

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

**Independent Power Producers
of New York, Inc.**

v.

**New York Independent System
Operator, Inc.**

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Docket No. EL13-62-000

**ANSWER OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC. TO
MOTION TO AMEND, AND AMENDMENT TO, COMPLAINT**

In accordance with Rule 213 of the Commission’s Rules of Practice and Procedure and the March 28, 2014 *Notice of Amendment to Complaint*, the New York Independent System Operator, Inc. (“NYISO”) respectfully submits its answer to the *Motion to Amend, and Amendment to, Complaint of the Independent Power Producers of New York, Inc.* (“Amended Complaint”). This answer also addresses certain aspects of the *Supporting Comments* filed by Entergy Nuclear Power Marketing, LLC (“ENPM”) on April 10.¹

As is set forth in detail below, the Amended Complaint should be denied. The Independent Power Producers of New York, Inc. (“IPPNY”) have once again failed to carry their burden of proof to show that the NYISO’s existing tariff provisions are unjust and unreasonable under Sections 206 and 306 of the Federal Power Act (“FPA”) and Commission Rule 206. IPPNY has failed to demonstrate, as Commission precedent requires, that “uneconomic

¹ *Supporting Comments on Amended Complaint of Entergy Nuclear Power Marketing, LLC* (filed April 10, 2014) (“ENPM Comments”). The fact that the NYISO has chosen not to respond to other aspects of the ENPM Comments should not be construed as acquiescence in, or agreement with, ENPM’s assertions.

retention” of existing resources in the New York Control Area (“NYCA”)² constitutes a “well-defined structural problem” that necessitates the adoption of a new form of buyer-side market power mitigation. IPPNY has not even established that the contractual arrangement identified in the Amended Complaint takes an unjustified approach to addressing anticipated electric system conditions.

It is inappropriate and unproductive for IPPNY to continue to seek to unilaterally impose market rule changes on the NYISO and all other stakeholders. It is also unnecessary because the generation station that is the subject of the arrangement identified in the Amended Complaint is not anticipated to re-enter the market until September 1, 2015, at the earliest. IPPNY should be directed to fully articulate its concerns and submit its proposal in the NYISO stakeholder process. The NYISO will, with input from the independent market monitoring unit (“MMU”), evaluate those concerns and whether they should lead to any market rule changes. The NYISO stakeholder process is well suited to vet IPPNY’s concerns and obtain stakeholder input on possible remedies. The MMU has authorized the NYISO to state that it believes that uneconomic retention is a potential competitive concern that should be evaluated and addressed as needed. However, under the specific facts and circumstances of this proceeding, the MMU believes further evaluation is necessary and agrees that the NYISO’s stakeholder process is the appropriate place to review and consider the issues raised in the Amended Complaint.

Finally, the NYISO renews its request that the still pending May 10, 2013 *Complaint Requesting Fast Track Processing of the Independent Power Producers of New York, Inc.* (“Complaint”) be denied.

² Capitalized terms that are not otherwise defined herein shall have the meaning specified in the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).

I. BACKGROUND

The Complaint focused on what IPPNY alleged to be artificial price suppression caused by Reliability Service Support Agreements (“RSSAs”) involving generating facilities owned by Dunkirk Power, LLC (“Dunkirk”) and Cayuga Operating Company, LLC (“Cayuga”).³ It also alluded to hypothetical market threats that it claimed could arise from future RSSAs and other anticipated New York State policy initiatives.⁴

The Complaint requested that the Commission mitigate the “uneconomic retention” of existing resources that are prevented from exiting the market by bilateral contracts that allegedly convey state-sponsored subsidies. Existing capacity resources, as compared to new entrants, are not currently subject to buyer-side mitigation under any Independent System Operator or Regional Transmission Organization (“ISO/RTO”) tariff.

The Complaint also asked that the Commission order the NYISO to either: (i) exclude Cayuga and Dunkirk from the capacity market; or (ii) require them to offer capacity at a level no lower than their “going-forward costs,” as defined by IPPNY in proposed tariff revisions that were developed outside of the stakeholder process.

The NYISO’s answer emphasized that the NYISO and the MMU strongly support buyer-side market power mitigation measures when and where they are needed.⁵ But, as the NYISO explained, the Complaint was based on fundamental flaws and wholly without merit.⁶ The Cayuga and Dunkirk units were not uneconomic and RSSAs only raise competitive concerns if:

³ Complaint at 20.

⁴ *Id.* at 18-19.

⁵ *Answer of the New York Independent System Operator, Inc.* at 5 (filed May 30, 2013) (“NYISO Answer”).

