

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

<b>Independent Power Producers of New York, Inc.</b>	)	
	)	
	)	
	)	
<b>v.</b>	)	<b>Docket No. EL13-62-002</b>
	)	
<b>New York Independent System Operator, Inc.</b>	)	

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

In accordance with Rule 213 of the Commission’s Rules of Practice and Procedure (“Commission”),<sup>1</sup> the New York Independent System Operator, Inc. (“NYISO”) submits this request for leave to answer, and its answer, to the *Motion to Intervene and Comments of the New York ISO’s Market Monitoring Unit* (“MMU Comments”), the *Protest of the Independent Power Producers of New York, Inc.* (“IPPNY Protest”), and the *Protest of Entergy Nuclear Power Marketing, LLC to NYISO’s Compliance Report* (“Entergy Protest”) (collectively the “comments and protests”).<sup>2</sup> In support of this answer, the NYISO submits a second confirming affidavit by its subject matter expert on these issues, Lorenzo P. Seirup, Supervisor, NYISO Market Mitigation and Analysis - ICAP.<sup>3</sup>

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<sup>1</sup> 18 C.F.R. §§ 385.212 and 385.213 (2010).

<sup>2</sup> The NYISO notes that comments in support of the Compliance Report were filed by the New York State Public Service Commission (“NYPSC”) and the Transmission Owners described as the “Indicated TOs.”

<sup>3</sup> The Second Confirming Affidavit of Lorenzo P. Seirup is Attachment I to this Answer.

The comments and protests challenge the NYISO's June 17, 2015 compliance report ("Compliance Report")<sup>4</sup> in response to the Commission's *Order Denying Complaint* in this proceeding ("March 19 Order").<sup>5</sup> Some claim that the Compliance Report's recommendations are undermined by updated information provided by the NYISO to its stakeholders on July 15, 2015 (the "July 15 Updates"). Some question the reasonableness of certain assumptions that were used in the analyses supporting the Compliance Report. The MMU Comments ask that the NYISO be required to conduct further analyses using different assumptions. The IPPNY Protest and Entergy Protests go further. They wrongly claim that the Compliance Report was deficient, or even non-compliant with the March 19 Order. They ask that the NYISO be directed to file new capacity market power mitigation measures that the NYISO's analyses have not shown to be necessary (to date).

The comments and protests have overstated the significance of the July 15 Updates. Although the NYISO updated (by two months) certain data, corrected other data, and enhanced certain assumptions, these changes do not alter (or invalidate) the Compliance Report's conclusions or recommendations. The NYISO did not view the July 15 Updates, which addressed detailed NYISO calculations that supported but were not included in the Compliance Report, as sufficiently material to warrant submitting them to the Commission. Similarly, notwithstanding what the comments and protests claim, the NYISO analyses were reasonable, and were based on reasonable assumptions.

Accordingly, the Commission should: (i) accept the Compliance Report; (ii) reject all requests that the NYISO be required to conduct further analyses or implement new mitigation

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<sup>4</sup> New York Independent System Operator, Inc., *Compliance Report in Docket No. EL13-62-002* (June 17, 2015).

<sup>5</sup> *Indep. Power Producers of N.Y., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,214 (2015).

measures; and (iii) accept the NYISO's proposed schedule for completing its analysis of the repowering and uneconomic retention issue.

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

The Commission's regulations allow answers to pleadings styled as "comments," such as the MMU Comments, as a matter of right. The Commission also has discretion<sup>6</sup> to accept answers to protests and has done so when they help to clarify complex issues, provide additional information, or are otherwise helpful in the Commission's decision-making process.<sup>7</sup> The Commission should follow its precedent and accept the NYISO's answer in this instance. The issues in this proceeding are complex and are of great importance. This Answer will help the Commission to better understand the issues raised by the comments and protests. It also will ensure a complete and accurate record by correcting mischaracterizations and misstatements in the protests.

The NYISO has limited its response to those points where it believes that providing additional information is especially necessary or helpful to the Commission. The NYISO's silence with respect to any particular argument or assertion should not be construed as acceptance or agreement.

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<sup>6</sup> See 18 C.F.R. § 385.213(a)(2).

