

**New York Independent System Operator, Inc.** ) **Docket No. ER14-500-001**

In accordance with Rule 213 of the Commission’s Rules of Practice and Procedure,<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this request for leave to answer and limited answer to certain requests for rehearing filed in response to the Commission’s January 28, 2014 *Order Accepting Tariff Filing Subject to Condition and Denying Waiver* (“January Order”).<sup>2</sup> Specifically, the NYISO responds to a few of the assertions made in the requests of the Independent Power Producers of New York (“IPPNY”),<sup>3</sup> including IPPNY’s “Supplement,”<sup>4</sup> the Indicated Suppliers,<sup>5</sup> and the New York Supplier & Environmental Advocate Group (“NY-SEA”)<sup>6</sup> (collectively, the “Supply Interests”). As discussed below, the rulings challenged by the Supply Interests were all based on substantial evidence drawn from a complete record and reflected reasoned decision-making. There is no factual or legal basis for overturning or “clarifying” any of those aspects of the January Order. In addition, the NYISO addresses the Indicated Suppliers’ request for clarification that effectively asks the Commission to misapply the existing rules governing the

<sup>6</sup> *Request for Rehearing of the New York Supplier & Environmental Advocate Group* (Feb. 27, 2014) (“NY-SEA Group Request”).

development of Installed Capacity (“ICAP”) Demand Curves in future reset procedures.<sup>7</sup> The fact that the NYISO has confined this answer to these points should not be construed as agreement with, or acquiescence in, any of the other arguments made by the Supply Interests.

## **I. BACKGROUND**

The January Order accepted the ICAP Demand Curve parameters presented in the NYISO’s November 29, 2013 filing for the 2014/2015-2016/2017 Capability Years (“November Filing”).<sup>8</sup> Relevant to this Answer, the January Order thoroughly reviewed the evidence presented and arguments made in the November Filing. The November Filing alone provided a more than sufficient basis for the January Order but the Commission also had the benefit of a fully developed record that included<sup>9</sup> the NYISO’s January 9 answer,<sup>10</sup> the New York Transmission Owners’ (“NYTOs”) January 10 answer,<sup>11</sup> and various other filings in this proceeding.

Among other things, the January Order approved as “reasonable”<sup>12</sup> the NYISO’s recommended proxy plant technology, which is comprised of the Siemens SGT6-5000F(5) class frame simple-cycle combustion turbine (“F class frame”) with SCR emissions control for the New York City, Long Island

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<sup>7</sup> Capitalized terms that are not otherwise defined herein shall have the meaning specified in the NYISO’s Market Administration and Control Area Services Tariff.

<sup>8</sup> New York Independent System Operator, Inc., *Proposed Tariff Revisions to Implement Revised ICAP Demand Curves and a New ICAP Demand Curve for Capability Years 2014/2015, 2015/2016 and 2016/2017 and Request for Partial Phase-In and for Any Necessary Tariff Waivers*, Docket No. ER14-500-000 and *Unrelated Ministerial Tariff Correction*, Docket No. ER12-360-000 (filed November 29, 2013).

<sup>9</sup> Although Section III of the January Order did not expressly reference pleadings filed after January 6, 2014, P 17 states that the Commission accepted “the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.”

<sup>10</sup> *Request for Leave to Answer and Answer of the New York Independent System Operator, Inc.* (Jan. 9, 2014) (“NYISO Answer”).

<sup>11</sup> *Motion for Leave to Answer and Answer of the New York Transmission Owners* (Jan. 10, 2014) (“NYTOs Answer”).

<sup>12</sup> January Order at P 57.

and G-J Locality Demand Curves<sup>13</sup> It likewise accepted as reasonable the NYISO's determination that the F class frame unit without SCR "is economically viable for use as the proxy unit" for the New York Control Area ("NYCA").<sup>14</sup> In both cases, the January Order considered, and reasonably rejected, arguments that there was insufficient evidence in the record to support the NYISO's selection.<sup>15</sup> Similarly, the January Order considered, but rightly did not adopt, arguments proffered by certain protestors that the stakeholder process leading up to the selection of the F class frame with SCR was flawed, finding that the Board acted "within its authority."<sup>16</sup>

## **II. REQUEST FOR LEAVE TO ANSWER**

Parties are permitted to answer requests for clarification as of right.<sup>17</sup> To the extent that the Commission accepts the IPPNY Supplement for filing,<sup>18</sup> the NYISO should likewise be permitted to answer it as of right because it purports to provide relevant new evidence. In addition, the Commission has discretion<sup>19</sup> to accept answers to requests for rehearing and has done so when they help to clarify complex issues, provide additional information, or are otherwise helpful to its decision-

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<sup>13</sup> See Services Tariff Section 2.7, which defines G-J Locality as "[t]he Locality comprised of Load Zones G, H, I, and J collectively."

