnote,[28] the NYISO did not say that the Commission must approve the proposed improvements solely because stakeholders supported them. It simply requested that Commission show its normal level of deference to a proposal that had been fully vetted in, and duly approved by, an ISO/RTO stakeholder process.

Similarly, the NYISO did not rely solely on the presence of super-majority stakeholder support to justify its proposal. It also depended heavily on the expert

[27] *New York Independent System Operator, Inc.*, 124 FERC ¶ 61,238 at P 35 (2008) (accepting the NYISO stakeholder approved proposal which was "thoroughly vetted through the NYISO Stakeholder process and received unanimous approval" and falls within a zone of reasonableness); *New York Independent System Operator, Inc.*, 109 FERC ¶ 61,161 at P 19 (2004) (accepting the NYISO's proposed tariff revisions because they were developed through its stakeholder process and received the support of a large majority); *New York Independent System Operator, Inc.*, 90 FERC ¶ 61,319 (2000) (rejecting alternative ICAP recall bid proposal put forward by a single party in opposition to a system approved by the NYISO's stakeholder committees).

[28] *See Comments and Protest of the New York City Suppliers* at n. 52, Docket No. ER10-3043 (October 22, 2010) ("Incumbent Suppliers").

judgment of its own Auxiliary Market Products and Market Mitigation and Analysis Departments and the independent MMU. The Incumbent Suppliers and the Independent Power Producers of New York ("IPPNY") recognize the importance of such judgments by giving great weight to the independent MMU's opinion on the one point where it is not at odds with their interests. On the other hand they wholly ignore the MMU's support for the other elements of the September 27 filing at the same time that the Incumbent Suppliers criticize the NYISO for "discounting"[29] the independent MMU's views.

That is not the Incumbent Suppliers' only misrepresentation. The Incumbent Suppliers suggest that the proposed improvements were universally opposed by suppliers and then attempt to dispense with the inconvenient fact that three suppliers voted for them by impugning their motives.[30] They would have the Commission discount the votes of all of the non-suppliers that supported the filing on the irrelevant ground that a few previously opposed the establishment of buyer side measures. By that spurious reasoning, any comments that the Incumbent Suppliers might make on future revisions to supply-side mitigation measures that they initially opposed should likewise be disregarded. The Incumbent Suppliers also: (i) admit that the proposed tariff improvements enjoy super-majority support while simultaneously implying that they do not;[31] and (ii) deny that the proposed revisions were the product of the NYISO's shared governance process or reflect a reasonable balancing of interests because other participants were unwilling to make every concession that they demanded.

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[29] *Id.* at 28.

[30] *Id.* at the Affidavit of Mark Younger at P 121 ("Younger Affidavit").

[31] *See* Younger Affidavit at P 117 (admitting that it was correct for the NYISO to refer to super-majority support "within the meaning of the NYISO Services Tariff" for its proposals).

More fundamentally, the Incumbent Suppliers falsely depict the proposed tariff improvements as a "sea change" that would substantially weaken the In-City Buyer Side Mitigation Measures. Although certain parties are opposed to any form of buyer side mitigation, the NYISO, as its response to those parties in this answer demonstrates, is not. The same is true of the independent MMU which generally supports the proposed improvements while continuing to advocate for strong buyer side mitigation measures.

Finally, IPPNY claims that the September 27 filing violates a rule of its own invention. IPPNY asserts that any change to buyer side mitigation must be balanced by a corresponding change on the supplier-side.[32] In reality, the Commission has required the NYISO to have adequate buyer and supplier side mitigation measures, but this does not mean that the NYISO may not make improvements in one area unless it also proposes changes to the other. In this instance, the NYISO is focused on the buyer side because the independent MMU's 2009 *State of the Market Report* encouraged it to improve those measures. It is not proposing changes to the supplier side measures at this time because the independent MMU's report indicated that they appeared to be functioning properly[33] and the NYISO concurs with the independent MMU's conclusion.

C. The Commission Should Reject All of the "Alternative Proposals" that Have Been Offered in Contravention of the Federal Power Act and the NYISO's Stakeholder Approval Requirements

Various protests urge the Commission to compel the NYISO to file new tariff revisions that have not been fully vetted by stakeholders, sometimes by an arbitrary deadline unilaterally selected by the protestor. As an initial matter, such requests are

[32] Incumbent Suppliers at 15.

[33] Potomac Economics, *2009 State of the Market Report New York ISO* at 121 *available at* < http://www.potomaceconomics.com/documents/C9&C10>.

inconsistent with Commission and judicial precedent holding that public utilities cannot be forced to make involuntary filings under Section 205 of the Federal Power Act unless the Commission first finds that the existing rate is unlawful.[34] No protestor sponsoring an "alternative proposal" has challenged the justness and reasonableness of the existing In-City Buyer Side Mitigation Measures. Indeed, the Incumbent Suppliers and IPPNY argue that the existing measures should remain in place with no modifications, perhaps permanently. All of the "alternative proposals," including the nominally distinctive ones that would have the Commission direct the NYISO to make a compliance filing, are therefore procedurally defective and should be rejected for that reason alone.