<sup>7</sup> See *Black Oak Energy, L.L.C. v. PJM Interconnection, L.L.C.*, 125 FERC ¶ 61,042 at P 14 (2008) (accepting answer to rehearing request because the Commission determined that it has "assisted us in our decision-making process."); *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,289 at P 12 (2008) (accepting "PJM's and FPL's answers [to rehearing requests], because they have provided information that assisted us in our decision-making process"); *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,044 at P 39 (2008) (accepting answers to answers because they provided information that aided the Commission's decision-making process); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (accepting an answer that was "helpful in the development of the record .....").

## II. ANSWER

### A. The NYISO's Posting of Corrected Assumptions Does Not Alter the Recommendations of the Compliance Report

The Compliance Report stated that: (i) “the NYISO’s analyses [as of that] date indicated that buyer-side market power mitigation measures should not be applied to new entry in the ‘Rest of State’ at this time”; and (ii) “although there may be concerns regarding the potential market effects of uneconomic retention and repowering pursuant to ‘agreements similar to Dunkirk’s’ it would be premature for the Commission to address these concerns prior to the NYISO’s submission of its compliance filing (‘RMR Compliance Filing’) in response to the Commission’s February 19, 2015 Order in Docket No. EL15-37-000 (‘RMR Order’), and consideration of the results of further analyses and stakeholder discussions which the NYISO plans to conduct.” [footnote omitted] The NYISO proposed “to submit a further report in this docket within ninety days of its submission of the RMR Compliance Filing.”<sup>8</sup>

The analyses described in the Compliance Report were based in part on calculations set forth in an Excel “Net Present Value” workbook. In the interest of transparency and to permit stakeholders to review the NYISO’s analyses in more depth, a “live” version of that workbook was posted on June 18, 2015 (the “June 18 Workbook”).<sup>9</sup>

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<sup>8</sup> Compliance Report at 1-2.

<sup>9</sup> See Excel workbook and *NYISO Note to accompany Excel Workbook on NYISO Study on ROS BSM and Uneconomic Retention/Repowering (the “July Workbook Note”)*, available under the June 10, 2015 Installed Capacity Working Group meeting materials at:

<[http://www.nyiso.com/public/markets\\_operations/committees/meeting\\_materials/index.jsp?com=bic\\_ica\\_pwg](http://www.nyiso.com/public/markets_operations/committees/meeting_materials/index.jsp?com=bic_ica_pwg)>. See also, Excel workbook *Unoffered Capacity*, and *Unoffered Capacity Release*, providing further data to stakeholders on June 22, 2015, available under the May 18, 2015 Installed Capacity Working Group meeting materials at:

<[http://www.nyiso.com/public/markets\\_operations/committees/meeting\\_materials/index.jsp?com=bic\\_ica\\_pwg](http://www.nyiso.com/public/markets_operations/committees/meeting_materials/index.jsp?com=bic_ica_pwg)>.

On July 15, the NYISO posted a revised version of the June 18 Workbook (the “July 15 Workbook”) and described the changes it had made (*i.e.*, the “July 15 Updates”). The NYISO made the July 15 Workbook available to stakeholders in the interest of further transparency and accuracy. The changes included “the correction of errors, the use of alternative data sources, the use of the most recent data, and the enhancement of assumptions.”<sup>10</sup>

The Compliance Report was clear that the NYISO was not claiming to have made a “definitive showing” that there was no possible incentive to attempt to use subsidized uneconomic entry to suppress prices in Rest of State (“ROS”).<sup>11</sup> The Compliance Report was equally clear that there was no historic evidence that such conduct had occurred and no likelihood that “any further analysis would show a theoretical incentive to do so that was sufficiently large enough to cause concern even in the absence of actual evidence of problematic behavior ..... ” Thus, there was no “compelling evidence suggesting a need to apply the buyerside mitigation rules to new entry in the ROS.”<sup>12</sup>

The Compliance Report noted that some stakeholders and the MMU questioned several assumptions in the NYISO’s analysis. The NYISO reiterates that there is room for reasonable debate about certain assumptions and that, in some cases, using alternative assumptions might also have been reasonable. The NYISO also reiterates, and continues to believe, that the assumptions it used were reasonable. If the July 15 Updates had been known prior to filing the Compliance Report, the NYISO would have made the exact same recommendations. Namely,

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<sup>10</sup> See *July Workbook Note*.

