

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

Astoria Generating Company, L.P., NRG)	
Power Marketing LLC, Arthur Kill Power)	
LLC, Astoria Gas Turbine Power LLC,)	
Dunkirk Power LLC, Huntley Power LLC,)	
Oswego Harbor Power LLC and TC)	
Ravenswood, LLC)	
)	
Complainants,)	Docket No. EL11-42-000
)	
vs.)	
)	
New York Independent System Operator,)	
Inc.)	
)	
Respondent.)	

**ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC. TO
COMMENTS**

In accordance with Rule 213 of the Commission’s Rules of Practice and Procedure¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully answers the:

(i) *Comments of Hudson Transmission Partners, LLC* (“HTP Comments”); (ii) *Motion to Intervene and Comments in Support of Independent Power Producers of New York, Inc.* (“IPPNY Comments”); (iii) *Motion to Intervene and Comments in Support of the Electric Power Supply Association* (“EPSA Comments”); and (iv) the *Motion for Leave to Intervene Out-of-Time and Comments in Support of Energy Curtailment Specialists, Inc.* (“ECS Comments”) (collectively, the “Comments”).² The Comments generally support the *Complaint Requesting Fast*

¹ 18 C.F.R. § 385.213 (2011).

² Because these pleadings are “comments,” the NYISO is entitled to answer them under Commission Rule 213(a)(3). To the extent that the Commission were to deem any of these pleadings to

Track Processing (“Complaint”) in this proceeding³ that was previously addressed by the NYISO’s July 6, 2011 Answer (“NYISO Answer”). For the reasons set forth herein, including those incorporated by reference from the NYISO Answer, the Commission should deny all of the Comments’ requests for relief.

I. ANSWER

A. Answer to the HTP Comments

The HTP Comments disagree with the Complaint’s allegations that the NYISO is “biased.”⁴ HTP does speculate, however, that the NYISO will err on the side of administering the In-City Buyer-Side Mitigation Measures⁵ too harshly with respect to HTP’s proposed merchant transmission facility.⁶ Like the Complaint’s claims that the NYISO has been too lax in its administration of the In-City Buyer-Side Mitigation Measures, HTP’s claims are unsubstantiated, lack merit, and should be rejected.

be tantamount to protests, the NYISO respectfully requests that the Commission exercise its discretion to allow this answer. *See, e.g., New York Independent System Operator Inc.*, 133 FERC ¶ 61,178 at P 11 (2011) (allowing answers to answers and protests “because they have provided information that have assisted [the Commission] in [its] decision-making process”).

³ *Complaint Requesting Fast Track Processing*, Docket No. EL11-42-000 (filed June 3, 2011), as amended by *Amendment to Complaint and Request for Shortened Comment Period*, Docket No. EL11-42 (filed June 16, 2011) (collectively, the “Complaint”).

⁴ HTP Comments at 2, 10-11.

⁵ The “In-City Buyer Side Mitigation Measures” are the currently-effective buyer-side capacity market mitigation provisions found in Attachment H of the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).

⁶ The NYISO will refer to a project such as HTP’s that is analyzed under the In-City Buyer-Side Mitigation Measures as an Unforced Capacity Deliverability Right (“UDR”) project. In order for the capacity associated with a merchant transmission facility to qualify as In-City capacity, it must have UDRs. Accordingly, the In-City Buyer-Side Mitigation Measures uses the term UDR projects. *See, e.g., Services Tariff Attachment H § 23.4.5.7.3.*

1. HTP's Claims Regarding the NYISO's Supposed Lack of Transparency Are Both Unfounded and Premature

HTP complains that the NYISO has supposedly not provided sufficient information regarding the “methodology, data, and calculations” that would be applied to its merchant transmission project.”⁷ These arguments are unfounded because, as was explained in the NYISO Answer, the NYISO has already provided HTP and other potential new entrants more information than its tariff requires.⁸ The relevant tariff provisions were recently accepted by the Commission, which rejected protests that the provisions needed clarification.⁹ The NYISO also disagrees with HTP's characterization of the extent and scope of its communications with the NYISO.

HTP's concerns are premature because the process of making determinations under the In-City Buyer-Side Mitigation Measures is not complete. The Initial Decision Period¹⁰ for the Class Year process, which is the date referenced by the In-City Buyer Side Mitigation Measures,¹¹ commenced on July 14, 2011. The NYISO has in fact communicated with projects that are presently being examined (“Projects”), including communications with HTP subsequent to the filing of the HTP Comments. In addition, and as the NYISO Answer explained, there is no possibility that the NYISO would issue final mitigation exemption or Offer Floor

⁷ HTP Comments at 1.

⁸ See NYISO Answer at 4, 18, 31, 35, 37.