Furthermore, all of the alternative proposals should be rejected under the Commission's precedent discouraging individual parties from attempting to circumvent the vetting function that ISO/RTO stakeholder processes perform.[35] This is especially true in this case because the September 27 filing was only the first step in the NYISO's

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[34] *See, e.g., Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, at 10 (2002) (stating that "[t]he courts have repeatedly held that FERC has no power to force public utilities to file particular rates unless it first finds the existing filed rates unlawful. *See Pub. Serv. Comm'n v. FERC*, 866 F.2d 487, 488-89 (D.C.Cir.1989) (interpreting parallel provision of the Natural Gas Act, 15 U.S.C. § 717d) ("On four occasions in the last three years this court has reviewed [FERC] efforts to compromise [Section] 5's limits on its power to revise rates. On each the court has repelled [FERC]'s gambit. This is number five."); *Western Res., Inc. v. FERC*, 9 F.3d 1568, 1578 (D.C.Cir.1993) ("We now make it an even six."); *see also Consumers Energy Co. v. FERC*, 226 F.3d 777, 780 (6th Cir.2000) (Natural Gas Act); *Louisiana v. Federal Power Comm'n*, 503 F.2d 844, 861 (5th Cir.1974) (same). Nor may FERC prohibit public utilities from filing changes in the first instance. Rather this Court, among others, has stressed that the power to initiate rate changes rests with the utility and cannot be appropriated by FERC in the absence of a finding that the existing rate was unlawful").*)*

[35] *See, e.g. ISO New England*, 128 FERC ¶ 61,266 at P 55 (2009) (declining to grant a party's specific request for relief because the Commission "will not ... circumvent that stakeholder process"); *New York Independent System Operator, Inc.*, 126 FERC ¶ 61,046 at PP 54 (2009) (stating that while a proposal "may have merit" the proposal should be "presented to and discussed among ... stakeholders")*; New York Independent System Operator, Inc.*, 122 FERC ¶ 61,209 at PP 24, 26 (2008) (declining to direct requested revisions without "giving other stakeholders an opportunity for comment" because it "would inappropriately circumvent [the] stakeholder process"); *New England Power Pool*, 107 FERC ¶ 61,135 at PP 20, 24 (2004) (declining to accept changes proposed for the first time in a Commission proceeding by an entity that participated in the stakeholder process because the "suggested revisions have not been vetted through the stakeholder process and could impact various participants").

efforts to improve the In-City Buyer Side Mitigation Measures. The NYISO is planning to present other potential enhancements to its stakeholders and the protestors can easily make their own recommendations in the course of those discussions.[36]

First and foremost, the Commission must reject the Incumbent Suppliers' *de facto* attempts to amend the NYISO's tariffs without obtaining the requisite stakeholder approvals. The Incumbent Suppliers urge the Commission to adopt Mr. Younger's comprehensive "alternative proposal" for phasing-out Offer Floor mitigation for resources that demonstrate that they are actually economic. Mr. Younger's alternative proposal has undergone no stakeholder review whatsoever,[37] was not validly filed under Section 205, and is not predicated on evidence demonstrating that the existing tariff provisions are unjust or unreasonable. Moreover, as the attached affidavit of Mr. David Lawrence explains, Mr. Younger's attack on the proposed Total Cleared UCAP test relies on one-sided assumptions and selective, contrived examples. Even if there were sufficient merit to Mr. Younger's alternative for it to be deemed just and reasonable, which there is not, the mere existence of an alternate proposal does not prevent the Commission from accepting the NYISO's just and reasonable proposal for the same reasons that the NYISO discussed above in connection with the independent MMU's proposal.

Similarly, the Incumbent Suppliers' effort to dictate how the NYISO would apply its proposed improvements to mitigation exemption analyses in individual cases[38] is

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[36] NYISO Board of Directors' Decision on Appeal of the Management Committee's August 25, 2010 Decision to Revise In-City ICAP Buyer-Side Mitigation 5-6 (September 24, 2010) *available at* <http://www.nyiso.com/public/markets_operations/committees/appeals/index.jsp>.

[37] As was noted above at n. 15, however, the NYISO's stakeholders have already rejected an amendment that would have introduced seasonal distinctions into the analysis,

[38] Incumbent Suppliers at 48; *see also* Younger Affidavit at PP 80-82.

impermissible. The scope of this proceeding is properly confined to determining whether the proposed tariff improvements are just and reasonable, not to assessing how they should be effectuated under particular facts and circumstances. The Commission should not allow the Incumbent Suppliers to implement *de facto* tariff amendments in the guise of formal Commission "interpretations" when the Incumbent Suppliers' proposals have not been submitted in a procedurally valid Section 205 filing or a request for declaratory order. It is especially inappropriate for the Incumbent Suppliers to try to impose their views of how the proposed tariff language would apply to potential competitors, such as the Bayonne Energy Center or Astoria Energy II, given the Incumbent Suppliers' obvious interest in avoiding competition from such projects. The Commission should therefore neither accept, nor give any other endorsement to, the Incumbent Suppliers' assertions regarding the treatment of their would-be competitors.