<sup>11</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 (“Services Tariff”), and if not defined therein the meaning specified in the Compliance Report. The Compliance Report explained that the NYISO was using the term “ROS” to refer to the established definition in Section 23.2.18 of the Services Tariff, *i.e.*, as encompassing Load Zones A through F.

<sup>12</sup> Compliance Report, Attachment I at 8.

there is no compelling evidence that mitigation measures are needed to address uneconomic entry in ROS and no need for further analysis of the question.

**B. The Compliance Report's Recommendation Regarding ROS Mitigation Is Not Invalidated by, or In Conflict with, the July 15 Updates**

The MMU acknowledges that “[t]he NYISO’s general analytical approach was sound” although the conclusions “are sensitive to several key assumptions.”<sup>13</sup> The MMU Comments state that the July 15 Updates corrected four errors which “caused the uneconomic investment strategy being studied to appear to be more costly, and therefore understated the incentive to engage in such a strategy....” Thus it believes that “the incentive to subsidize new entry in the ROS area is stronger than originally estimated.” It claims that the NYISO’s changes “cast doubt” on the Compliance Report’s “original” finding that “there is no indication that [buyerside mitigation] rules are warranted to prevent subsidized entry in ROS” and that the NYISO’s “revised analysis” actually suggests “that there may be significant incentives to subsidize new entry to suppress capacity prices.” The MMU recommends that the NYISO be required to refine certain assumptions and revise its analyses.<sup>14</sup> The IPPNY Protest argues that the July 15 Updates “now itself shows sufficient incentive to suppress prices using three of the . . . technologies that it studied, [and it] was otherwise plagued by four substantial flaws.”<sup>15</sup>

The NYISO agrees with the MMU that information in the July 15 Workbook makes the potential incentive to subsidize uneconomic new entry in the ROS appear stronger relative to the analyses that were included in the June 18 Workbook. However, the NYISO does not agree that

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<sup>13</sup> MMU Comments at 6.

<sup>14</sup> See MMU Comments at 6, 10.

<sup>15</sup> IPPNY and Mr. Younger incorrectly indicate that there were eight technologies studied. The June 18 Workbook and July 15 Workbook both clearly present data on ten technologies: Five in Load Zone C and five in Load Zone F. See IPPNY Protest, Affidavit of Mark D. Younger (“Younger Affidavit”) at P 13. See also Entergy Protest at 1.

the July 15 Workbook reveals “significant incentives” to suppress prices. The July 15 Workbook does not indicate that price suppression in ROS is a concern.

For example, the NYISO acknowledges that it is accurate to state that for three of the ten technologies that it studied, the July 15 Updates indicate that uneconomic entry in the ROS could be marginally profitable for a subsidizing entity. However, as can also be seen in the July 15 Workbook, the potential profit is minimal, particularly when compared to the dollar amount of the investments needed to develop a new entrant. Those profits are also not certain due to a variety of factors.<sup>16</sup>

Specifically, the MMU points out that under the July 15 Updates subsidized new entry by a new combustion turbine (“CT”) in Load Zone F would appear to yield a small net profit, instead of the substantial loss indicated by the June 18 Workbook (*i.e.*, \$88 million net loss vs. \$9 million profit). Similarly, the MMU notes that the net loss from subsidized new entry by a combined cycle turbine (“CC”) in Load Zone C would be smaller in light of the new information provided by the July 15 Updates than appeared to be the case under the June 18 Workbook (*i.e.*, \$133 million net loss vs. \$48 million net loss).<sup>17</sup> Those observations are true. However, it is unlikely that any entity would seek to suppress prices through subsidized entry in order to capture a nearly *de minimis* net profit (or to absorb a smaller net loss). This is especially true given the inherent uncertainty that real world price suppression strategies would be effective. Among other factors, potential sponsors would have to consider the likelihood that an attempt to

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<sup>16</sup> As the New York State Public Service Commission points out in its Comments (“NYPSC Comments”) the NYISO’s analysis did not account for the fact that “the generation fleet in the ROS is relatively old, which leads to a higher likelihood of forced outages or catastrophic failures, and changes to the NYISO’s market rules that could affect capacity rules. *See* NYPSC Comments at 5.