⁶ Complaint at 11-16.

(i) there is no legitimate need for the resource; or (ii) the need addressed by an RSSA already fully captured by capacity market requirements.⁷

The NYISO also explained that, although IPPNY had a statutory right to file the Complaint, the filing represented a unilateral attempt to bypass the NYISO's shared governance system that was inconsistent with clear Commission policy favoring the use of stakeholder processes. The NYISO asked the Commission to follow its precedent by discouraging IPPNY's attempted "end-run."⁸

The Amended Complaint focuses on a 2014 term sheet between Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") and Dunkirk (the "Term Sheet").⁹ According to the Amended Complaint, the Term Sheet provides for coal-fired Units 2, 3, and 4 of the Dunkirk Generating Station ("Dunkirk 2-4") to add natural gas-fired generating capability, and for energy and capacity from those units to be available for ten years.¹⁰ Also according to the Amended Complaint, the Term Sheet would result in "uneconomic retention in the Rest of State on a scale and over a term far beyond that occurring under the [RSSAs] that prompted the Complaint."¹¹ IPPNY argues that even under the analysis set forth by the MMU in the NYISO Answer, "Dunkirk 2-4 is not 'the most economic means to satisfy a reliability need that is not reflected in the NYISO market requirements.'"¹² The Amended Complaint concludes that the

⁷ Complaint at 11.

⁸ *Id.* at 24.

⁹ Amended Complaint at 1.

¹⁰ *Id.* at 7.

¹¹ *Id.* at 2.

¹² *Id.* at 3, *citing* Patton Initial Affidavit to NYISO Answer at P 40.

Commission must act to address what IPPNY anticipates will be an “eye-popping \$841 million”¹³ of “artificial [capacity] price suppression” in New York over the course of ten years.¹⁴

On April 10, ENPM filed comments asking the Commission to grant the Amended Complaint and urging it to use this proceeding to adopt certain “principles” related to uneconomic retention that would apparently apply to all Commission-jurisdictional organized capacity markets.¹⁵

Nothing in the Amended Complaint or the ENPM Comments causes the NYISO to alter the position stated in the NYISO Answer. The Amended Complaint’s suggestion that the Term Sheet somehow reinforces the need for Commission action is, as demonstrated in this Answer, without merit. Therefore, the NYISO renews its request that the Commission deny IPPNY’s requests for relief in the Complaint related to the Cayuga and Dunkirk RSSAs, as well as its other requests for relief.¹⁶

II. ANSWER

The MMU has advised the NYISO that it continues to support the indicators for determining when uneconomic retention arrangements may be problematic that are included in the NYISO Answer.¹⁷ The NYISO continues to agree with the MMU. The NYISO and the MMU also agree that contractual arrangements that result in price suppression can have adverse competitive consequences that require mitigation.

¹³ Amended Complaint at 11 (emphasis in original omitted here).

¹⁴ *Id.* at 16.

¹⁵ See ENPM Comments at 9-14.

¹⁶ This includes *Motion to Lodge of the Independent Power Producers of New York, Inc.* (filed in this docket on Nov. 12, 2013), to which NYISO has not previously responded.

¹⁷ See NYISO Answer at 2-3.

The NYISO has actively sought tariff changes when it concluded that mitigation rules were justified. For example, it proposed buyer-side mitigation rules for New York City (“NYC”)¹⁸ and then buyer- and supplier-side rules for any Mitigated Capacity Zone, including the newly established G-J Locality.¹⁹ In addition, the NYISO worked through the stakeholder process to propose significant enhancements to its buyer-side mitigation rules to add transparency and certainty for all stakeholders.²⁰ The NYISO also enforces those rules, which results in mitigation when warranted.

At the same time, the NYISO is cognizant of the fact that over-mitigation can harm the markets. The Commission has clearly held that rules that result in over-mitigation are not permissible.²¹ In addition, the NYISO understands that buyer-side market power mitigation measures can be administratively burdensome and can impose unintended costs. Dr. David B. Patton, the President of the MMU, indicated in NYISO stakeholder discussions in 2013 that it is

¹⁸ See *Initial Tariff Compliance Filing of the New York Independent System Operator, Inc. Implementing New York City ICAP Mitigation Measures*, Docket No. ER08-695 (filed March 20, 2008) (proposing tariff revisions to implement market power mitigation of ICAP suppliers in NYC) and *Second Tariff Compliance Filing of and Request for Waiver of the New York Independent System Operator, Inc. Implementing New York City ICAP Market Mitigation Measures*, Docket No. ER08-695-001 (filed May 6, 2008).