⁹ *New York Independent System Operator, Inc.*, 133 FERC ¶ 61,178 at P 74 (2010) (“November Order”); *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,083 at P 24 (2011) (“February Order”).

¹⁰ Capitalized terms that are not otherwise defined herein shall have the meanings specified in the Services Tariff or, if not defined therein, then the meaning specified in the NYISO's Open Access Transmission Tariff (“OATT”).

¹¹ See Services Tariff Attachment H at 23.4.5.7.3.3.

determinations under its currently effective tariff provisions until after August 15, 2011.¹²

Although it is technically possible that determinations might be made relatively soon after August 15, it is considerably more reasonable to expect that they will not occur until some time afterwards given the iterative nature of the Class Year Facilities Study process.¹³ Thus, there is still time for additional communications between the NYISO and the Projects, individually (including HTP's), regarding the data, assumptions, and methodology used in determinations under the In-City Buyer-Side Mitigation Measures.

2. HTP Has Not Identified Any “Fundamental Flaws” in the NYISO’s Implementation of the In-City Buyer-Side Mitigation Measures

HTP claims to have detected two supposedly “fundamental flaws” in the NYISO’s application of the In-City Buyer-Side Mitigation Measures to its project. It wrongly suggests that the claimed existence of these two flaws demonstrates that other flaws will be discovered in the future.¹⁴ It also argues, again wrongly, that the NYISO is overlooking relevant distinctions between conventional generation and merchant transmission projects in its mitigation analysis. These claims are contrary to the view of the independent Market Monitoring Unit (“MMU”) for the NYISO, Potomac Economics, Ltd. As stated in the NYISO Answer, the MMU has reviewed

¹² NYISO Answer at 60 and n. 164.

¹³ Subsequent to the submission of the NYISO Answer, the NYISO’s stakeholder Operating Committee voted to approve the Class Year 2009 and 2010 Facilities Study at its July 14, 2011 meeting. Thus, it is still possible, that determinations under the In-City Buyer-Side Mitigation Measures could be finalized shortly after August 15, 2010. Experience with the Class Year Facilities Study process suggests, however, that it is unlikely that all Class Year 2009 and all Class Year 2010 Developers will accept their cost allocations by August 15, and it is instead highly likely that the Class Year process will continue, as described on pages 60-61 of the NYISO Answer. In the unlikely event that all projects accept their Project Cost Allocations by August 15, 2011, the Class Year process is not complete until after all projects have satisfied the applicable security posting requirement within 5 business days of the end of the applicable round. (*See* OATT Attachment S §25.8.2.1). Failure to post security is an event that triggers removal of that project plus another round in the Class Year Facilities Study process. (*See* OATT Attachment S §25.8.2.2, §12.8.3.3).

¹⁴ HTP Comments at 9.

and commented on the NYISO's implementation of the In-City Buyer-Side Mitigation Measures and has not identified any compliance concerns.¹⁵ The NYISO further addresses each of HTP's claimed flaws below.

First, HTP states that the NYISO "apparently is proposing to perform the [mitigation] evaluations for HTP's Class Year 2008 project after it performs the [mitigation exemption test] evaluation for Class Year 2009, and coincident with Class Year 2010 projects."¹⁶ HTP claims that this approach would be "backwards" and contrary to an alleged tariff requirement that projects be reviewed by Class Year in chronological order.¹⁷ The fact is that this approach is required by the Services Tariff.

The Commission determined that the entry date that should be used for HTP¹⁸ when applying the In-City Buyer-Side Mitigation Measures is the "Reasonably Anticipated Entry Date Rule"¹⁹ that existed in Attachment H of the Services Tariff before it was amended (such buyer-side exemption and Offer Floor mitigation rules collectively, the "Pre-Amendment Rules"). The Commission provided that specific and limited exception to HTP after considering HTP's request that it "grant limited, specific relief as applied to the Hudson Transmission Project to

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 5.

¹⁷ *Id.*

¹⁸ HTP is a Class Year 2008 project.

¹⁹ The "Reasonably Anticipated Entry Date Rule" is the date that the project is reasonably anticipated to offer to supply." That rule was replaced by what the Commission and parties commonly refer to as the "Three-Year Rule." The Three-Year Rule is the date that is three years from the beginning of the Summer Capability Period commencing three years from the start of the year of the Class Year Starting Capability Period. (See February Order at P 23). Accordingly, absent the specific relief request by HTP, and the granted by the Commission, the NYISO would have applied the Three-Year Rule to HTP.

direct the NYISO analyze the Project based on the projected start date of 2013.”²⁰ The Commission observed, based on HTP’s filings, that HTP’s projected actual date of entry is 2013.²¹ The entry date to be utilized for Projects under the In-City Buyer-Side Mitigation Measures – whether based on the Three-Year Rule or the Reasonably Anticipated Entry Date Rule – is only one component of the measures. Attachment H also requires that determinations be made with reference to other Projects that are anticipated to enter the market at the same time.