The Commission should also reject Incumbent Suppliers' arguments, and alternatives, with respect to the NYISO's proposed improvements to the Offer Floor exemption process in new section 23.4.7.5, which specifies the only situations in which the NYISO would re-evaluate an Offer Floor or exemption determination (*i.e.*, where a facility: (a) enters a new Class Year for CRIS; or (b) intends to receive transferred CRIS rights at the same location).[39] These modifications are necessitated by, among other things, Commission accepted tariff revisions adopting a second level of interconnection

[39] Although Mr. Younger has correctly identified two circumstances in which the NYISO would not retest proposed projects, *See* Younger Affidavit at P 77, the NYISO has also proposed not to retest any project for which it has issued an exemption or Unit Net CONE determination (1) under the existing (pre-amendment) version of Attachment H; or (2) after Attachment H is amended pursuant to the proposed revisions, if the project receives the CRIS rights it requested , or if the project meets the criteria in 23.4.5.7.3(III) *See* September 27 Filing at 14 and proposed new Section 23.4.5.7.3.5.

service with a deliverability component.[40] The Incumbent Suppliers take issue with this proposal because it clarifies that entities that initially elect ERIS and accept the resulting cost allocation, and then in a later Class Year request to be evaluated for CRIS rights, will be re-evaluated in that Class Year's Offer Floor exemption test.

The Incumbent Suppliers urge the Commission to either reject these improvements, or limit the entities that could be re-evaluated. However, these provisions will allow the NYISO to perform its exemption analysis concurrent with the OATT Attachment S Class Year process, thus ensuring that the analysis provides an accurate picture of the level of Capacity available from the relevant Class Year projects. Not evaluating all potential Capacity, by ignoring ERIS entities requesting CRIS rights altogether, or limiting testing to units seeking CRIS for uprates or where a potential new entrant does not accept its minimum interconnection costs and proceeds to a new Class Year, defeats a purpose of the proposed improvement. The measures were designed to allow all market participants – both incumbent suppliers, entities evaluating the facilities cost allocation, prospective developers, and buyers – to more accurately make their own evaluation of the market by adding transparency and objectivity to the evaluation process.

Further, arguments that the proposal will allow entities to "class shop" and circumvent mitigation do not rise to the level of making the NYISO's proposed tariff modifications unjust and unreasonable, as such concerns are overstated. The likelihood

[40] When the existing Attachment H language was drafted, the NYISO's Attachments S, X, and Z did not contain provisions on deliverability. After Attachment H was developed, the Commission accepted the NYISO's added provisions providing developers with the choice of two levels of interconnection service, Capacity Resource Interconnection Service ("CRIS") and Energy Resource Interconnection Service ("ERIS"). An entity interconnecting pursuant to the provisions in Attachments X or Z and being studied and allocated costs pursuant to Attachment S now has the ability to select between CRIS (which includes a deliverability component) and ERIS. Attachment S also contains provisions allowing entities undergoing those processes to elect ERIS only and in a subsequent Class Year request to be evaluated for CRIS.

of the type of "class shopping" feared by the Incumbent Suppliers is severely limited by the unpredictability of market forces which introduce great risk to such a strategy, particularly in light of existing tariff provisions which allow the NYISO and the independent MMU to mitigate instances of uncompetitive conduct.

The Commission must also reject Incumbent Suppliers' proposed modifications to the parameters of the mitigation exemption test for the same reasons that were discussed above. These components of the Incumbent Suppliers' proposals are especially puzzling because the Incumbent Suppliers are now attacking tariff revisions governing the modeling of generator retirements that the NYISO added at the urging of the Incumbent Suppliers' own affiant, Mr. Younger, during stakeholder meetings**,** and complaining about the absence of features that are actually a part of the NYISO's proposal.[41]

Turning to the other protests, the Commission should deny the Indicated LSEs' request[42] that the NYISO be ordered to make a filing within 120 days to address questions that the NYISO's independent Board of Directors has already instructed the NYISO's staff to examine. It is both unnecessary to compel the NYISO to explore issues

[41] Proposed section 23.4.5.7.3.2, which identifies retirements, was designed to provide objective criteria to the extent practicable so that all market participants could make their own market assessments. Accordingly, after specific discussion at several stakeholder meetings, including Mr. Younger's specific comments, the proposed revisions incorporated the objective standard of generators that provided notice pursuant to the NYPSC pursuant to the NYPSC's requirements. *See Order Adopting Notice Requirements for Generation Unit Retirements*, Case 05-E-0889, at 15-17 (issued December 20, 2005). In general, the NYPSC Order requires that units provide 180 days notice, and in some instances less time. Thus, it is not reasonably likely a generator would provide a notice of retirement three years in advance, which would be necessary to even be captured in the NYISO's forecast that is the NYISO's buyer-side mitigation test. Thus, Mr. Younger's disingenuous complaint is even more of a red herring because it would require highly speculative occurrence of a generator providing notice to the State regulator more than 30 months earlier than required, and further, that of those MW of proposed retirements, a percent might be rejected by the NYPSC.