¹⁹ *New York Independent System Operator, Inc.*, 143 FERC ¶ 61,217 (2013) (accepting, with conditions, the NYISO’s proposed buyer-side and supplier-side market power mitigation measures for new capacity zones; *i.e.*, Mitigated Capacity Zones).

²⁰ *New York Independent System Operator, Inc., Proposed Enhancements to In-City Buyer-Side Capacity Mitigation Measures, Request for Expedited Commission Action, and Contingent Request for Waiver of Prior Notice Requirement*, Docket No. ER10-3043 (filed Sept. 27, 2010).

²¹ See, *e.g.*, *New York Independent System Operator, Inc.*, 143 FERC ¶ 61.217 (2013) at P 77 (directing NYISO to work with stakeholders to “consider whether the buyer-side market power rules for NYC, when applied to a new zone, will appropriately balance the need for mitigation of buyer-side market power against the risk of over-mitigation” and whether modifications were needed to achieve that balance); citing *Edison Mission Energy, Inc., et al., v FERC*, 394 F. 3d 964 (D.C. Cir. 2005) (noting potential dangers of over-mitigation).

difficult to structure the tests in a manner that would ensure that buyer-side mitigation would not restrict economic investment.²²

The NYISO stakeholder process has been an effective vehicle for considering and addressing changes to market power mitigation rules while guarding against over-mitigation. For instance, in 2013 TC Ravenswood, LLC proposed tariff revisions to extend to the Rest of State (“ROS”) market mitigation measures that are currently in place in NYC, the G-J Locality, and any future Mitigated Capacity Zones. After vetting in the stakeholder process, the proposal failed to obtain stakeholder approval, and TC Ravenswood appealed to the NYISO Board of Directors. The Board denied the appeal. It explained that:

There is no evidence that supplier-side market power exists in the ROS, or that buyer-side market power has been, or is expected to be, exercised there. TCR provides no analysis substantiating the alleged harm that would result if uneconomic new generation entered the ROS. While TCR expresses concern about potential, future uneconomic activities in the ROS, TCR fails to support its claim that uneconomic activity exists today in ROS and warrants immediate action without the support of a majority of NYISO stakeholders.²³

Because of the potentially significant consequences of both under- and over-mitigation, it is important to fully evaluate whether mitigation rules are appropriate, and, if so, to carefully develop them so that they properly address market power issues. The NYISO’s stakeholder process is clearly a better forum than a formal complaint proceeding for the thorough consideration, and if warranted, the development of, appropriate market mitigation rules.²⁴

²² *NYISO Board of Directors’ Decision on Appeal of the Management Committee’s Decision Rejecting a Proposal to Apply Capacity Market Mitigation Measures in Rest of State* at n. 3 (Sept. 4, 2013) (“Board Decision”); citing *NYISO Business Issues Committee Minutes for May 9, 2013* at 3. The Board Decision is available at: http://www.nyiso.com/public/webdocs/markets_operations/committees/appeals/Appeals_to_the_BOD/June_11,_2013/Board%20Decision%20ROS%20Mitigation%20Appeal.pdf.

²³ Board Decision at 3.

²⁴ In its written comments in Docket No AD13-7-000, *Technical Conference re Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators*, (“Centralized Capacity Market Proceeding”) the NYISO stated that its stakeholder process had “recently

The NYISO is also mindful, notwithstanding ENPM's and IPPNY's assertions that Commission-jurisdictional mitigation rules have no impact on legitimate state prerogatives,²⁵ that the question of whether wholesale capacity market rules are "effectively accommodate" state policies was among the most important issues discussed in the Commission's recent Centralized Capacity Market Proceeding.²⁶

IPPNY has not provided a basis for the Commission to require that the proposed bilateral agreement contemplated by the Term Sheet be mitigated. It has fallen far short of what is required to justify the acceptance of its proposed new system of NYCA-wide mitigation rules. ENPM has likewise failed to justify the imposition of its novel "principles" on the NYISO or on other ISO/RTO markets.²⁷ Moreover, neither IPPNY nor ENPM has shown that its proposed mitigation measures strike the right balance between over- and under-mitigation.

struggled" to resolve certain capacity market design issues after extensive discussions. Those issues do not include the "uneconomic retention" related questions involved in this proceeding. There is thus every reason to expect that the issues in this proceeding are "controversial and consequential capacity market design questions" that can and should be addressed through the shared governance process in the first instance. *Post-Technical Conference Comments of the New York Independent System Operator, Inc.* at 10 (filed Jan. 8, 2014).