<sup>14</sup> January Order at P 76.

<sup>15</sup> January Order at PP 60, 76-77.

<sup>16</sup> January Order at P 29.

<sup>17</sup> See 18 C.F.R. § 385.213(a)(3) and *Mirant Americas Energy Marketing, L.P. v. ISO New England Inc.*, 97 FERC ¶ 61,360 (2001).

<sup>18</sup> *Motion for Leave to Answer and Answer of the New York Transmission Owners* (March 13, 2014.) Under Commission Rule 713(c)(3), new matters may be raised on rehearing only if "based on matters not available for consideration by the Commission at the time of the final decision or order." It is well-established that the Commission "generally will not consider new evidence on rehearing, as [it] cannot resolve issues finally and with any efficiency if parties attempt to have [it] chase a moving target." *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,548 & n. 64 (1994).

<sup>19</sup> See 18 C.F.R. § 385.213(a)(2).

making process.<sup>20</sup> The Commission should accept the NYISO's answer in this instance, as it provides additional information that will assist the Commission.

### III. ANSWER

#### 1. **The January Order Gave More than Sufficient Consideration to the Evidence and Arguments and Provided a More than Sufficient Explanation of its Determinations**

The Supply Interests allege that the Commission erred when it rejected or failed to give adequate consideration to evidence and arguments that purportedly “demonstrated” that the NYISO's proxy unit selections and the other proposals included in the November Filing were “substantively flawed.”<sup>21</sup> The IPPNY Request is essentially a laundry list of arguments that it previously offered and now alleges were ignored without justification.<sup>22</sup> The Indicated Suppliers similarly call for rehearing because of the Commission's claimed failure to engage their “serious objection” that the F class frame with SCR cannot comply with Con Edison's 45-second fuel switching requirement.<sup>23</sup> The NY-SEA Group also rehashes points that the January Order either reasonably rejected or did not adopt based on clear record evidence.<sup>24</sup>

The Supply Interests would effectively require the Commission to respond in detail to every single point made in each and every one of their pleadings. But reasoned decision-making does not require the Commission to meet such an unreasonable and unrealistic standard. The NYISO is aware

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<sup>20</sup> See, e.g., *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157 at P 10 (2009) (accepting an answer to a request for rehearing because it provided information that assisted the Commission in its decision-making process).

<sup>21</sup> IPPNY Request at 3, 6-11; Indicated Suppliers Request at 6-12.

<sup>22</sup> IPPNY Request at 7.

<sup>23</sup> Indicated Suppliers Request at 7-8.

<sup>24</sup> See e.g. NY-SEA Group Request at 13, arguing again that the NY-SEA Group was entitled to an opportunity to be heard through an evidentiary proceeding, a request that the Commission considered (January Order at P 67) and declined to grant. See NYISO Answer at 55-57 and the *Request for Leave to Submit Limited Answer and Limited Answer of the New York Independent System Operator, Inc.* at 2-5 (Jan. 28, 2014).

of no rule or precedent imposing such a requirement.<sup>25</sup> To the contrary, reasoned decision-making only requires an agency articulate the principal justifications for its decisions.<sup>26</sup> The Supply Interests arguments are thus exactly like those that the Commission rejected in its 2009 rehearing order in *330 Fund I, L.P. v. New York Independent System Operator, Inc.*<sup>27</sup> There the Commission explained that:

330 Fund broadly claims that the Commission's October 1 Order is arbitrary and capricious and demonstrates a lack of reasoned decision making. 330 Fund faults the order because the Commission did not address certain arguments and inconsistencies in the pleadings. The Commission is not required to address every argument advanced by parties. The agency need only state the main reasons for its decision. *Simpson v. Young*, 854 F.2d 1429, 1434-35 (D.C. Cir. 1988). Many of the 330 Fund's arguments are disposed of by broader holdings in the October 1 Order. This order, like the October 1 Order, will present the central issues that dispose of the dispute, and will address the salient points raised in the request for rehearing.<sup>28</sup>

The January Order more than satisfied the true requirements of the reasoned decision-making standard by articulating "the main reasons for its decision."<sup>29</sup> This standard is especially appropriate in the context of proxy unit selection which, as the Commission acknowledged, is inherently a "matter of judgment."<sup>30</sup> The arguments reiterated by the Supply Interests largely go to secondary or tertiary factors that in some cases are relevant to, but are hardly dispositive in, a broad and comprehensive evaluation of the economic viability of particular technologies. Such evaluations are necessarily driven by the major factors that the January Order identified and relied upon. Just as in the *330 Fund* case, the lesser points that the Supply Interests pose on rehearing were inherently and understandably considered and disposed of as part of the January Order's broader determinations.