[42] *Motion to Intervene, Comment and Limited Protest of Consolidated Edison Company o New York, Inc., Orange and Rockland Utilities, Inc., New York Power Authority, Long Island Lighting Company d/b/a LIPA, Niagara Mohawk Power Corporation d/b/a National Grid, The City of New York and the New York State Consumer Protection Board* at 8, Docket No. ER10-3043 (October 22, 2010) ("Indicated LSEs").

that it is already charged with investigating and inadvisable to impose an arbitrary time limit on related stakeholder discussions that may artificially constrain them.

Similarly, the Commission should take no action on the suggestion of the New York State Department of Public Service that new entry by "merchant developers" should be exempted from In-City Buyer Side Mitigation Measures because "such developers are merely interested in competing for revenue rather than suppressing prices."[43] At first blush, the suggestion appears to be both unduly discriminatory and inconsistent with the underlying rationale supporting the In-City Buyer Side Mitigation Measures (because a merchant developer could enter into a contractual relationship with interests that sought to artificially suppress In-City capacity prices). The NYISO's stakeholder process is available to all stakeholders that may want to propose modifications.

D. The Commission Should Accept the Proposed Six Capability Period Minimum and the Thirty Capability Period Maximum Offer Floor Mitigation Periods

As the Commission has recognized, it cannot possibly be proven with mathematical rigor, in advance, that market power mitigation measures will function exactly as intended. The crafting of mitigation measures necessarily depends on judgments about likely impacts and risks.[44] In this proceeding, the NYISO's expert and

[43] *Notice of Intervention and Comments of the New York State Public Service Commission* at 8, Docket No. ER10-3043 (October 22, 2010) ("PSC"). It is unclear whether the PSC intended for the Commission to approve such an exemption now, or merely wanted the Commission to require the NYISO to consider it.

[44] *PJM Interconnection LLC*, 126 FERC ¶ 61,145 at P 29 (2009) (stating that "[w] e agree with those commenters who maintain that there is no perfect market power test or screen" and "judgment is needed to evaluate proposed tests," *citing, Colorado Interstate Co. v. FPC*, 324 U.S. 581, at 589 (1945) (rate design involves judgment on a myriad of facts; it has no claim to an exact science); *Blumenthal v. FERC*, No. 07-1130, 2009 U.S. App. Lexis 1101 at 12-13 (D.C. Cir. Jan 23, 2009) (there is no single just and reasonable rate, but rather a zone of reasonableness and the Commission must balance competing considerations in deciding on a just and reasonable rate within the zone); *Wisconsin v. FERC*, No. 06-1408, slip. op. at 8 (D.C. Cir. Oct. 31, 2008) (deference accorded to ratemaking determinations); *Association of*

independent judgment was that the duration of Offer Floor mitigation for resources that are not exempt from the In-City Buyer Side Mitigation Measures should continue for no less than six Capability Periods and for no more than thirty. The NYISO believed that establishing those minimum and maximum limits would strike an appropriate balance between the vital objectives of deterring uneconomic entry without discouraging needed economic entry. The Independent MMU's Comments also stated the Commission should accept this aspect of the September 27 filing as just and reasonable.

Various protestors have argued that these minimum and maximum durations are too short or too long, generally along predictable lines that are consistent with their own, or their perception of their constituents', short-term economic interests. None of them have shown, however, that the balanced approach favored by the NYISO, and accepted by its independent MMU, is unreasonable.

For example, the Incumbent Suppliers claim that the NYISO must provide analyses proving beyond any possible doubt that a fifteen year maximum duration will be sufficient to deter any imaginable uneconomic entry scheme, no matter how impracticable. Mr. Younger's only response to the NYISO's observation that a fifteen year maximum is self-evidently sufficient to deter uneconomic entry by rational actors is an argument that the NYISO's proposal must also ensure that its rules will deter irrational entrants.[45] Ultimately, it appears that the Incumbent Suppliers and IPPNY would be

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Oil Pipelines v. FERC , 83 F.3d 1424, at 1431 (D.C. Cir. 1996) (ratemaking involves "complex industry analyses and difficult policy choices")).

[45] *See* Younger Affidavit at P 56.

content to leave an existing tariff rule that could have severe and clearly unintended consequences[46] uncorrected indefinitely.