²⁵ ENPM Comments at 6, citing *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,145 at P3 (2011) and *New England States Comm. on Elec. v. ISO New England Inc.*, 142 FERC ¶ 61,108 at P 35 (2013); Complaint, at n. 123, citing *Astoria Generating Co. L.P. v. New York Indep. Sys. Operator, Inc.*, 140 FERC ¶ 61,189 at P 142 (emphasizing that the Commission's actions "do not serve to restrict the authority state or local agencies may have to address reliability concerns").

²⁶ See e.g. *Supplemental Notice of Technical Conference, Final Agenda* at 3, Docket No. AD13-7-000 (August 23, 2013) ("1. Do centralized capacity markets effectively accommodate various federal and state policies, such as state resource planning policies, renewable portfolio standards, and compliance with environmental regulations? If not, how can such policy considerations be better accommodated in centralized capacity market design? 2. Are there specific aspects of capacity market design or specific capacity market design elements that create barriers to effective implementation of federal or state resource procurement, planning, energy or environmental policies?"); *Notice of Technical Conference*, Docket No. AD13-7-000 (June 17, 2013) at 1 ("[S]ome states have pursued individual resource adequacy policies to ensure the development of new resources in particular areas or with particular characteristics, and questions have been raised as to how those individual policies can be accommodated in centralized capacity markets.")

²⁷ Attachment C to Complaint and ENPM Comments at 9-14.

A. The Amended Complaint Fails to Demonstrate that Uneconomic Retention Is a Well-Defined Structural Problem that Necessitates the Adoption of Market Power Mitigation Rules

Under the FPA and the Commission’s procedural rules, a complainant faces a dual burden of proof: it must both show that the provisions it challenges are unjust, unreasonable, unduly discriminatory or preferential, and must affirmatively establish that the changes it proposes are just and reasonable, and not unduly discriminatory or preferential.²⁸ Commission precedent is clear that “unsubstantiated allegations” are not sufficient to meet the dual burden of proof. Rather, complainants must offer “clear and convincing” evidence to support their requests for relief.²⁹ The Commission rightly looks with disfavor on “poorly supported” complaints based on nothing but speculation and “broad allegations” of violations.³⁰

The Commission has stringent standards for the approval of new market power mitigation measures. As the Commission has held, it “only accepts mitigation measures that address well-defined structural problems in the market, and has consistently rejected mitigation proposals that are not adequately supported by a showing of the potential to exercise market power.”³¹ New

²⁸ *Louisiana Public Service Comm’n v. Entergy Corp.*, 134 FERC ¶ 63,016 at P 13 (2011).

²⁹ See *Astoria Gas Turbine Power LLC v. New York Independent System Operator, Inc.*, 131 FERC ¶ 61,205 at P 19 (2010) (“NRG, as the complainant, bears the burden of proof in this case, but failed to demonstrate with clear and convincing evidence that it met that burden.”)

³⁰ See e.g. *Arena Energy, LP v. Sea Robin Pipeline Co.*, 133 FERC ¶61,140 at P 59 (2010) (denying a request to remove provisions from a tariff because the claims regarding the misuse of certain tariff provisions were speculative and unsupported and the tariff was not shown to be unjust and unreasonable); and *Public Service Co. of New Mexico*, 95 FERC ¶ 61,481 at 62,715 (2001) (rejecting as speculative, unsupported and without merit a claim that the Public Service Company of New Mexico would reap windfall profits from engaging in a certain practice, when there was no showing that the company had historically engaged in such a practice).

³¹ *California Independent System Operator Corp.*, 139 FERC ¶ 61,211 (2011) (“CAISO”), citing 126 FERC ¶61,150 at P 71.

mitigation proposals must have the support of “a fully developed factual record.”³² By their very nature, ISO/RTO stakeholder processes help to ensure that the Commission’s standards are satisfied by producing proposals that consider stakeholders’ input and balance their interests.

The Commission has followed these standards when declining to accept energy market power mitigation rules proposed by ISOs/RTOs in unconstrained regions within their markets.³³ For instance, in denying mitigation measures proposed by the California Independent System Operator Corporation (“CAISO”), the Commission found that CAISO had presented “no new evidence or analysis of continuing structural problems ”³⁴ Similarly, as IPPNY acknowledged in the Complaint, the 2010 Order rejected TC Ravenswood’s claim that a change in contractual or financial arrangements pertaining to an existing generation facility³⁵ should subject it to a new form of buyer side mitigation.³⁶ The Commission found that the possibility that uneconomic capacity that should be mothballed or retired might attempt to exercise market power through contractual or financial arrangements was “too speculative at this point to require an immediate remedy.” The Commission therefore concluded that the evidence to date supported only offer floor mitigation for uneconomic new entrants.³⁷

³² *New York Independent System Operator, Inc.*, 106 FERC ¶ 61,111, PP 22, 28, 30 (2004) (rejecting, without prejudice, a NYISO proposal to apply automated mitigation procedures outside of New York City.)