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<sup>25</sup> *Fall River Rural Elec. Coop. v. FERC*, 543 F.3d 519, 530-531 (9th Cir. 2008) (stating that the court could not find "a single case requiring FERC's orders to thoroughly analyze each and every argument in order to engage in reasoned decision making .....")

<sup>26</sup> See, e.g., *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168-69 (1962); *Federal Power Comm'n v. Texaco, Inc.*, 417 U.S. 380, 397 (1974).

<sup>27</sup> 126 FERC ¶ 61,151 (2009).

<sup>28</sup> *Id.* at n. 19.

<sup>29</sup> See, e.g. January Order at PP 27 and 57-60 (setting out the major reasons for the Commission's decision to support the NYISO's selection of the F class frame with SCR).

<sup>30</sup> January Order at P 60.

Moreover, there was ample record evidence for both the express rulings of the January Order and its unstated refusal to adopt other arguments that the Supply Interests object to on rehearing. The January Order speaks to the IPPNY's alleged "substantive deficiencies."<sup>31</sup> For example, Paragraphs 40 and 52 of the January Order discuss the arguments on dual fuel capability that IPPNY and the NYISO made. Paragraph 57 contains the Commission's analysis and decision on the topic, and cites evidence and analysis presented by the NYISO to support its holding that it was reasonable to conclude that the proxy unit for NYC, LI, and the G-J Locality could comply with dual fuel requirements.<sup>32</sup> IPPNY also alleges that the Commission accepted the NYISO's proposal to exclude any original issue discount ("OID") costs from the financing cost assumptions of the proxy unit "without any detailed reasoning."<sup>33</sup> But in Paragraph 121, the Commission explained why it found NYISO's answer to IPPNY's protest on this issue to be convincing and the NYISO's proposal on the level of OID to be reasonable. Reasoned decision-making does not require the Commission to engage every detail of every argument the Supply Interests made on these issues, especially given the strong record support for the Commission's determinations.

The Commission also squarely addressed IPPNY's meritless claim that there was not enough operating data in the record, stating:

The Commission does not look for a minimum number of hours in order to determine whether a technology is considered viable. In this case, there is a difference of opinion as to whether the Marsh Landing Station provided enough hours, and we find the record of evidence presented in support of the frame unit with SCR is adequate in order to find that NYISO reasonably concluded that the F class frame with SCR is a viable technology and able to serve as the proxy unit in NYC, LI, and the G-J Locality.<sup>34</sup>

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<sup>31</sup> IPPNY Request at 5.

<sup>32</sup> January Order at P 57, citing Licata Affidavit at PP 11-12.

<sup>33</sup> IPPNY Request at 15.

<sup>34</sup> January Order at P 60.

That record of evidence demonstrating that the F class frame with SCR was operational included the November Filing and its supporting affidavits (specifically that of Mr. Licata),<sup>35</sup> the NYISO's Answer, and the supplemental affidavit of Mr. Licata.<sup>36</sup>

Similarly, there was more than sufficient record evidence for the Commission to reject the Indicated Suppliers' allegation that the Commission failed to account for Con Edison's fuel switching requirements. Both sides of this issue are presented in the January Order and the Commission articulated the main reason for its determination.<sup>37</sup> The record before the Commission also included the Thompson Affidavit (which was part of the NYTOs' Answer but not expressly referenced by the January Order) which thoroughly supported the reasonableness of the NYISO recommendations and refuted the Indicated Suppliers' arguments on this issue.<sup>38</sup>

## **2. Nothing in the IPPNY Supplement Justifies Granting Rehearing**

The IPPNY Supplement contains what IPPNY characterizes as "direct evidence" that "strongly supports" IPPNY's position that the Commission should reject the F class frame with SCR as the proxy unit for the NYC, LI and G-J Localities.<sup>39</sup> But the supposed direct evidence, a presentation by the Brattle Group to the New England Power Pool ("NEPOOL") Markets Committee as part of the ongoing development of sloped demand curves for the ISO New England ("ISO-NE") market provides absolutely no basis for rehearing.