Other protestors take the position that the six Capability Period minimum mitigation period should be eliminated.[47] In general, these parties support the NYISO's proposed "economic demonstration" rule and the concept that Offer Floor mitigation should cease to apply to resources that demonstrate that they are economic. The protests on this point also make an unwarranted assumption, however, that the proposed economic demonstration rule will be able to perfectly mitigate every uneconomic decision.[48] The NYISO believes that its proposed economic demonstration rule is sound and represents a just and reasonable improvement over the current tariff. The NYISO cannot possibly be certain, however, that the proposed rule will unerringly distinguish between economic and uneconomic resources in every instance. Experience may demonstrate that the proposed rule will work so well that the minimum Offer Floor period could safely be eliminated. The NYISO does not yet have that kind of implementation experience. Until it does, it would be imprudent to abandon the minimum duration component of the proposed tariff improvements.

Professor Cramton and the Indicated LSEs also argue that the minimum mitigation period is not necessary to offset potential monopsony power as they each have chosen to define it.[49] These arguments are irrelevant because the minimum mitigation period is part of a mitigation package that is specifically directed against the kinds of

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[46] *See* September 27 filing at 5-6.

[47] Indicated LSEs at 8-12; PSC at 5-7.

[48] Indicated LSEs at 11-12; PSC at 5-6.

[49] *See* Indicated LSEs at 11-12; Indicated LSEs at Affidavit of Dr. Peter Cramton at 3 ("Cramton Affidavit").

attempts to artificially suppress In-City capacity prices that were discussed in prior Commission orders, and not against the direct exercise of traditional monopsony power by a single dominant customer.[50]

The NYISO also respectfully disagrees with the suggestion of the Department of Public Service that the Commission's market manipulation rule would be sufficient to deter uneconomic entry in the absence of adequate mitigation mechanisms in the NYISO's tariff.[51] The Commission has consistently indicated that it expects ISOs/RTOs to have effective market power mitigation measures[52] independent of the Commission's overarching statutory responsibility to detect and punish manipulation. Moreover, the market manipulation rule is not well suited to deter uneconomic entry because it is not applied until after manipulation occurs, the elements of market manipulation are difficult to prove, and rule is still so new that there is not sufficient precedent for a developer to predict its applicability.

Finally, neither the Indicated LSEs nor the PSC have offered any support for shortening the maximum mitigation period to six years that would warrant overturning the NYISO's independent MMU-endorsed determination that fifteen years is an

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[50] *See New York Independent System Operator, Inc.*, 131 FERC ¶ 61,170 (2010); New York Independent System Operator, Inc., 124 FERC ¶ 61,301 (2008); *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,211 (2008). *See also* Affidavit of David B. Patton, Attachment I to Compliance Filing Of The New York Independent System Operator, Inc. Regarding The New York City ICAP Market Structure, Docket No. EL07-39-000, October 4, 2007, at 19-20 (explaining the difference between traditional monopsony power and the problem that is addressed by the In-City Buyer Side Mitigation Measures).

[51] *See* PSC at 6.

[52] *See, e.g., Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g*, Order No. 719-A, 74 Fed. Reg. 37,776 (Jul. 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009) (reforming and enhancing the market monitoring function to increase the transparence and improve the performance of organized markets); *Policy Statement on Market Monitoring Units, Market Monitoring Units in Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267 (2005) (providing guidance on the role of market monitoring units in ISO/RTO markets).

appropriate maximum. The Indicated LSEs and the Department of Public Service likewise do not dispute that a fifteen year maximum is an improvement over the theoretically infinite duration of mitigation under the existing tariff. The Commission should therefore accept the fifteen year maximum as just and reasonable measure which is improvement over current tariff.

E. The Commission Should Reject Claims that the Proposed Tariff Revisions Are Unclear or Will Somehow Result in Undue Discrimination or Arbitrary Actions by the NYISO

The Incumbent Suppliers and Hudson Transmission Partners, LLC ("HTP") both claim that the proposed tariff improvements are overly complex or unclear.[53] Although the underlying subject matter can be difficult to master at first, the proposed tariff provisions are no more sophisticated than other market design and market power issues that routinely come before the Commission. It is, at best, disingenuous for them to claim to be perplexed by tariff language that, with a few exceptions, they have been involved in developing and reviewing for many months. The fact that certain changes were made near the end of the process in response to continuing stakeholder feedback does not invalidate the entire exercise. Moreover, the NYISO has been very clear that it was necessary to move swiftly to finalize and file the proposed improvements so that their benefits could be realized in time for potential new entrants' consideration of their Project Cost Allocations.

HTP alleges that the proposed tariff revisions are insufficiently clear with respect to the NYISO's treatment of Scheduled Lines.[54] HTP's complaint overlooks the fact that

[53] Incumbent Suppliers at 25; *Motion to Intervene and Protest of Hudson Transmission Partners* at 3, Docket No. ER10-3043 (October 22, 2010) ("HTTP").