³³ *See ISO New England, Inc.* 101 FERC ¶ 61,344, PP 26-28 (2002) and *ISO New England, Inc.*, 100 FERC ¶ 61,287, P 41 (2002) (rejecting market power mitigation proposals absent a convincing showing of “well-defined structural problems.”)

³⁴ *CAISO* at P 76.

³⁵ The 2010 Order’s distinction between existing and new resources belies ENPM’s claim that there is no legal basis for viewing uneconomic entry and uneconomic retention differently. *See* ENPM Comments at 6-9.

³⁶ *New York Independent System Operator, Inc.*, 131 FERC ¶ 61,170 (2010) (“2010 Order”).

³⁷ Complaint at n. 4, *citing* 2010 Order at P 43. *See also CAISO* at P 78 (holding that that “CAISO has not demonstrated why the Commission should base its approval of market power mitigation measures on the mere suspicion of the potential for abuse”).

IPPNY has not met its dual burden of proof under the FPA - it has not shown that artificial price suppression has occurred under the existing Services Tariff or will occur in the future (assuming that the Term Sheet is actually executed and implemented.) Nor has it demonstrated that its proposed “remedies” are just and reasonable. It has likewise failed to demonstrate that uneconomic retention is a “well-defined structural problem” in the NYISOadministered capacity market or that circumstances have changed so much since 2010 that concerns about uneconomic retention through contractual or financial arrangements are no longer speculative. The Complaint therefore should be denied.

As the NYISO’s filings in response to the Complaint demonstrated, with the MMU’s support, IPPNY’s concerns about the Cayuga and Dunkirk RSSAs were overstated and without merit. Dr. Patton explained in his Initial Affidavit that IPPNY’s assertions are based on fundamental misunderstandings of these units’ roles in the NYISO market: it is efficient for them to clear in the capacity market, and any provision imposed that would cause them not to clear would be unreasonable.³⁸ The NYISO’s earlier filings also explained that IPPNY’s concerns about possible dangers to the market posed by other existing or hypothetical New York State public policy initiatives were speculative, premature, and insufficiently established.³⁹

Although the conclusory allegations offered by the Amended Complaint relate to potential concerns regarding uneconomic retention, they do not satisfy IPPNY’s burden of proof. IPPNY’s predictions of artificial price suppression are not supported by “clear and convincing” evidence and, as discussed below in Section II.B, rest on an overly simplistic and incomplete assessment of electric system conditions. Given that the Commission already is considering how

³⁸ Patton Initial Affidavit at P 25.

³⁹ See *Initial Answer of the New York Independent System Operator, Inc. Opposing Fast Track Processing* (filed May 13, 2013) and NYISO Answer at 9-10.

best to balance existing uneconomic entry rules against state public policy prerogatives in the Centralized Capacity Market Proceeding it should not accept IPPNY's proposed new regime of "uneconomic retention" mitigation rules.

Nor should the Commission adopt ENPM's uneconomic retention principles.⁴⁰ There is no record basis for doing so in this proceeding and the Centralized Capacity Market Proceeding already exists as a generic policymaking docket. Indeed, ENPM has already called in that proceeding for the adoption of rules that would mitigate "uneconomic retention" and would establish "core market policies."⁴¹

B. The Amended Complaint Has Not Accurately Assessed the Relationship Between the Term Sheet and the Anticipated Electric System Conditions and Contingencies that it Could Address

Dr. Patton's Initial Affidavit stated that "to the extent that other units in the future receive RSSAs because they are the most economic means to satisfy a reliability need that is not reflected in the NYISO's market requirements, these units should similarly not be mitigated or otherwise prevented from selling capacity."⁴² The Amended Complaint relies on this statement to support its claim that the possible implementation of the Term Sheet in September 2015 is sufficient to justify imposition of new mitigation measures on all ICAP Suppliers in the NYCA. IPPNY's demand is based on an implicit assumption that all anticipated system conditions could be addressed by a 150 MW transmission upgrade.

⁴⁰ ENPM Comments at 1-3.