As an initial matter, even if one Brattle Group expert, *i.e.*, Mr. Newell, were to take a position

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<sup>35</sup> See, *e.g.* November Filing at 12-16, and Attachment V (Affidavit of Mark W. Chupka, Principal, the Brattle Group, including the *Independent Evaluation of SCR Systems for Frame-Type Combustion Turbines: Report for ICAP Demand Curve Reset* (Nov. 2013)) and Attachment VII (Affidavit of Anthony Licata) to November Filing.

<sup>36</sup> NYISO Answer at 11-27, and Attachment 2 to the NYISO Answer (Supplemental Affidavit of Anthony Licata).

<sup>37</sup> January Order at PP 36, 40 and 56.

<sup>38</sup> Exhibit B to the NYTOs Answer, Affidavit of Edwin Thompson.

<sup>39</sup> IPPNY Supplement at 1.

in an unrelated ISO-NE matter that differed from the position taken by another, *i.e.*, Mr. Chupka, in this proceeding it would in no way devalue Mr. Chupka's conclusions. It should go without saying, that Mr. Chupka, not the Brattle Group as a whole, is the NYISO's expert in this case. Thus, even if Mr. Newell's opinion was directly contrary to Mr. Chupka's, and the NYISO explains below that it was not inconsistent with Mr. Chupka's at all, that would not mean that the January Order's reliance on Mr. Chupka was misplaced. It would simply be another example of different experts coming to different conclusions regarding a technical matter that requires the application of expert judgment.<sup>40</sup>

In addition, IPPNY claims that statements in the presentation about the commercial risk of the F class frame with SCR and the market risk associated with its selection represent "new" evidence.<sup>41</sup> But this "new" evidence does not introduce anything new into the record. The Commission has already fully considered IPPNY's arguments regarding the commercial acceptance of the F class frame with SCR<sup>42</sup> and Mr. Younger's theory of asymmetric risk.<sup>43</sup> The statements submitted with the IPPNY Supplement add nothing new to this discussion.<sup>44</sup>

Furthermore, these statements, which are part of Mr. Newell's not-yet final recommendation to the NEPOOL Markets Committee on the ISO-NE proxy unit, do not contradict Mr. Chupka's because they deal with substantially different facts and circumstances. ISO-NE is in the process of introducing sloped demand curves for the first time and the ability of these curves to attract merchant investment in capacity to meet the reliability requirements for New England, which has struggled to attract

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<sup>40</sup> See *e.g.* November Filing at 14 (noting that "qualified experts can sometimes come to competing conclusions. This is especially true when it comes to predicting the future performance of technology.")

<sup>41</sup> IPPNY Supplement at 1, 2.

<sup>42</sup> January Order at P 60.

<sup>43</sup> January Order at P 54.

<sup>44</sup> *Long Island Lighting Company*, 82 FERC ¶61,216 (1998).



investment for some time, is not yet proven.<sup>45</sup> By contrast, the NYISO has had sloped ICAP Demand Curves in place since 2003 and a successful record of attracting new investment.<sup>46</sup> Thus, there may be practical reasons that would justify choosing a “lower risk” (*i.e.*, the higher fixed cost and lower variable cost) unit in New England than in New York. The NYISO is required by tariff to base ICAP Demand Curves on the economically viable peaking technology with the lowest fixed cost and highest variable cost or the plant with the lowest Net CONE value. For ISO-NE, Mr. Newell is working with a blank slate to develop a proposal for sloped demand curves. In doing so he has identified the F class frame turbine as a potential reference technology that is both feasible and economic, but has based his recommendation of the combined cycle technology for use in the new sloped demand curve on concerns that are unique to ISO-NE and without any technology prescriptions included in the ISO-NE tariff.<sup>47</sup>

It should also be noted that Mr. Newell’s presentation supports the recommendations made by the NYISO and includes statements that support the Commission’s approval of the NYISO’s selection of the F class frame with SCR as the lowest fixed cost, highest variable cost proxy unit that is economically viable. The presentation shows that the Net CONE/Reference Price values calculated by the Brattle Group for ISO-NE clearly support the outcome of the NYISO process, as the F class frame

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<sup>45</sup> See *e.g.*, ISO New England Inc. *Exigent Circumstances Filing of Revisions to Forward Capacity Market Rules* at 3 (Nov. 25, 2013), discussing “the general decline in the amount of new resources seeking to participate in the [forward capacity auction] (likely because of low prices set by the current vertical demand curve structure, which signaled that new resources were not needed.” See also *ISO-New England Inc.*, 146 FERC ¶ 61,043 at 7 (2014).