[54] *Id.* at 4.

the current version of the tariff uniformly uses generator-specific nomenclature which can make every facet of its application to Scheduled Lines problematic. By contrast, the new language is written in a way that much more clearly encompasses Scheduled Lines and is thus an improvement over the existing provisions.

Notwithstanding HTP's contentions regarding the proposed tariff provisions' supposedly "labyrinthine"[55] complexity it would have the Commission make them far more complicated by requiring the NYISO to add new safeguards against undue discrimination and details regarding its exemption analysis methodology.[56] Its concerns about undue discrimination can be reduced to a claim that the proposed language permits undue discrimination because it does not explicitly prohibit it. Obviously this is not the case, because undue discrimination is universally forbidden both by other NYISO tariff provisions and the FPA itself.[57] HTP also fails to explain why it is necessary to add tariff language prohibiting the NYISO from considering irrelevant factors when conducting Offer Floor exemption analyses. There is no reason to suspect that an independent, not-for-profit entity would have a bias against any particular project that might necessitate such language. Nor is there any reason to require the NYISO, contrary to the Commission's established "Rule of Reason,"[58] to provide more detail regarding the implementation of Offer Floor mitigation than is provided for any other mitigation

[55] *Id.* at 1.

[56] *Id.* at 7-8.

[57] 16 U.S.C. § 824d.

[58] *See, e.g.*, *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats & Regs. ¶ 31,241, at PP 1650-1651 (2007), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, 129 FERC ¶ 61,126 (2009) (Adopting and clarifying the Commission's traditional "rule of reason" for distinguishing between information that must be included in a tariff as opposed to a manual or other non-tariff document).

measure under Attachment H to the Services Tariff. Additionally, Attachment H to the Services Tariff requires the NYISO to seek the input of the independent MMU "on matters relating to the determination of price projections and cost calculations."[59]

HTP complains that the NYISO provided it with unrealistic deadlines to provide the information necessary for its exemption analysis and used data templates that were clearly geared towards generators.[60] HTP acknowledges that it was able to meet the deadline, although it ignores the steps that NYISO staff took to ensure that it would be able to do so.[61] The tight deadlines and generic templates were necessary because of the need to be ready to implement the new provisions by November 10. The NYISO does not anticipate that such rapid turn-arounds will be necessary in the future, but does expect that it could prepare a unique data template for Scheduled Lines.

Finally, HTP argues that the consequences of failing to provide the information needed to make an exemption determination, *i.e.*, the automatic imposition of an Offer Floor, would be unreasonably harsh. The NYISO disagrees because there must be a clear and effective incentive for resources to comply with the NYISO's directives so that it can fulfill its own tariff responsibilities. Moreover, if necessary to avoid a true injustice either an affected resource, or the NYISO itself, could always ask the Commission for a waiver to allow for a temporary extension of the deadline.

IV. Conclusion

For the foregoing reasons, the New York Independent System Operator, Inc., respectfully requests that the Commission: (i) exercise its discretion to accept this

[59] Services Tariff, Attachment H, Section 23.4.5.7.2.

[60] HTP at 6.

[61] *Id.*

answer; (ii) reject all protests; (iii) accept the improvements to the In-City Buyer Side Mitigation Measures that were included in the September 27 filing; and (iv) allow the NYISO to consider additional possible improvements through its normal stakeholder process without mandating any specific outcomes or arbitrary deadlines.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on the official service list compiled by the Secretary in these proceedings.

Dated at Washington, DC, this 1st day of November, 2010.

/s/Ted J. Murphy

Hunton & Williams LLP
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Washington, DC 20426
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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.) Docket Nos. ER10-3043-000

AFFIDAVIT OF DAVID LAWRENCE

1. My name is David Lawrence, and I am the Manager of Auxiliary Market Products for the New York Independent System Operator, Inc. ("NYISO"). In this position I am responsible for the design and implementation of, and enhancements to, the Installed Capacity ("ICAP") product in the NYISO market, including market mitigation measures, and for working with stakeholders on such matters. Prior to my current position, I was employed for 24 years by Power Technologies, Inc., where, among other positions, I served as the Director of the Instrumentation and Energy Management Department. I received a Bachelor of Science degree in Engineering and a Master of Science degree in Electric Power Engineering from Rensselaer Polytechnic Institute in Troy, New York.

2. I am submitting this affidavit in response to the Comments and Protest of Astoria Generating Company, L.P., a U.S. Power Generating Company, the NRG Companies, and TC Ravenswood, LLC (collectively the "Incumbent Suppliers"). Specifically, I address and provide additional analyses to refute certain examples used by the Incumbent Suppliers in the Affidavit of Mark D. Younger ("Younger Affidavit"). As explained herein, the examples provided in the Younger Affidavit mischaracterize the

effects of the NYISO's proposed Total Cleared UCAP[1] rule by positing one-sided assumptions.

