

# Attachment III

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

**New York Independent System Operator, Inc. Docket No. ER26-1431-000**

**AFFIDAVIT OF JONATHAN NEWTON**

Mr. Jonathan Newton declares:

1. I have personal knowledge of the facts and opinions herein and if called to testify could and would testify competently hereto.
2. The purpose of this affidavit is to provide further support for the New York Independent System Operator, Inc.'s ("NYISO") proposal to require holders of Unforced Capacity Deliverability Rights ("UDRs") and External-to-Rest of State Deliverability Rights ("EDRs") to submit two distinct seasonal elections for the upcoming Capability Year, one for the Summer Capability Period and one for the Winter Capability Period, with an accompanying must offer requirement ("Seasonal Election Requirement").<sup>1</sup> This affidavit provides (i) an overview of the interplay between the Seasonal Election Requirement and the NYISO supply-side capacity market power mitigation ("capacity market power mitigation")<sup>2</sup> and (ii) clarifications of aspects of the proposed Seasonal Election Requirement in response to criticisms raised in the protest submitted by H.Q. Energy Services (U.S.) Inc. ("HQUS") in the above-referenced proceeding, including the affidavits of Simon Bergevin ("Bergevin Testimony") and Andrew Levitt ("Levitt Testimony") submitted as part of HQUS' protest.<sup>3</sup>

**I. Qualifications**

3. My name is Jonathan Newton. I am currently Senior Manager, Capacity Market Mitigation, for the NYISO. My business address is 10 Krey Boulevard, Rensselaer, New York 12144. In this position, I am responsible for overseeing the administration of market power mitigation measures applicable to the NYISO's capacity market also known as the Installed Capacity ("ICAP") market, including the application of analytical frameworks used to support market power mitigation determinations. Prior to my current role, I served as Senior Manager, Withholding and Analysis, where I oversaw analyses related to physical and economic withholding in both the energy and capacity markets administered by the NYISO and supervised staff responsible for conducting market

---

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning specified in the Market Administration and Control Area Services Tariff ("Services Tariff").

<sup>2</sup> The NYISO capacity market has two market power mitigation frameworks set forth in Services Tariff Section 23.4.5: supply-side market power mitigation measures and buyer-side market power mitigation measures. The supply-side market power mitigation measures are relevant to this proceeding; for ease of reference, in this affidavit, "supply-side market power mitigation" is referred to as "capacity market power mitigation."

<sup>3</sup> HQUS March 11, 2026 Protest, Docket No. ER26-1431-000.

behavior reviews and preparing analyses supporting tariff administration and regulatory filings. Earlier in my tenure at the NYISO, I served as Supervisor, ICAP Market Mitigation, as well as Senior ICAP Mitigation Analyst and ICAP Mitigation Analyst, where I was responsible for conducting in depth mitigation evaluations and assisting in the administration of the NYISO's market power mitigation measures.

4. For over ten years, I have worked for the NYISO in the administration and oversight of its capacity market, including market power mitigation related analysis and implementation. I received a Bachelor of Science from the University at Albany in New York and a Master of Science in Accounting from The College of Saint Rose in New York.
5. I have also been directly involved in responding to questions market participants raised during the stakeholder process associated with the development of the NYISO's proposal in this proceeding and its interaction with the NYISO's existing capacity market power mitigation measures.

## **II. Interplay Between the Seasonal Election Requirement and NYISO's Capacity Market Power Mitigation Measures**

6. Contrary to the assertion made in the Bergevin Testimony,<sup>4</sup> during the stakeholder process to develop the enhancements proposed in this proceeding, the NYISO did address the interplay between the Seasonal Election Requirement and the NYISO's capacity market power mitigation measures. In addition to responding to questions raised by market participants during stakeholder meetings, including during HQUS' discussion of these issues in its presentation at the October 6, 2025 NYISO Installed Capacity Working Group ("ICAPWG") meeting,<sup>5</sup> the NYISO provided written material on this topic.
7. On July 2, 2025, in response to stakeholders' request, the NYISO provided an overview of the existing capacity market power mitigation measures in the Services Tariff and how such rules apply to holders of UDRs.<sup>6</sup> The NYISO explained that the capacity market power mitigation measures mitigate against the potential abuse of market power that would artificially inflate prices. The NYISO described the two main types of capacity

---

<sup>4</sup> See Bergevin Testimony at 22–24.