HTP is an “Examined Facility” under Section 23.4.5.7.3(III)(a)(i) of the Services Tariff because it is “in the ISO Interconnection Queue in a Class Year prior to 2009/10,” *i.e.*, it is in Class Year 2008, and it “has not commenced commercial operation or been canceled.” The HTP Comments state that the NYISO has not yet “made an exemption or Unit Net CONE determination” for HTP, which is the additional criterion for the NYISO to be examining a project now.²² The Three-Year Rule is applied to Class Year 2010 projects, and, therefore, they have the same expected entry date as HTP.

Section 23.4.5.7.3.2 of the Services Tariff, states that

[W]hen the ISO is evaluating more than one Examined Facility concurrently, the ISO shall recognize in its computation of the anticipated ICAP Spot Market Auction forecast price that Generators or UDR facilities will clear from lowest to highest, using for each Examined Facility the lower of (i) its Unit Net CONE; or (ii) the numerical value equal to 75% of the Mitigation Net CONE.

Section 23.4.5.7.3.3 of the Services Tariff further provides that the NYISO:

shall determine the reasonably anticipated Unit Net CONE less the costs to be determined in the Project Cost Allocation or Revised Project Cost Allocation, as applicable, prior to the commencement of the Initial Decision Period Class Year .

²⁰ See *Limited Protest of Hudson Transmission Partners, LLC to Compliance Filing of the New York Independent System Operator, Inc. and Request for Relief* at 5, Docket No. ER10-3043-001 (filed December 21, 2010).

²¹ See February Order at P 4. The HTP Comments confirm that the project is still expected “to start commercial operations in the summer of 2013 (*see* HTP Comments at 6).

²² NYISO Services Tariff Section 23.4.5.7.3.

. . . On or before three (3) days prior to the ISO's issuance of the Revised Project Allocation, the ISO will revise its forecast of ICAP Spot Market Auction prices for the Capability Periods in the Mitigation Study Period based on the Examined Facilities that remain in the Class Year for [Capacity Resource Interconnection Service ("CRIS")] and the Examined Facilities that meet 23.4.5.7.3(II) or (III).

For purposes of Section 23.4.5.7.3.3, Class Year 2010 projects have the same Mitigation Study Period²³ as HTP, *i.e.*, Summer 2013 through Winter 2015/2016. Class Year 2010 Examined Facilities that remain in the Class Year process for CRIS and HTP should therefore be evaluated concurrently, and included in the same forecast of ICAP Spot Market Auction prices. Also in accordance with the Services Tariff, however, the ICAP Spot Market Auction forecast will be revised to reflect Examined Facilities that reject their System Deliverability Upgrade ("SDU") costs and are Energy Resource Interconnection Service-only projects, and those that reject both SDU and System Upgrade Facility costs for determining the level of excess in the energy revenue model, at the time of the Revised Project Cost Allocations.²⁴

Second, HTP alleges that the "NYISO apparently proposes to add hundreds of millions of dollars in hypothetical additional costs to HTP that do not apply to the Hudson Transmission Project."²⁵ HTP does not specify the "hypothetical" costs or provide any information to support its argument. Unless it does, the NYISO should be under no obligation to offer a speculative response and the Commission should afford its unsubstantiated allegation no weight. Likewise, the Commission should reject HTP's statements that the NYISO "has no basis" for adding supposedly "hypothetical" costs or is making determinations based on a "faulty assumption."²⁶

²³ Section 23.4.5.7.3 describes the "Mitigation Study Period" as a period encompassing the Capability Periods of expected entry.

²⁴ See Services Tariff Attachment H § 23.4.5.7.3.3, §23.4.5.7.3.3.

²⁵ HTP Comments at 5 (emphasis in original).

²⁶ See *id.* at 5.

HTP also asserts that the NYISO's implementation of the In-City Buyer-Side Mitigation Measures "appears to be focused on the new gas-fired generating capacity in New York City, and not externally-connected Merchant Transmission Facilities, which are fundamentally different assets."²⁷ It goes on to recite a number of ways in which merchant transmission facilities differ from generators and implies that the NYISO fails to recognize those distinctions.²⁸ HTP does not explain the basis for these assertions, other than suggesting that it has not yet received sufficient information from the NYISO to confirm that the differences between the two types of assets are accounted for. First, and without disclosing the NYISO's specific communications with HTP, it should be apparent to HTP from its interactions with the NYISO, including information requests by the NYISO to which HTP has responded, that the NYISO is evaluating HTP as a merchant transmission facility UDR project. Second, it is not even possible to compute the Unit Net CONE of a project without considering its actual characteristics and nature. As is explained in the attached Supplemental Affidavit of Joshua A. Boles²⁹ ("Boles Supplemental Affidavit"), contrary to what the HTP comments suggest,³⁰ the NYISO in fact recognizes and accounts for the differences that distinguish UDR projects from gas-fired generation in its implementation of the In-City Buyer Side Mitigation Measures. The differences include, as HTP suggests is appropriate,³¹ utilizing in the Unit Net CONE calculation for a UDR project the energy price spread between NYISO's Zone J (New York City) and the neighboring Control Area, as described in the Boles Supplemental Affidavit.³²

²⁷ *Id.* at 3.