3. The Younger Affidavit analyzes data, and through several exhibits (*i.e.*, MDY-2, MDY-3, and MDY-4, collectively the "Younger Exhibits"), purports to depict the impact of the Total Cleared UCAP rule proposed in the NYISO's September 27 filing, as approved by the NYISO's Management Committee. The Total Cleared UCAP rule provides for Offer Floor mitigation to expire when the Total Cleared UCAP amount is reached. Specifically, exhibits MDY-2 and MDY-3 are argued by the Incumbent Suppliers as illustrative of the impact of the buyer-side mitigation rules according to the current tariff and the impact due to the Total Cleared UCAP rule. In exhibits MDY-2 and MDY-3, the load forecast Mr. Younger used in his analysis is based on the load forecast included in Table I-2b of the NYISO's 2010 Load and Capacity Data ("Gold Book"). Exhibit MDY-4 postulates a scenario with lower load growth than used in exhibits MDY-2 and MDY-3 and depicts the resulting market impact.

4. The Incumbent Suppliers assert on the basis of the analysis shown in exhibit MDY-3 that the consequence of "premature" elimination of mitigation (in 2017 as compared with 2019 in exhibit MDY-2) is price suppression. Even if the Commission were inclined to rely on the Younger Exhibits, his exhibits are at best incomplete: the longer-term impact of what the Incumbent Suppliers postulate as the supposed price

[1] The term "Total Cleared UCAP" and the associated rule are set forth in proposed Section 23.4.5.7 of Attachment H to the Market Administration and Control Area Services Tariff ("Services Tariff").

suppression that would result from the Total Cleared UCAP rule must be considered. The longer-term impact can be derived by computing the net present value ("NPV") of the Capacity revenue stream for the ten-year period covered in the Younger Exhibits, using a reasonable 1.7% discount factor consistent with the Demand Curve escalation, yielding an NPV for the income stream in exhibit MDY-2 of $1,107/kW, while the NPV of exhibit MDY-3 is $1,096/kW, a less than one percent difference in total Capacity revenue over the ten year period analyzed. This result stands in stark contrast to the Incumbent Suppliers' allegation of price suppression.

5. Additionally, the Younger Exhibits greatly simplify the actual process that results in the acceptance of Unforced Capacity offers; for example, all of Mr. Younger's calculations are shown in ICAP terms, without considering the impact of forced outages and performance measurements, and in his examples, unit net CONE does not escalate. Nonetheless, they do provide a consistent framework for evaluating other realistic scenarios that provide a more balanced perspective on the impact of the Total Cleared UCAP rule.

6. Table 1, below, builds upon the same scenario as exhibit MDY-3, with one significant change: the NYISO's annual determination of Locational Minimum Installed Capacity Requirements[2] ("LMCRs") sets the percentage of New York City ("NYC") peak load to be supplied by NYC Capacity. One aspect of the process to determine LMCRs is an update of the NYC peak load forecast based upon the most recent information. Analyses performed in 2009 and 2010 showed a reduction in NYC peak

[2] Terms in upper case not defined herein are as defined in the Services Tariff.

load of 325 MW.[3] While the Incumbent Suppliers base their criticism of the proposed Total Cleared UCAP rule on multi-year load forecasts performed at one point in time, the reality is that new supply entry is subject to LMCRs that are updated annually with the most recent information.

7. To illustrate one real-world situation, Table 1, below, reduces the forecasted load by 325 MW beginning in 2014; all other assumptions are consistent with those in MDY-3.

Table 1

Year	Actual NYC Peak Load	NYC Minimum Capacity Requirement	Capacity Price at Minimum Requirement ($/kW-yr)	Existing Capacity	New Entrant Capacity	Capacity After New Entrant	New Entrant Bid Floor	Amount of Capacity Cleared	Amount of New Entrant Cleared at Bid	Capacity Market Clearing Price
1/1/2011	11775.0	9420.0	$ 159.90	9892	0	9892	$ 112.60	9892.0	0.0	$ 115.39
1/1/2012	11815.0	9452.0	$ 162.62	9892	550	10442	$ 114.51	9955.3	63.3	$ 114.51
1/1/2013	11925.0	9540.0	$ 165.38	9892	550	10442	$ 116.46	10048.0	156.0	$ 116.46
1/1/2014	11670.0	9336.0	$ 168.19	9892	550	10442	$ 118.43	9892.0	0.0	$ 112.54
1/1/2015	11740.0	9392.0	$ 171.05	9892	550	10442	$ 120.00	9896.5	4.5	$ 120.00
1/1/2016	11795.0	9436.0	$ 173.96	9892	550	10442	$ 120.00	9962.8	70.8	$ 120.00
1/1/2017	11893.0	9514.4	$ 176.92	9892	550	10442	$ 120.00	10065.4	173.4	$ 120.00
1/1/2018	11973.0	9578.4	$ 179.93	9892	550	10442	$ 120.00	10152.7	260.7	$ 120.00
1/1/2019	12079.0	9663.2	$ 182.99	9892	550	10442	$ 120.00	10261.9	369.9	$ 120.00
1/1/2020	12185.0	9748.0	$ 186.10	9892	550	10442	$ 120.00	10371.2	479.2	$ 120.00
									NPV	$1,074.85