<sup>5</sup> See HQUS, *Seasonal Election CASR Review Comments of HQUS* (presented at Oct. 6, 2025 NYISO ICAPWG meeting), [https://www.nyiso.com/documents/20142/54258786/HQUS%20Presentation\\_Seasonal%20Election%20and%20CASR%20review%2020251006-FINAL.pdf](https://www.nyiso.com/documents/20142/54258786/HQUS%20Presentation_Seasonal%20Election%20and%20CASR%20review%2020251006-FINAL.pdf) (providing comments to stakeholders and the NYISO on the Seasonal Election Requirement, including HQUS' concerns on the interplay between the proposal and the NYISO's capacity market power mitigation measures).

<sup>6</sup> See NYISO, *Installed Capacity Market Supply-side Mitigation and UDR* (presented at July 2, 2025 NYISO ICAPWG meeting), [https://www.nyiso.com/documents/20142/52280993/Supply%20Side%20Mitigation%20and%20UDRs\\_ICAPWG\\_20250702.pdf](https://www.nyiso.com/documents/20142/52280993/Supply%20Side%20Mitigation%20and%20UDRs_ICAPWG_20250702.pdf).

market power mitigation.<sup>7</sup> The first are the general physical withholding provisions in Services Tariff Section 23.4.5.6.1 that (1) allow the NYISO to audit decisions to retire, remove, and/or de-rate capacity and (2) assess whether such a decision or proposal has a legitimate economic justification or is based on an effort to withhold capacity in order to affect prices. The second are the Pivotal Supplier measures in Services Tariff Section 23.4.5.4 that (1) subject Pivotal Suppliers to an offer cap and (2) obligate Pivotal Suppliers to offer Mitigated UCAP in the monthly ICAP Spot Market Auctions. The NYISO explained that Pivotal Suppliers may be exempt from this “must offer” requirement if Mitigated UCAP has been exported to an External Control Area or sold to meet minimum capacity procurement requirements (“minimum capacity requirements”) outside the Mitigated Capacity Zone in which the ICAP Supplier is a Pivotal Supplier in a transaction that does not constitute physical withholding under the standards specified in Services Tariff Section 23.4.5.4.

8. At the November 12, 2025 NYISO Business Issues Committee (“BIC”) meeting, the NYISO clarified the interplay of the capacity market power mitigation penalties and the penalties associated with the Seasonal Election Requirement.<sup>8</sup> Specifically, the NYISO explained that, if the NYISO determines that the holder of a UDR or EDR is subject to penalties for both (1) the failure to offer or certify the UCAP associated with UDR or EDR MW that have not been returned to the NYCA in any ICAP Spot Market Auction during the subject Capability Period as well as (2) the failure to offer or sell Mitigated UCAP or External Sale UCAP in accordance with Section 23.4.5.4.2 of the Services Tariff, then the holder of the applicable UDR or EDR would be required to pay the larger of these two sanction amounts.

### **III. Compatibility of the Seasonal Election Requirement and Existing Capacity Market Power Mitigation Measures**

9. The Bergevin Testimony mischaracterizes the Seasonal Election Requirement as conflicting with the NYISO’s existing capacity market power mitigation measures.<sup>9</sup> Similarly, the Levitt Testimony raises concerns regarding the interaction between the Seasonal Election Requirement and the NYISO’s existing capacity market power mitigation measures.<sup>10</sup> HQUS’ concerns reflect a conflation of the purpose of capacity market power mitigation with the distinct objectives of the proposed Seasonal Election Requirement. As the NYISO explained during the stakeholder process, the Seasonal Election Requirement does not preempt or supersede the NYISO’s existing capacity

---

<sup>7</sup> See *supra* n.2 (explaining that in this affidavit “capacity market power mitigation” refers to supply-side market power mitigation).

<sup>8</sup> See NYISO, *Winter Reliability Capacity Enhancements* (presented at Nov. 12, 2025 NYISO BIC meeting), <https://www.nyiso.com/documents/20142/54991575/05%20Winter%20Reliability%20Capacity%20Enhancements.pdf>

<sup>9</sup> Bergevin Testimony at 22.