²⁸ *Id.* at 12-15.

²⁹ Attachment 1.

³⁰ HTP Comments at 12.

³¹ *Id.* at 14.

³² Boles Supplemental Affidavit at P 12.

3. There Is No Justification for Holding Determinations Under the In-City Buyer-Side Mitigation Measures for Class Years 2008, 2009, and 2010 In Abeyance

HTP contends that because of the supposed lack of transparency and other alleged errors in the NYISO's implementation of the In-City Buyer-Side Mitigation Measures, the Commission should hold all mitigation exemption tests for Class Years 2008, 2009, and 2010 in abeyance.³³ In addition to its general statement in support of the Complaint on this point, HTP argues that holding the mitigation process in abeyance will allow time for challenges to determinations under the In-City Buyer-Side Mitigation Measures. HTP appears to envision that such challenges would be made before determinations are finalized.³⁴

The NYISO Answer has already explained that Complainants have not justified holding the Class Year Facilities Study process in abeyance. HTP's notion that *ex ante* challenges to mitigation determinations must be allowed has already been rejected by the Commission. HTP previously asked the Commission to require the NYISO to establish a "dispute resolution process" to govern "data requests, data responses, and the analysis itself"³⁵ The Commission declined to require the NYISO to include such a dispute resolution process in its tariff.³⁶ Allowing for such challenges is unnecessary given the MMU's involvement in the mitigation process before determinations are made, and market participants' ability to bring concerns regarding final determinations to the Commission.

³³ HTP Comments at 2-3.

³⁴ See HTP Comments at 2, 9, 11, 16.

³⁵ See November Order at PP 67, 72.

³⁶ *Id.* at P 72.

B. Answer to the ECS, EPSA, and IPPNY Comments

1. EPSA and IPPNY Principally Rely on Arguments that Were Disposed of in the NYISO Answer

For the most part, EPSA and IPPNY simply rehash arguments in the Complaint that have already been refuted by the NYISO Answer. Specifically, the NYISO Answer has already explained that:

- The NYISO is not implementing the In-City Buyer-Side Mitigation Measures “in complete obscurity.”³⁷ In reality, it has complied with all tariff requirements and has provided (and will continue to provide) more information than the Services Tariff requires that it make available, and given the need to protect confidential information.³⁸
- The NYISO is not required to adopt the same rules that the PJM Interconnection, LLC (“PJM”) voluntarily proposed for itself, including PJM’s decision to use in its capacity mitigation the exact same assumptions it uses to calculate its demand curve.³⁹
- The NYISO Answer explained that the NYISO does not “ignore inflation” in its Unit Net CONE calculation.⁴⁰
- The NYISO Answer explained that it would use the ICAP Demand Curve values that the Services Tariff requires it to use for its Offer Floor and exemption determinations.⁴¹
- The NYISO Answer explained that the Services Tariff does not currently provide for the escalation of established Offer Floors but that the NYISO did not object in principle to

³⁷ IPPNY Comments at 7.

³⁸ See NYISO Answer at 30-33, which addresses the points recited by EPSA Comments at 7-10 and IPPNY Comments at 8-11.

³⁹ See NYISO Answer at 45-46, which addresses the point made at p. 11 of the EPSA Comments.

⁴⁰ See NYISO Answer at 45-46, which addresses the points recited by IPPNY at 6.

⁴¹ NYISO Answer at 6, 27, which addresses the points recited by IPPNY at 6.

possible future revisions to the Services Tariff to allow the escalation of established Offer Floors provided stakeholders were given an opportunity to “provide input on the questions of whether, and if so, how, escalation should be implemented.”⁴²

- The NYISO Answer explained that the NYISO “does evaluate contracts when and as necessary to validate costs identified by a developer and to determine whether a cost is appropriate to use in a project’s Unit Net CONE.”⁴³

Similarly, EPSA and IPPNY have offered nothing to counter the NYISO Answer’s conclusion that there is no basis for the Commission to: (i) require the NYISO to “correct” supposed “flaws” in its implementation of the In-City Buyer-Side Mitigation Measures or to “clarify” the tariff in order to make purported “corrections;”⁴⁴ (ii) direct the NYISO to file tariff revisions “clarifying” how the mitigation and Offer Floor determinations are made in order to establish more objective tariff criteria or greater transparency;⁴⁵ (iii) order the NYISO to file a “benchmarking analysis”;⁴⁶ (iv) compel the MMU to file a report regarding the NYISO’s implementation of the In-City Buyer-Side Mitigation Measures;⁴⁷ or (v) “consider” whether the MMU should implement the In-City Buyer-Side Mitigation Measures in the future.⁴⁸

⁴² NYISO Answer at 54, which addresses the points recited by IPPNY at 6.