<sup>17</sup> *See* MMU Comments at 5. The Entergy Protest also identifies a “price suppression strategy” that, like the MMU scenario, is at a *de minimis* amount. *See* Entergy Protest at 17, Affidavit of Michael M. Schnitzer at 15 - 16.

suppress prices would be detected, reported, and subject to possible Commission enforcement action especially given the visibility of new entry. Therefore, the NYISO does not view the July 15 Updates as showing that “there may be significant incentives to subsidize new entry to suppress capacity prices.”<sup>18</sup>

In addition, the MMU’s bar chart only looks at the potential outcomes for two units in Load Zone C, whereas the NYISO analysis looked at five generator models for both Load Zones C and F. The Compliance Report explained that “all of the net present values of the generators were negative, suggesting that subsidizing new entry would not be a sound financial strategy for a buyer-side entity.”<sup>19</sup> The July 15 Updates only indicate the possibility of a small profit for three of the ten generator models. This is not a great enough difference to alter or invalidate the Compliance Report’s conclusions or recommendations.

The MMU does not dispute the NYISO’s determination that there has been no historic evidence dating back to 2001 of inappropriate price suppression by new entry in ROS.<sup>20</sup> No party argued or provided information to the contrary. As the Compliance Report explained, this fact contributed to the NYISO’s recommendation that new mitigation measures aimed at uneconomic entry were not needed in the ROS. The NYISO respectfully submits that it is a highly relevant fact for the Commission’s consideration as well.

It would be unreasonable to propose mitigation measures simply because there are scenarios in which a price suppression strategy might (in principle) be profitable. Doing so would risk “over-mitigation” which the Commission has recognized can be harmful to markets.<sup>21</sup>

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<sup>18</sup> See MMU Comments at 6.

<sup>19</sup> Compliance Report, Attachment I at 6.

<sup>20</sup> See, e.g., Compliance Report, Att. I at 1, 7.

<sup>21</sup> See, e.g., *New York Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,217 at P 77 (2013) (noting that buyer-side market power mitigation rules must “appropriately balance the need for mitigation of buyer-

In short, the July 15 Updates do not “cast doubt” on the Compliance Report. Nor do they support a finding that buyer-side mitigation rules in ROS are warranted to prevent subsidized new entry in ROS. There is no need for further analyses.

**C. The Assumptions Underlying the Compliance Report Do Not Become Unreasonable Simply Because Certain Alternative Assumptions Have Been Put Forward by Others**

As noted above, the Compliance Report explained that although some stakeholders disagreed with certain assumptions used in the NYISO’s analysis the NYISO use of those assumptions was reasonable. As with most analyses, the results are sensitive to the choice of assumptions. Given the complexity of the issues, it is not surprising that reasonable alternative assumptions might exist. Moreover, as the MMU notes, any changes in results produced by using certain alternative assumptions may be offset when other factors are considered.<sup>22</sup>

Commission and judicial precedent recognizes that there will often be a range of potentially “just and reasonable” outcomes. The Commission’s decisions must always reflect reasoned decision-making but this only requires that they be supported by reasonable analyses.<sup>23</sup>

A reasonable analysis is not unreasonable simply because it might have used alternative

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side market power against the risk of over-mitigation”) citing *Edison Mission Energy, Inc., et al. v. FERC*, 394 F.3d 964 (D.C. Cir. 2005). (“[Mitigation] may well do some good by protecting consumers and utilities against... the exercise of market power. But the Commission gave no reason to suppose that it does not also wreak substantial harm... that could be cured only by attracting new resources of supply.”); see also *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 at P 27 (2013) (confirming that a PJM buyer-side mitigation tariff proposal “appropriately balances the need for mitigation of buyer-side market power against the risk of over-mitigation.”)

<sup>22</sup> See MMU Comments at 9.