⁴¹ In its comments in the Centralized Capacity Market Docket, ENPM echoed the arguments that it seeks to advance in this proceeding, alleging that "experience has shown that the integrity of the capacity markets has been compromised by market rules that have allowed uneconomic entry, including by generating units operating under 'reliability must run' contracts in NYISO and ISO-NE." ENPM also urged the Commission to use its authority "to establish core market policies that will guide the Northeast RTO[s] in improving their centralized wholesale markets." *Comments of Entergy Nuclear Power Marketing, LLC*, Docket No. AD13-7-000, at 2, 3 (filed Jan. 8, 2014).

⁴² Patton Initial Affidavit at P 40.

IPPNY is attempting to apply an overly literal interpretation of statements made in the NYISO's earlier filings in this docket, and in filings made in a New York State Public Service Commission ("NYPSC") proceeding.⁴³ IPPNY's focus on National Grid's reference to a 150 MW transmission solution⁴⁴ is simplistic and potentially misleading. There are many potential electric system conditions that will need to be addressed by one or multiple projects (especially when evaluated over a long-term planning horizon). Likewise, it should be beyond dispute that looking exclusively at just a single electric system condition, in isolation from all of the other conditions that currently exist, that are expected to exist, or that could come into existence over a long-term planning horizon, distorts the realities facing system planners and operators as well as state policymakers.

In reality, projects are often needed not just because they narrowly address an immediate or anticipated electric system condition but also because they will address future conditions and contingencies that could otherwise trigger applicable reliability criteria. The *Order Instituting Proceeding* in NYPSC Case 12-E-0503 demonstrates the interrelated nature of electric system conditions, the universe of potential solutions to the conditions, and how the loss of one resource can exacerbate existing issues and create new ones.⁴⁵ The Amended Complaint does not show

⁴³ Amended Complaint at 13, citing NYISO Answer at 18 and Initial Patton Affidavit at P 36 and Amended Complaint at 15, citing National Grid's February 13, 2014 filing with the NYPSC at 8 and 11.

⁴⁴ Second Supplemental Younger Affidavit at P 19.

⁴⁵ See *Order Instituting Proceeding and Soliciting Indian Point Contingency Plan*, Case 12-E-0503, *Proceeding on Motion of the Commission to Review Generation Retirement and Contingency Plans* (November 30, 2012) (describing implications of the potential retirement of a major nuclear generating station in New York) available at <HYPERLINK "http://documents.dps.ny.gov/public/common/viewdoc.aspx?docrefid=0fe5ea7e-68a6-42a0-85fb-a68c812fac88">http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={0FE5EA7E-68A6-42A0-85FB-A68C812FAC88}>; see also *New York Energy Highway Blueprint* at 44 (2012) (Emphasizing that "[d]ynamic and proactive scenario planning can provide many benefits" and the potential importance of taking a "long-term view" that would "allow for longer-term alternative solutions") available at <http://www.nyenergyhighway.com/Content/pdf/Blueprint_FINAL.pdf>.

that it is reasonable to ignore these interrelationships or to consider individual system needs and responses in isolation.

The NYISO has not reviewed the scope and interrelationships of potential system contingencies which might have been considered by the NYPSC or National Grid in relation to the Dunkirk repowering. The NYISO can state, however, that there may be broader electric system benefits. One example of system benefits that may be desirable and realized by more generation (in the case of Dunkirk, more than the 150 MW identified in the Amended Complaint) is enhanced reliability and operational flexibility.⁴⁶

In any case, measuring the true extent of an electric system need over an extended period of time involves many considerations and requires a complex exercise of judgment. It is not a task that can be reduced to a single test, formulation, or to the myopic approach espoused by IPPNY. The Amended Complaint does not evaluate such factors in connection with the Term Sheet. Therefore, it is not reasonable to rely on the Amended Complaint's assessment of the relationship between the Term Sheet and the anticipated electric system conditions and contingencies that it could address.

⁴⁶ See, e.g., April 7, 2014 *Comments of NRG Energy, Inc.* in NYPSC Case 12-E-0577, *Proceeding on Motion of the Commission to Examine Repowering Alternatives to Utility Transmission Reinforcements - Term Sheet Agreement Between National Grid and Dunkirk Power LLC Regarding Dunkirk Generation* (describing potential reliability, operational, planning, grid stabilization, and other benefits of the Term Sheet) available at <HYPERLINK "http://documents.dps.ny.gov/public/common/viewdoc.aspx?docrefid=7eebdf1c-803b-4629-/" http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={7EEBDF1C-803B-4629-860D-B61909409121}>; *Dunkirk Repowering Power Flow Analysis Prepared by the NYISO as Requested by NYS DPS* (October 25, 2013) (describing scenario in which 435 MW of generation capacity at Dunkirk would provide greater operational flexibility than 150 MW) available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={A4F199EA-7DE8-447C-95D1-D0E86F6BE067}>.