⁴³ NYISO Answer at 54-55, which addresses the points recited by EPSA at 12; IPPNY at 6.

⁴⁴ See NYISO Answer at Sections III.B,C and D, which addresses the points recited by EPSA at 2,5,7 and IPPNY at 7,14.

⁴⁵ See NYISO Answer at Section III.C.1, which address the points recited by EPSA at 6-7, 13-14 and IPPNY at 13-14, n. 40.

⁴⁶ See NYISO Answer at Sections II.D and III.C.1.b below, which address the points recited by IPPNY at 13-14.

⁴⁷ See NYISO Answer at Section III.G, which addresses the points recited by IPPNY at 14.

⁴⁸ See NYISO Answer at Section III.G, which addresses the points recited by IPPNY at 14.

2. EPSA's and IPPNY's Comments Only Serve to Underscore Critical Defects in the Complaint

To the extent that EPSA and IPPNY offer anything beyond a recitation of failed arguments in the Complaint, it only serves to highlight the Complaint's deficiencies. For example, the Complaint indicated that Complainants are seeking to usurp the market power mitigation responsibilities of the NYISO and the MMU by making themselves responsible for "confirming" the NYISO's compliance with the In-City Buyer-Side Mitigation Measures.⁴⁹ IPPNY's Comments make the Complainants' goal even clearer. IPPNY states three times that the NYISO's determinations under the In-City Buyer-Side Mitigation Measures must be subject to market participant "oversight."⁵⁰ They cite no precedent supporting placing market participants in a position to provide such "oversight," do not explain how it could possibly be appropriate, or how "oversight" by market participants would relate to the functions properly performed by the MMU and the Commission.

Just as the Complaint did, EPSA and IPPNY strain to find "support" for their claims in the absence of relevant precedents or actual evidence that the NYISO has failed to comply with the Services Tariff. IPPNY cites a 1999 Commission order which rejected the NYISO's original supply-side mitigation proposal for not including sufficient detail in the tariff.⁵¹ That order is irrelevant here because the Commission has already accepted the In-City Buyer-Side Mitigation Measures. Indeed, IPPNY admits that the Commission order accepting In-City Buyer-Side Mitigation Measures rejected claims that they were insufficiently clear.⁵² IPPNY goes on to cite a Commission order which held that sufficient information should be provided to stakeholders to

⁴⁹ See NYISO Answer at Section III.F.

⁵⁰ See IPPNY Comments at 7, 9, 11.

⁵¹ See *id.* at 9.

⁵² See *id.* at n. 19.

allow them to replicate the results of planning studies.⁵³ IPPNY ignores the obvious differences between the market monitoring and planning contexts that render this case inapposite.

EPSA follows the Complainants' example by relying on a holding from the Commission's Minimum Offer Price Rule ("MOPR") proceeding that has been taken out of context.⁵⁴ It notes that the Commission's recent MOPR order directed PJM to make a filing to clarify what information market participants must submit before mitigation determinations are made and the "objective standards" under which such submissions will be evaluated. The information submission requirements in the In-City Buyer-Side Mitigation Measures have already been found to be sufficiently clear,⁵⁵ and are not at issue in this proceeding. The In-City Buyer-Side Mitigation Measures likewise already include objective standards which, as was noted above, the Commission has already found to be sufficiently clear.

EPSA also echoes the Complaint's false assertion that the NYISO has been a more "enthusiastic" proponent of supply-side mitigation.⁵⁶ It goes on to make the remarkable suggestion that the Commission "must require parity from the NYISO with respect to the transparent application of the buyer-side mitigation rules that is in line with the transparency the ISO has applied its supply-side mitigation rules."⁵⁷ As the NYISO Answer explained, that is precisely what the NYISO has done and will continue to do.⁵⁸ As explained in the Answer, the

⁵³ See *id.* at 9-10. The Commission, however, has recognized, even in the planning context, the NYISO's need to adopt protections for confidential customer information. See *Filing in Compliance with October 16, 2008 Commission Order* at 13, Docket No. OA08-52-004 (filed January 14, 2009) and *New York Independent System Operator, Inc.*, 129 FERC ¶ 61,044 (2009) (accepting the proposed tariff language).