<sup>23</sup> See, e.g., *S.C. Pub. Serv. Auth. v. FERC*, 762 F. 3d 41, 65 (D.C. Cir. 2014) (rejecting challenges to Commission rule because the rule was based on reasonable economic assumptions). Commission decisions must be based on “reasoned decision-making” which means that there must be a “rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983). Decisions must be based on “substantial evidence” which is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Colo. Interstate Gas v. FERC*, 599 F.3d 698, 704, 389 U.S. App. D.C. 436 (D.C. Cir. 2010). The Compliance Report’s analyses provide a more than sufficient basis for the Commission to accept its recommendations.

reasonable assumptions.<sup>24</sup> In this case, although the NYISO believes that information in the July 15 Workbook improves on the June 18 Workbook, this does not mean that assumptions underlying the June 18 Workbook were unreasonable. As noted above, the July 15 Updates would not have changed the Compliance Report's recommendations.

The NYISO disagrees with claims that the assumptions underlying the Compliance Report and June 18 Workbook were unreasonable. For example, the MMU proposes that instead of using the NYISO's duration assumption that the entry of subsidized uneconomic resources would affect prices for three years, the duration assumption should instead have been based "on an analysis of the characteristics of supply and demand...."<sup>25</sup> The MMU also proposes an alternative to the NYISO's assumption regarding capacity price levels prior to entry that resulted in price suppression.<sup>26</sup> The NYISO does not contend that these proposed alternatives are unreasonable. However, this does not mean that the assumptions used by the NYISO were unreasonable or inconsistent with a reasonable analysis.

On the other hand, IPPNY has proposed some alternative assumptions which arguably might have some theoretical appeal but are undeveloped and without sufficient support. For

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<sup>24</sup> See, e.g., *New York Indep. Sys. Operator, Inc.*, 122 FERC ¶61,064 at P 14 (2008). See also 122 FERC ¶ 61,064 at n. 12. ("The Commission does not need to show that other proposals that arguably fall within a zone of reasonableness are not just and reasonable and, indeed, we must approve NYISO's proposals if supported as just and reasonable even if there are other just and reasonable proposals.") See also *FPC v. Conway Corp.*, 426 U.S. 271, 278 (1976) ("there is no single cost-recovering rate, but a zone of reasonableness"); *United Distribution Companies v. FERC*, 88 F.3d 1105, 1169 (D.C. Cir. 1996) ("FERC correctly counters that the fact that AEPCO may have proposed a reasonable alternative to SFV rate design is not compelling. The existence of a second reasonable course of action does not invalidate the agency's determination"); *PJM Interconnection L.L.C.*, 119 FERC ¶ 61,318, at P 116 (2007) (citing "*Complex*" *Consol. Edison Co. v. FERC*, 165 F.3d 992, 1004 (D.C. Cir. 1999)); *Cal. Indep. Sys. Operator, Corp.*, 119 FERC ¶ 61,076, at P 14 (2007); *S. Cal. Edison Co.*, 73 FERC ¶ 61,219, at 61,608 n. 73 (1995) (citing *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir.), cert. denied, 469 U.S. 917 (1984)).

<sup>25</sup> See MMU Comments at 6-7.

<sup>26</sup> See MMU Comments at 8-9.

example, IPPNY questions the NYISO's assumptions regarding the potential "longevity" of cost savings associated with uneconomic new entry.<sup>27</sup> IPPNY's argument is based on data developed by a NYISO consultant as part of its evaluation of the potential merits of a forward capacity market design. It is questionable whether those data are directly translatable for purposes of a ROS new entry mitigation analysis. IPPNY witness Younger's use of the data without even attempting to justify its applicability to the development of his alternative methodology on its face calls his conclusions into question.