<sup>10</sup> Levitt Testimony at 4, 26.

market power mitigation measures, including the Pivotal Supplier and general physical withholding provisions.

10. The purpose of the capacity market power mitigation measures is to identify and address situations in which a market participant withholds capacity, either physically or economically, in order to exercise market power and influence market clearing prices. The capacity market power mitigation framework is designed to evaluate conduct against that objective and to ensure that capacity prices reflect competitive outcomes. It is not intended to establish, or substitute for, the modeling parameters used to determine minimum capacity requirements.
11. The Seasonal Election Requirement is not a capacity market power mitigation measure. Rather, it is a market design mechanism intended to ensure that capacity counted toward minimum capacity requirements reflects the level of capacity that market participants can reasonably and credibly commit to provide during peak conditions when reliability risks are most prominent and to support the establishment of appropriate minimum capacity procurement targets in each Capability Period. The capacity market is structured around meeting peak reliability needs, and the seasonal election framework is designed to align capacity commitments made in seasonal elections and the available capacity in the market with those reliability risk conditions. Once capacity commitments are established through the election process, existing capacity market power mitigation provisions continue to apply to the capacity that is elected and offered. The Seasonal Election Requirement therefore operates upstream of the capacity market power mitigation framework, rather than in conflict with it.
12. HQUS also raises concerns regarding the potential applicability of the general physical withholding provisions in Services Tariff Section 23.4.5.6.1, suggesting that a seasonal election could expose a UDR or EDR rights holder to claims of physical withholding.<sup>11</sup> Section 23.4.5.6.1 does permit the NYISO and the Market Monitoring Unit to review market participant actions if they are taken with the intent to affect, or could reasonably be expected to affect, market prices, and a seasonal election could, in principle, be subject to review if there were evidence that it was undertaken with such intent. However, seasonal elections differ fundamentally from traditional forms of physical withholding. Elections are made sufficiently far in advance that they are directly accounted for in the annual NYCA Installed Reserve Margin (“IRM”) and Locational Minimum Installed Capacity Requirement (“LCR”) studies and reflected in the resulting ICAP Demand Curves. As a result, changes in elected MW amount are incorporated into the determination of minimum capacity requirements themselves, rather than occurring against a fixed level of demand.
13. Because a seasonal election affects the level of capacity relied upon for maintaining resource adequacy, as reflected in the IRM and LCRs that are used in determining the minimum capacity requirements, it does not function in the same manner as physical or economic withholding in a market with fixed demand. Seasonal elections therefore do

---

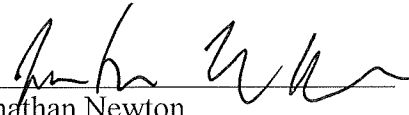
<sup>11</sup> Bergevin Testimony at 3, 22-24.

not present the same characteristics or incentives typically associated with physical or economic withholding. Accordingly, contrary to the assertions of HQUS, the Seasonal Election Requirement does not undermine or conflict with the NYISO's existing capacity market power mitigation framework and should not be expected to result in unwarranted allegations of physical withholding.

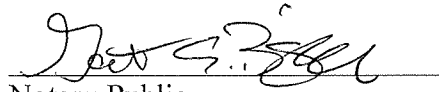
14. The election framework serves a different and complementary purpose to align the capacity reflected in seasonal elections with credible availability of capacity during periods when loss of load risk is most prevalent. Capacity market power mitigation measures remain available to address improper conduct where warranted, but these measures were not designed to substitute for, or eliminate the need for, appropriate market design mechanisms that seek to ensure the integrity of the elections that are accounted for in the establishment of minimum capacity requirements designed to maintain resource adequacy.
15. This concludes my affidavit.

**ATTESTATION**

I am the witness identified in the foregoing 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.

  
Jonathan Newton  
April 1<sup>st</sup>, 2026

Subscribed and sworn to before me  
this 1<sup>st</sup> day of April 2026

  
Notary Public

My commission expires: 9/19/2029

GARRETT E. BISSELL  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02BI6133400  
Qualified in Albany County  
My Commission Expires 09-19-2029