⁵⁴ See NYISO Answer at 30.

⁵⁵ See November Order at P 72.

⁵⁶ EPSA Comments at 12.

⁵⁷ *Id.* at 8.

⁵⁸ See NYISO Answer at 14-17.

NYISO treats the information as confidential, consistent with its treatment of Going Forward Cost determinations, which the NYISO “treats as confidential and does not disclose ... even the fact that a Going Forward Cost determination has been requested or made.”⁵⁹ The timing of the NYISO’s examination and issuance of determinations is explicit in the Services Tariff: it is in relation to the Class Year Facilities Study process and the Revised Cost Allocations pursuant to that process.⁶⁰ Requiring the NYISO to disclose the determinations made pursuant to the In-City Buyer-Side Mitigation Measures would be contrary to, not consistent with, the NYISO’s supply-side mitigation practices.

3. The Comments Should Not Be Permitted to Confuse the Issues in this Proceeding with Those Pending in Docket No. EL11-50-000

The Comments suggest that determinations made under the Pre-Amendment Rules should be reviewed.⁶¹ The NYISO has been consistently clear, beginning with its September 2010 filing of the In-City Buyer-Side Mitigation Measures, that the revisions to the measures would not alter any determinations made under the Pre-Amendment Rules.⁶² The NYISO therefore does not believe that allegations regarding the application of the Pre-Amendment Rules are relevant in this proceeding, which concerns the implementation of the In-City Buyer Side Mitigation Measures. In addition, two of the Complainants in this proceeding have filed a separate complaint in Docket No. EL11-50-000 related to the implementation of the Pre-

⁵⁹ *Id.* at 31.

⁶⁰ *See* Services Tariff Attachment H § 23.4.5.7.3, § 23.4.5.7.3.3.

⁶¹ *See, e.g.,* IPPNY Comments at 10-11.

⁶² *See* NYISO Answer at n. 39, *citing 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. ER10-3043-000 (September 27, 2010) (“September Filing”). The September Filing was clear that “any exemption or Offer Floor determinations” under the version of Attachment H effective prior to the effectiveness of the revisions that it proposed “would not be altered or affected by the amendments proposed in this filing.” *See* September Filing at 14. *See also, Request for Leave to Answer and Answer of the New York Independent System Operator, Inc.*, filed November 1, 2010 (“November Answer”) at 14, n. 39, Docket No. ER10-3043-000.

Amendment Rules. Since even the Complainants evidently recognize that there are material distinctions between their claims in the two proceedings, the Commenters should not be allowed to inject issues that pertain to Docket No. EL11-50-000 in this case.

4. To the Extent that IPPNY Is Calling for a Formal Commission Investigation, its Request Should Be Denied

The IPPNY Comments suggest that “[o]nly the Commission can conduct a proper investigation into the NYISO’s implementation of the Mitigation Exemption Test.”⁶³ IPPNY does not appear to actually be requesting an investigation under Section 1b.8 of the Commission’s regulations. Instead, it seems that the only “Commission intervention” that IPPNY is seeking is that the Complaint be granted. IPPNY has not satisfied the Commission’s requirements for initiating an investigation. There is no basis for the Commission to undertake one at this time given that the Complaint lacks merit.⁶⁴

5. ECS’s Comments Are Devoid of Substance

ECS argues that “[t]o the extent that prices are artificially suppressed due to improperly granted exemptions and improperly calculated Offer Floor (*sic*), there will be a substantial adverse impact on ECS and other providers of DR services, as well as DR customers.”⁶⁵ It offers no evidence indicating that artificial price suppression has occurred but simply assumes that it has. The only new “argument” offered by ECS, is a suggestion that concerns for the adequacy of demand side resource compensation that resulted in Commission Order No. 745, which provides

⁶³ IPPNY Comments at 11.

⁶⁴ To the extent that IPPNY is also requesting a review of determinations under the Pre-Amendment Rules, as discussed above, the request should be denied. Further, answers in Docket EL11-50-000 have not yet been filed.

⁶⁵ ECS Comments at 5.

for eligible demand side resources to receive full locational marginal price compensation for energy, somehow also justify a ruling in favor of Complainants in this proceeding.⁶⁶

The ECS Comments are wholly devoid of merit. The NYISO agrees, and cannot imagine that any party would disagree, that market power mitigation measures must be implemented properly. The NYISO Answer demonstrated that the NYISO's implementation of the In-City Buyer-Side Mitigation Measures is in accordance with, and that the NYISO has adhered to, all Services Tariff requirements. As was noted above, the MMU has confirmed that it has reviewed and commented on the NYISO's implementation and has not identified any compliance concerns. There has been no "impropriety," lack of transparency, or "disregard" of tariff rules by the NYISO. Thus, there has been, and will be, no legally cognizable injury to ECS, demand side resources, or market participants in general. Nor will there be any harm particular to demand side resources that could possibly make Order No. 745 relevant here. To the extent that ECS's real desire is that the NYISO implement the In-City Buyer Side Mitigation Measures in a manner that would discourage even economic entry, and thus benefit incumbent suppliers (including existing demand side resources), its position is without merit. Therefore, the Commission should afford no weight to the ECS Comments.