Regarding the assumption for the capacity price prior to suppression, the MMU also suggested that the NYISO "produce sensitively cases that assume a range of starting price levels, rather than basing its conclusions on a starting single price."<sup>28</sup> The price chosen by the NYISO was reflective of current market conditions, and thus was consistent with the information the Commission indicated it must consider; *i.e.*, "the current state of the NYISO market."<sup>29</sup>

**D. The NYISO Complied with the Commission's Directive to Examine Whether There is an Incentive to Suppress Prices Through Uneconomic Retention and Repowering of Uneconomic Generators**

IPPNY and Entergy inaccurately assert that the NYISO did not analyze the uneconomic retention issue and that the NYISO thus "violated" the March 19 Order. IPPNY claims that developing uneconomic retention mitigation measures now would not interfere with the

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<sup>27</sup> IPPNY argues that "[t]he findings in [the Analysis Group's Forward Capacity Market report, on GFC's and forecasted E&AS revenues, and supply curve] refute the NYISO's position that there is no evidence that buyer side mitigation rules are required in the ROS market." IPPNY Protest, Younger Affidavit at P 54. It asserts that is a significant incentive to suppress prices by pursuing uneconomic new entry because the GFCs of existing units are substantially below the Net CONE for new entrants. *See* IPPNY Protest, Younger Affidavit at PP 55-67.

<sup>28</sup> MMU Comments at 9.

<sup>29</sup> March 19 Order at 70.

development of the RMR Compliance Filing and that the NYISO has not justified delaying the completion of its analysis.<sup>30</sup>

IPPNY and Entergy are wrong to suggest that the NYISO did not analyze the uneconomic retention issue. The March 19 Order directed the NYISO to consider “whether resources under repowering agreements similar to Dunkirk’s have the characteristics of new rather than existing resources, triggering a buyer-side market power evaluation because of their potential to suppress prices in the capacity market and what mitigation measures need to be in place to address such concerns.”<sup>31</sup> As described in the Compliance Report, the NYISO has examined the issue.<sup>32</sup> It has identified circumstances in which repowering agreements, with certain characteristics, might trigger the need for a buyer-side mitigation evaluation. This is the “potential concern” that the Compliance Report referenced.

IPPNY and Entergy are also wrong to claim that the NYISO did not discuss the uneconomic retention analysis with stakeholders.<sup>33</sup> The NYISO discussed its plans for the analysis of these questions with stakeholders at the April 30, 2015 meeting of the Installed Capacity Working Group.<sup>34</sup> The NYISO’s presentation, which it discussed with stakeholders, explained that it intended to do what it has now done, *i.e.*, “leverage the results of the study on ROS mitigation.” The presentation emphasized that “the costs associated with repowering and retention are highly variable” and that the NYISO expected to “evaluate the study’s findings on

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<sup>30</sup> IPPNY Protest at 11-13.

<sup>31</sup> March 19 Order at P 71.

<sup>32</sup> See Compliance Report at 3 and Attachment II.

<sup>33</sup> Similarly, IPPNY is wrong to suggest that the NYISO did not conduct an adequate stakeholder process with respect to its ROS mitigation analysis. See, IPPNY Protest, Younger Affidavit at PP 9-10.

<sup>34</sup> The presentation is posted at <  
[http://www.nyiso.com/public/markets\\_operations/committees/meeting\\_materials/index.jsp?com=bic\\_icapwg](http://www.nyiso.com/public/markets_operations/committees/meeting_materials/index.jsp?com=bic_icapwg)>.

the incentives and viability of short-term and long-term price suppression in light of the cost to repower or otherwise retain an existing out-of-market unit.” The presentation noted that the NYISO also was “examining concerns with these types of agreements as part of its response to FERC’s RMR Order.”

**E. The Commission Should Not Require the NYISO to Prematurely Complete its Ongoing Analysis of Repowering and Uneconomic Retention Issues or Submit Further Responses**

As discussed in detail in Attachment II to the Compliance Report, the NYISO leveraged its analysis of potential incentives to suppress prices through subsidized uneconomic entry in the ROS to consider whether there is an incentive to do so through the retention and repowering of uneconomic existing generators. As noted above, the NYISO found that “there may be concerns regarding the potential market effects of uneconomic retention and repowering pursuant to ‘agreements similar to Dunkirk’s’” but advised the Commission that it would be premature to address these concerns prior to the RMR Compliance Filing. It therefore proposed to complete its analysis of this issue, and present it in an additional report to be filed within 90 days of the submission of the RMR Compliance Filing.<sup>35</sup>

The MMU “recommend[s] that the Commission require NYISO to produce and file a more robust analysis” and address ROS buyer-side mitigation and uneconomic retention and repowering together in this docket, rather than waiting for the RMR Compliance Filing.<sup>36</sup>

IPPNY asks that the NYISO be required to file new mitigation measures to address uneconomic retention (and new entry into ROS) within sixty days of Commission action on the

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<sup>35</sup> See Compliance Report at 2, 5.