C. IPPNY's Concerns Should First Be Addressed Through the NYISO Stakeholder Process

As explained in the NYISO Answer,⁴⁷ IPPNY has a legal right to file the Complaint and the Amended Complaint but there are clear reasons, backed by Commission precedent and policy, why IPPNY should be discouraged from doing so.

The Commission has repeatedly discouraged attempts to make “end-runs” around ISO/RTO governance processes by proposing tariff changes that have not had the benefit of stakeholder vetting.⁴⁸ The Commission recognizes that stakeholder discussions can improve the quality of tariff filings by balancing the interests of various sectors, evaluating the benefits and costs of different solutions, and reducing the number and magnitude of contested issues.⁴⁹ The NYISO's shared governance arrangements give all stakeholders a role in shaping tariff revisions and thus the market rules. The Commission has also held that granting a complaint before the complainant has exhausted the remedies available to it through the stakeholder process is premature because it allows the complainant to circumvent that process, thus preventing the full participation of interested parties.⁵⁰

Although IPPNY has mentioned in NYISO stakeholder meetings that it has concerns with certain bilateral arrangements, those concerns were not different than those already made in

⁴⁷ NYISO Answer at 20-21.

⁴⁸ See e.g. *ISO New England, Inc.*, 130 FERC ¶ 61,145 at P 34 (2010) (“we encourage parties to participate in the stakeholder process if they seek to change the market rules”) and *ISO New England, Inc.*, 125 FERC ¶ 61,154 at P 39 (2008) (directing that unresolved issues be addressed through the stakeholder process).

⁴⁹ See, e.g. *PJM Interconnection, L.L.C.*, 135 FERC ¶61,022 at P 27 (2011) (holding that issues raised by a complainant should be first considered by PJM's stakeholders and, if not resolved to the complainant's satisfaction, can then be brought to the Commission in another complaint).

⁵⁰ See e.g., *Niagara Mohawk Power Corp. v. New York State Reliability Council and New York Independent System Operator, Inc.*, 114 FERC ¶ 61,098 at P 19 (2006).

the Complaint. Moreover, the Term Sheet was not even proposed to the PSC until recently.⁵¹ Further, IPPNY has, to date, declined the NYISO's invitation to develop a specific proposal to address those concerns for stakeholder consideration.⁵² IPPNY has still has ample time to do so.⁵³ As noted in the NYISO Answer⁵⁴ and described above, one IPPNY member, TC Ravenswood, brought the issue of uneconomic retention related to current and future RSSAs to stakeholders as part of a broader proposal, but subsequently abandoned the uneconomic retention elements of that proposal. This very limited effort by one IPPNY member does not justify IPPNY's stated preference⁵⁵ to avoid stakeholder consideration of, and a possible stakeholder resolution to, its concerns before seeking Commission action.

The NYISO remains committed to resolving valid concerns that impact the market as a whole through its shared governance process. Doing so provides an opportunity for all stakeholders to contribute to the evaluation of such concerns and, if necessary, to the creation of solutions.⁵⁶ The Commission should allow IPPNY's concerns to be vetted through the stakeholder process. There is no need for the Commission to act precipitously on the issues raised by the Amended Complaint: the Dunkirk repowering is not scheduled to be complete until September 1, 2015, and the issues for which IPPNY sought fast-track processing in the

⁵¹ See *e.g.* Second Supplemental Younger Affidavit at P 50.

⁵² For example, at an ICAP Working Group stakeholder meeting on March 19, 2014, in response to questions from IPPNY, the NYISO suggested to IPPNY that it make a presentation explaining its specific concerns, and describing its proposed remedy.

⁵³ See NYISO Answer at 9-10.

⁵⁴ NYISO Answer at 4, n 12.

⁵⁵ Complaint at 37-38.

Complaint lack merit. There is simply no justification for not directing IPPNY⁵⁷ to bring its issues to the NYISO stakeholder process for consideration in the first instance.

Importantly, as discussed below, the particular “remedies” that the Amended Complaint unilaterally proposed introduce additional complexities with wide-ranging implications.

IPPNY’s “remedies” should not be adopted without the benefit of stakeholder review. The NYISO could then proceed to make a filing under FPA section 205, if changes were found to be necessary and there was sufficient stakeholder support.

D. Even If Mitigation Measures for Uneconomic Entry Were Determined to be Appropriate, IPPNY’s Proposed Measures Are Flawed

Even if the Commission were to find that the Amended Complaint has merit, it should at a minimum reject IPPNY’s two unilaterally-proposed, and flawed, alternative “remedies.”