⁶⁶ *Id.* at 5-6.

II. CONCLUSION

In conclusion, for the reasons stated above, the NYISO respectfully requests that the Commission deny all of the relief requested or suggested by ECS, EPSA, HTP, and IPPNY. The NYISO also reiterates that the underlying Complaint in this proceeding should be rejected in its entirety based solely on the pleadings.

Respectfully submitted,

/s/ Gloria Kavanah

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July 21, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 21st day of July, 2011.

/s/ Vanessa A. Colón
Hunton & Williams LLP
2200 Pennsylvania Avenue, NW
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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.

Docket Nos. EL11-42-000

SUPPLEMENTAL AFFIDAVIT OF JOSHUA A BOLES

Mr. Joshua A. Boles declares:

1. I have personal knowledge of the facts and opinions herein and if called to testify could and would testify competently hereto.¹

I. Purpose of this Affidavit:

2. I submit this affidavit in support of the NYISO's Answer to the Comments submitted by Hudson Transmission Partners (the "HTP Comments") in response to the Complaint filed by Astoria Generating Company, L.P., the NRG Companies, and TC Ravenswood, LLC (collectively, the "Complainants").
3. I provided an Initial Affidavit in this proceeding. In the Initial Affidavit, I refuted the claims made by the Complainants that the NYISO's implementation of the "In-City Buyer-Side Mitigation Measures,"² has been flawed or will be flawed in the future. I demonstrated that the NYISO's implementation adheres to all aspects of Attachment H and Attachment O to the Services Tariff and Commission Orders.

¹ My professional and educational qualifications were summarized in PP 4-8 of my Initial Affidavit in this proceeding which I incorporate here by reference.

² As the NYISO does in the Answer, I use the term "In-City Buyer-Side Mitigation Measures" to refer to the currently-effective buyer-side capacity market mitigation provisions in Attachment H to its Market Administration and Control Area Services Tariff ("Services Tariff"), including those that were accepted by the Commission in its series of orders in Docket ER10-3043.

4. The purpose of this Supplemental Affidavit is to confirm that the NYISO does account for differences between generators and Unforced Capacity Deliverability Right³ (“UDR”) projects when conducting Unit Net CONE calculations. My Supplemental Affidavit also demonstrates that the methodology the NYISO uses to determine Unit Net CONE for UDR projects is consistent with Attachment H and Commission Orders.

II. Unit Net CONE Methodology for a UDR Project

5. The HTP Comments use the more general phrase “merchant transmission facility” to describe the HTP project when expressing concerns regarding the NYISO’s analysis of a merchant transmission facility. I will use the phrase UDR projects in my affidavit because that is the term used in the In-City Buyer-Side Mitigation Measures which specify the projects the NYISO is to examine.⁴ My Affidavit will only address UDR projects, such as the HTP project, that connect a neighboring Control Area to New York City.
6. Attachment H to the Services Tariff defines Unit Net CONE for purposes of the In-City Buyer-Side Mitigation Measures as the “localized levelized embedded costs of a specified Installed Capacity Supplier, including interconnection costs, and for an Installed Capacity Supplier located outside the New York City Locality including embedded costs of transmission service, in either case net of likely projected annual Energy and Ancillary Services revenues, as determined by the ISO, translated into a seasonally adjusted monthly

³ Capitalized terms that are not otherwise defined herein shall have the meanings specified in the Services Tariff.

⁴ See, for example, Services Tariff Attachment H § 23.4.5.7.3.

UCAP value using an appropriate class outage rate.”⁵ The NYISO applies this definition in determining the Unit Net CONE for UDR projects.