<sup>36</sup> See MMU Comments at 10.

Compliance Report. Entergy contends that the NYISO should be directed to submit such measures in ninety days.<sup>37</sup>

The Commission should reject these requests. As noted above, the NYISO's analysis found some cause for concern regarding uneconomic retention through "Dunkirk-like" agreements. But given the nature of the potential concern it is reasonable to complete further analyses after the RMR Compliance Filing is finalized. That would enable stakeholder discussion and MMU input on the ongoing NYISO analysis. The RMR Compliance Filing will propose significant changes to NYISO rules that are relevant to this proceeding. Among other things it will address certain potential repowerings, and will include tariff revisions that may reduce the likelihood of repowerings pursuant to agreements similar to Dunkirk's. The triggers that may lead to such an agreement or to uneconomic retention might change with the design of the RMR Compliance Filings.

Thus, additional analysis will need to be performed after the NYISO submits the RMR Compliance Filing. For example, with respect to the types of agreements and characteristics that may give rise to concerns and the triggers for an examination. Because of the overlap between the scope of the RMR Order and the uneconomic retention issue, it is reasonable to expect that the results of an analysis performed in the absence of the RMR Compliance Filing would differ in its identification of characteristics that may be cause for concern, and of potential workable triggers for buyer-side mitigation evaluations.

Attempting to complete the analysis before the finalization of the RMR Compliance Filing would result in an incomplete assessment that would be subject to significant revision in the near future. Given that the RMR Compliance Filing is due in October, it would be premature, even if the NYISO had identified clearer concerns with Dunkirk-like agreements, to

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<sup>37</sup> See Entergy Protest at 3-4, 10; IPPNY Protest at 8.

identify mitigation measures to address them. Acting prematurely would be inefficient and would waste the Commission's, stakeholders, and the NYISO's time and resources. Once the RMR Compliance Filing is made, the NYISO and its stakeholders will be able to identify the characteristics of particular repowering units with agreements similar to Dunkirk's and further its ongoing analysis regarding uneconomic retention.

IPPNY's and Entergy's position that the issues are not closely related is unfounded. For example, the system conditions that led to the Dunkirk and Cayuga Reliability Support Agreements would fall under the purview of the rules being developed by the NYISO with input from stakeholders and the MMU for the RMR Compliance Filing.<sup>38</sup>

Moreover, there is nothing unreasonable about the NYISO proposing to finalize its uneconomic retention analysis within ninety days of the RMR Compliance Filing. The fact that the NYISO has identified potential concerns regarding uneconomic retention does not mean that artificial price suppression will occur absent immediate action.<sup>39</sup> The NYISO's oversight of the markets is ongoing. Any attempt to use uneconomic retention to suppress prices prior to the completion of the NYISO's analysis would come to the NYISO's (and MMU's) attention and be subject to case-specific mitigation proposals. There is thus no justification for taking premature action that is not informed by the RMR Compliance Filing. Nor should the NYISO be denied a reasonable time to continue stakeholder discussions and complete its analysis after that filing is made.

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<sup>38</sup> See RMR Order at PP 6-8 (discussing procedural history of the two Dunkirk agreements at the Commission and the NYPSC, and discussing separate but similar reliability service arrangements involving Cayuga Operating Company, LLC).

<sup>39</sup> See *R.E. Ginna Nuclear Power Plant, LLC*, 151 FERC ¶ 61,023 at P 40 (2015) (indicating that future agreements regarding potential "reliability support" for generators will be addressed by the rules to be proposed in the RMR Compliance Filing).