<sup>46</sup> See *e.g.* *Report on Performance Metrics for Independent System Operators and Regional Transmission Organizations* at 212 (Apr. 2011) (“Through [the NYISO’s] market-based approach, New York has attracted significant private and public investment in transmission and generation.”) available at: <https://www.ferc.gov/industries/electric/indus-act/rto/rto-iso-performance.asp>.

<sup>47</sup> See *Net CONE for the ISO-NE Demand Curve: Summary of Initial Analysis*, presentation of The Brattle Group to the NEPOOL Markets Committee at 2 (Jan. 14, 2014) available at: [http://www.iso-ne.com/key\\_projects/fcm\\_sloped\\_dem\\_curve/mc\\_mtrls/](http://www.iso-ne.com/key_projects/fcm_sloped_dem_curve/mc_mtrls/).

with SCR is the most economical of the units that Brattle studied.<sup>48</sup> Brattle also notes that permitting risks associated with the F class frame with SCR should not disqualify it as a reference technology.<sup>49</sup>

### **3. The Commission Should Not Grant the Indicated Suppliers' Request for Clarification or Rehearing Regarding Future ICAP Demand Curve Resets**

The January Order expressly rejected challenges concerning the stakeholder process that resulted in the NYISO's selection of the proxy unit for NYC, LI, and the G-J Locality, including specifically the NYISO Board's decision to conduct additional due diligence near the end of that process.<sup>50</sup> The Commission also "suggested" that "in the future NYISO perform this process with more transparency in order to avoid any appearance of impropriety and allow adequate time throughout the entire process for stakeholders to voice their opinions and concerns."<sup>51</sup> The Indicated Suppliers seek to convert this suggestion into an unwarranted censure of the NYISO by asking the Commission to "clarify" that the NYISO has been "placed on notice that a repetition of th[e] opaque and rushed [DCR] process will not be tolerated in the future."<sup>52</sup>

There is no basis for such a clarification because the NYISO's process was transparent and went above and beyond what the tariff requires. There is nothing about the NYISO's action that was inappropriate or that should not be "tolerated." Indicated Suppliers' speculation that the January Order will "eviscerate"<sup>53</sup> future stakeholder processes is groundless and illogical. If anything, the results of the last stakeholder process demonstrate the fundamental importance of active stakeholder

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<sup>48</sup> Exhibit 1 to the IPPNY Supplement at 27-29. Mr. Newell also concluded that the LMS100 unit should be rejected as uneconomic. *Id.* at 30.

<sup>49</sup> *Id.* at 4

<sup>50</sup> January Order at P 29 ("Therefore, we find that the Board acted within its authority to conduct additional due diligence regarding the viability of the F class frame unit with SCR and their authority to reject a recommendation contained in the NYISO Staff Report. Furthermore, we note that stakeholders have the opportunity to pursue their positions in the instant proceeding and indeed have done so. We therefore conclude that stakeholders' procedural rights have not been violated.")

<sup>51</sup> *Id.*

<sup>52</sup> Indicated Suppliers at 2.

<sup>53</sup> Indicated Suppliers at 17.

participation at every stage because it was the diligence and persistence of load-side interests that ultimately convinced the Board to reconsider the NYISO staff's initial proxy unit recommendation.<sup>54</sup> Consistent with the January Order's suggestion, the NYISO will of course continue to provide as much transparency as possible in future ICAP Demand Curve reset stakeholder processes. If it once again becomes necessary to consider changes at a late stage in a future process, the NYISO will be mindful of the fact that even its best efforts at outreach did not satisfy some stakeholders in the 2013 process and will strive to do better. But the NYISO Board must retain final authority to decide what will be proposed in future ICAP Demand Curve filings. The Indicated Suppliers should not be allowed to undermine that authority in the guise of seeking clarification regarding the stakeholder process.

#### **IV. CONCLUSION**

For the reasons set forth above, the NYISO respectfully requests that the Commission deny the Supply Interests' requests for rehearing and clarification in their entirety.

Respectfully Submitted,

/s/ Ted J. Murphy

Ted J. Murphy

Counsel to the

New York Independent System Operator, Inc.

March 14, 2014

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<sup>54</sup> November Filing at 10.

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 14<sup>th</sup> day of March, 2014.

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