7. The methodology the NYISO uses to determine Unit Net CONE for a UDR project has been reviewed and commented on by the Independent Market Monitoring Unit (“MMU”) for the NYISO, Potomac Economics, Ltd. The MMU has not identified any compliance concerns with respect to the NYISO’s implementation of the In-City Buyer Side Mitigation Measures.
8. The NYISO’s approach to Unit Net CONE calculations for a UDR project is similar to its approach for a new generation project in a number of ways. Both classifications of projects are evaluated based on their reasonably anticipated costs minus their reasonably anticipated revenues to determine if they are exempt or subject to an Offer Floor. For a UDR project that connects to a neighboring Control Area, the costs and revenues associated with a UDR project will be different from a new generator located within the New York Control Area.
9. The NYISO’s methodology includes looking at the levelized embedded costs of the transmission facility, including the required upgrades necessary to make the facility deliverable in New York City, and the costs of upgrades in the neighboring Control Area that are required to export firm energy. The project is evaluated for the amount of MW for which CRIS rights have been awarded at the NYCA interconnection point.
10. Costs, if any, for the project to be deliverable to the NYCA interface are a component of Unit Net CONE because establishing deliverability is a prerequisite to obtaining UDRs. The Services Tariff provides that “[t]o the extent the NYCA interface is with an External Control Area the Unforced Capacity associated with UDRs must be

⁵ See Attachment H§23.2.1 at definition of Unit Net CONE.

deliverable to the Interconnection Point."⁶ In addition, a project must be deliverable to qualify as an In-City capacity resource: "[t]o be counted towards the locational component of the LSE Unforced Capacity Obligation, Unforced Capacity owned by the holder of UDRs or contractually combined with UDRs must be deliverable to the NYCA interface with the UDR transmission facility pursuant to NYISO requirements and consistent with the election of the holder of the rights to the UDRs set forth in this Section."⁷

11. In addition to the costs of the transmission facility itself, the NYISO's analysis of a UDR project connecting to a neighboring Control Area takes into account the cost of the capacity in the neighboring Control Area. This analysis is required because the In-City Buyer-Side Mitigation Measures are utilized to make determinations for In-City capacity resources. Without procuring capacity, a transmission line is not capable of receiving ICAP revenues in the NYC capacity market. The NYISO would use a reasonable estimate of the cost of capacity in the neighboring Control Area based on that Control Area's capacity market clearing prices for the respective location from which the capacity could be withdrawn.
12. To determine Unit Net CONE, the NYISO subtracts from the costs identified above, the reasonably anticipated energy and ancillary services revenues. The model used to determine energy revenues for a UDR project takes into account the price spread between the respective locations in the Control Areas from which the power is

⁶ See Services Tariff §2.21 at definition of Unforced Capacity Deliverability Rights.

⁷ See Services Tariff §5.11.4.

exported and the location to which it is imported. In order to determine the price spread that would induce arbitrage, the NYISO also considers the associated fees a market participant pays to export energy from the neighboring Control Area. This fee is used as the “hurdle rate” for when the model assumes a transaction will be scheduled to flow and when it will not. In the hours in which the energy spread exceeds the hurdle rate, this rate is subtracted from the spread to calculate the net energy revenues. Because arbitraging prices between Control Areas does not occur optimally in 100 percent of the hours when there is a price spread greater than the transaction costs, the energy revenues must also be discounted to capture the percentage of time that arbitrage can reasonably be expected to occur.

13. As stated in my Initial Affidavit, the NYISO contracted with NERA Economic Consulting (“NERA”) to perform the energy revenue estimates for all Unit Net CONE determinations. NERA uses its econometric model to estimate NYISO energy prices at the expected excess capacity level used in the In-City Buyer-Side Mitigation Measures. For a UDR project, instead of comparing those prices to the variable operating costs of the unit, the NERA model compares them to the hourly energy prices in the neighboring Control Area. NERA uses the econometric model to adjust historic NYISO hourly prices for the applicable excess capacity level and then compares the adjusted NYISO prices to those in the neighboring Control Area.
14. NERA has authorized the NYISO to state that they believe the analysis described in this Supplemental Affidavit for UDR project net revenues provides reasonable net revenue estimates.

15. The NYISO's analysis takes into account the other costs and revenues that the UDR project would be reasonably anticipated to incur or receive under the neighboring Control Area's tariff. For example, for a UDR project that connected PJM to New York City, the NYISO would consider whether Auction Revenue Rights ("ARRs") are available to a project.

Conclusion

16. This Affidavit demonstrates that the NYISO's methodology to implement the In-City Buyer-Side Mitigation Measures for UDR projects that connect to the NYCA from a neighboring Control Area is consistent with all aspects of Attachment H to the Services Tariff.

This concludes my affidavit.

ATTESTATION

I am the witness identified in the foregoing Supplemental Affidavit of Joshua A. Boles dated July 21, 2011 (the "Affidavit"). I have read the Supplemental Affidavit and am familiar with its contents. The facts set forth therein are true to the best of my knowledge, information, and belief.



/s/
Joshua A. Boles
Supervisor, Market Mitigation and Analysis
New York Independent System Operator, Inc.
July 21, 2011

Subscribed and sworn to before me
this 21st day of July.



GLORIA KAVANAH
Notary Public, State of New York
No. 4941412
Qualified in Schenectady County
Commission Expires 8/8/2012