Given the Amended Complaint’s lack of clarity, it is difficult to determine which or when units should be evaluated for possible mitigation. IPPNY seems to contemplate a review of all bilateral contracts in order to determine whether they constitute an “out of market

⁵⁷ The Commission should not view ENPM’s inaccurate assertion, at n. 23 of the ENPM Comments, that the NYISO “has taken no meaningful action” to address one of Dr. Patton’s recommendations in this proceeding in the time since the Complaint was filed as a justification for not relaying on the NYISO stakeholder process. The NYISO and Dr. Patton have both noted that the specific recommendation that locational planning requirements be “accurately and completely reflected in the NYISO capacity markets” is a long range goal. See *Patton Answering Affidavit* at P 14 to *Request for Leave to Answer and Answer of the New York Independent System Operator, Inc.*, Docket No. EL13-62-000 (filed June 28, 2013). Moreover, as the Commission is aware, issues related to that recommendation were before the Commission in Docket No. ER13-1380, and more recently Docket No. AD14-6-000, which arose out of Docket No. ER13-1380, since the Complaint was first filed. In addition, the NYISO proposed in Docket No. AD14-6-000 to conduct a stakeholder process to, among other things, explore the comprehensive market design changes that would be need to implement Dr. Patton’s recommendation that it “[c]reate a dynamic and efficient framework for reflecting locational planning requirements . . . ,” through the use of pre-defined capacity zones and other market enhancements. That proposal is pending before the Commission. See *2012 State of the Market Report for the New York ISO Markets* at 79-80, available at <http://www.nyiso.com/public/webdocs/markets_operations/documents/Studies_and_Reports/Reports/Market_Monitoring_Unit_Reports/2012/NYISO2012StateofMarketReport.pdf>; *Post-Technical Conference Comments of the New York Independent System Operator, Inc.* at 3-5, Docket No. AD14-6-000 (filed March 26, 2014).

arrangement.”⁵⁸ It would also seem to require an assessment of the actions each resource might take in scenarios that might prompt it to mothball or retire, the potential timing of such actions, and other factors such as other potential legal and regulatory changes. An analysis of so many scenarios would be impracticable given the time that will be available to conduct it.

IPPNY’s first proposed remedy, precluding resources with contractual arrangements that IPPNY opposes from offering capacity into the market, could result in excluding capacity that is the most economic means of satisfying system conditions.⁵⁹

IPPNY’s second proposed remedy, that resources’ offers into the market be at a level that reflects their GFCs and that does not consider revenue from bilateral contracts, is fundamentally flawed. As Dr. Patton explained, capacity resources that are the subject of RSSAs will normally not be anti-competitive, and requiring these units to ignore the revenue from the RSSAs would effectively require them to submit inflated offers.⁶⁰ The potential breadth of revisions could also impact resources when there are valid public policy reasons for excluding them from mitigation.⁶¹

In short, even if there were reason to think that mitigation measures should be adopted in this proceeding, any such measures should be subject to stakeholder review and revision before they are implemented. The NYISO’s shared governance process would provide an opportunity to obtain input from all market sectors, to consider implications for potential future contracts

⁵⁸ See IPPNY’s proposed revisions to the definition of “Uneconomic Existing Resource” in Attachment D to the Amended Complaint.

⁵⁹ Patton Initial Affidavit at P 40.

⁶⁰ See NYISO Answer at 15; Patton Initial Affidavit at PP 30-31.

⁶¹ In its comments in the Centralized Capacity Market Proceeding, the NYISO suggested that a “best practice should be exempting wind and solar renewable resources, and perhaps other kinds of renewable fuel resources from buyer-side capacity market power mitigation measures.” *Post-Technical Conference Comments of the New York Independent System Operator, Inc.* at 14.

with existing generators, RSSAs, and state and local initiatives in New York, and to find a balance between competing interests. It would also help to reduce market uncertainty and to avoid unintended adverse consequences which are more likely to be identified through discussions than via litigation. IPPNY provides no justification for its refusal to bring its concerns and its proposed solutions before the stakeholders and fails utterly to show that those proposed solutions are just and reasonable.

III. CONCLUSION

For the foregoing reasons, the NYISO respectfully requests that the Commission deny the Complaint, as amended, including its proposals to revise the Services Tariff and all other requested forms of relief.

Respectfully submitted,

/s/ Gloria Kavanah

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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 14th day of April, 2014.

/s/ Joy A. Zimmerlin

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