8. As can be seen in Table 1, no changes in new entry clearing occur during the first three years. However, when the LMCR is reduced in 2014, a completely different scenario results with respect to new entry mitigation. The new unit begins to clear more than 50% of its Capacity in 2019, and would be exempt from mitigation in 2021, four years later than depicted by the Incumbent Suppliers in exhibit MDY-3. The NPV for the Capacity income stream in Table 1 is $1,075/kW, 2.9% below

[3] The 2009 and 2010 Locational Minimum Installed Capacity Requirements Studies are available on the NYISO's website at: <http://www.nyiso.com/public/markets_operations/services/planning/documents/index.jsp>.

exhibit MDY-2. Total Capacity revenue paid to the new entrant would drop substantially ($165M in Table 1 as compared with $347M in MDY-2). Moreover, at the time when the 550 MW new entrant was making its investment decision, it would have no better information on load growth available to it than that presented in exhibit MDY-2.

9. While the Incumbent Suppliers propose an alternative rule for the cessation of mitigation, it is instructive to apply that rule to the example presented in Table 1. Table 2, below, shows the variation in cleared MW over time given a 325 MW LMCR reduction in 2014.

Table 2

Year	Actual NYC Peak Load	NYC Minimum Capacity Requirement	Capacity Price at Minimum Requirement ($/kW-yr)	Existing Capacity	New Entrant Capacity	Capacity After New Entrant	New Entrant Bid Floor	Amount of Capacity Cleared	Amount of New Entrant Cleared at Bid	Capacity Market Clearing Price
1/1/2011	11775.0	9420.0	$ 159.90	9892	0	9892	$ 112.60	9892.0	0.0	$ 115.39
1/1/2012	11815.0	9452.0	$ 162.62	9892	550	10442	$ 114.51	9955.3	63.3	$ 114.51
1/1/2013	11925.0	9540.0	$ 165.38	9892	550	10442	$ 116.46	10048.0	156.0	$ 116.46
1/1/2014	11670.0	9336.0	$ 168.19	9892	550	10442	$ 118.43	10048.0	156.0	$ 96.93
1/1/2015	11740.0	9392.0	$ 171.05	9892	550	10442	$ 120.00	10048.0	156.0	$ 104.68
1/1/2016	11795.0	9436.0	$ 173.96	9892	550	10442	$ 120.00	10048.0	156.0	$ 111.28
1/1/2017	11893.0	9514.4	$ 176.92	9892	550	10442	$ 120.00	10065.4	173.4	$ 120.00
1/1/2018	11973.0	9578.4	$ 179.93	9892	550	10442	$ 120.00	10152.7	260.7	$ 120.00
1/1/2019	12079.0	9663.2	$ 182.99	9892	550	10442	$ 120.00	10261.9	369.9	$ 120.00
1/1/2020	12185.0	9748.0	$ 186.10	9892	550	10442	$ 120.00	10371.2	479.2	$ 120.00
									NPV	$1,038.29

10. The Incumbent Suppliers' proposal would allow the amount of MW cleared annually (as simplified in paragraph 62 of the Younger Affidavit) to be exempt from mitigation going forward. Under the Incumbent Supplier's proposal, the NPV of the Capacity income stream is actually lower than that produced under the proposed Total Cleared UCAP rule ($1,038/kW under the Incumbent Suppliers' proposed rule as compared with $1,075/kW under the Total Cleared UCAP rule). Thus, the Incumbent

Suppliers' actually are proposing a rule which would suppress prices further than the prices they attempt to assert are suppressed under the Total Cleared UCAP rule.

11. There has been increased emphasis on conservation and load reduction technologies, which will exert downward pressure on load growth. At the same time, it will be challenging to predict the rate of penetration of such programs, and even more challenging for new entrants to gauge the viability of new projects given what could be declining annual forecasts. The Incumbent Suppliers have painted a one-dimensional picture of the proposed Total Cleared UCAP rule. A more balanced analysis shows that when a long-term view of the results of mitigation are considered together with inevitable Capacity requirement adjustments over time, the proposed Total Cleared UCAP rule is just and reasonable.

12. This concludes my affidavit.

ATTESTATION

I am the witness identified in the foregoing Affidavit of David Lawrence dated November 1, 2010 (the "Affidavit"). I have read the Affidavit and am familiar with its contents. The facts set forth therein are true to the best of my knowledge, information, and belief.

/s/ David Lawrence
David Lawrence
Manager, Auxiliary Market Products
New York Independent System Operator, Inc.
November 1, 2010

Subscribed and sworn to before me
this 1st day of November.