Finally, there is no legal basis for IPPNY's request that the NYISO be directed to implement mitigation measures to address uneconomic retention. IPPNY claims that its 2013 complaint, as amended in 2014, presented "overwhelming" evidence that uneconomic retention was a "clear and present danger".<sup>40</sup> But the March 19 Order denied that complaint on the ground that IPPNY had not met its burden of proof.<sup>41</sup> Despite IPPNY's attempt to depict the Commission's denial of its complaint as somehow embracing its arguments, the March 19 Order does not justify imposing new mitigation measures. It found that IPPNY had raised some concerns about the possibility that repowering agreements might cause uneconomic retention and directed the NYISO to examine the issue.<sup>42</sup> As noted above, the NYISO commenced, and is continuing, that analysis. If the NYISO ultimately concludes that new mitigation measures are needed, it would identify any that are not addressed in the RMR Compliance Filing. There is no justification for new mitigation measures absent analysis that accounts for the RMR Compliance Filing and the new rules to be proposed therein.

### **III. CONCLUSION**

For the reasons specified above, the New York Independent System Operator, Inc., respectfully requests that the Commission accept this answer, accept the Compliance Report, and reject all proposals in the comments and protests that it be required to conduct further analyses or

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<sup>40</sup> See IPPNY Protest at 7, Younger Affidavit at P 138.

<sup>41</sup> The March 19 Order likewise did not adopt what IPPNY characterizes as the MMU's two-pronged "bright line" test, See IPPNY Protest at 5, 12, for identifying uneconomic retention that should potentially be subject to mitigation.

<sup>42</sup> See March 19 Order at P 69 (noting "potential issues" that "might deter" new entry and thus "could result" in artificial price suppression.)

implement new mitigation measures at this time. The Commission should also permit the NYISO to complete its analysis of uneconomic retention and repowering issues after it has finalized the RMR Compliance Filing

Respectfully Submitted,

/s/ Ted J. Murphy

Counsel to the  
New York Independent System Operator, Inc.

August 3, 2015

cc: Michael Bardee  
Gregory Berson  
Anna Cochrane  
David Morenoff  
Daniel Nowak  
Jamie Simler  
Kathleen Schnorf  
Kevin Siqveland  
Morris Margolis

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2014).

Dated at Washington, D.C. this 3rd day of August, 2015.

/s/ Ted J. Murphy

Ted J. Murphy, Partner  
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## **ATTACHMENT I**

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

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

**Docket No. EL13-62-002**

**SECOND CONFIRMING AFFIDAVIT OF LORENZO P. SEIRUP**

Mr. Lorenzo P. Seirup declares:

1. I have personal knowledge of the facts and opinions herein and if called to testify could and would testify competently hereto.
2. I am the Supervisor of Market Mitigation and Analysis - Installed Capacity for the New York Independent System Operator, Inc. ("NYISO"). My business address is 10 Krey Boulevard, Rensselaer, NY 12144.
3. My professional qualifications and current responsibilities are set forth in the confirming affidavit that I prepared to support the report that the NYISO submitted on June 17, 2015 in this proceeding ("Compliance Report").
4. The Compliance Report responded to the Commission's March 19, 2015 order<sup>1</sup> denying the complaint<sup>2</sup> filed by the Independent Power Producers of New York, Inc. in this proceeding.
5. The Compliance Report recommended that: (i) new capacity market power mitigation measures should not be applied to new entry in the "Rest of State" ("ROS")<sup>3</sup> region at this time; and (ii) although there may be concerns regarding the potential market effects of uneconomic retention and repowering pursuant to "Dunkirk-like" agreements it would be premature to complete the analysis of that issue until after the NYISO submitted its "RMR Compliance Filing" (which is to be filed in October).
6. The purpose of this Second Confirming Affidavit is to corroborate factual statements in the *Request for Leave to Answer and Answer of the New York Independent System Operator, Inc.* ("NYISO Answer") that are within my expertise. The NYISO Answer responds to comments and protests addressing the Compliance Report that were submitted by the independent Market Monitoring Unit ("MMU"), the Independent Power

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<sup>1</sup> *Independent Power Producers of New York, Inc. v. New York Independent System Operator, Inc.*, 150 FERC ¶ 61,139 (2015) (the "March 19 Order").

<sup>2</sup> *Complaint Requesting Fast Track Processing of the Independent Power Producers of New York, Inc.*, Docket No. EL13-62-000 (filed May 10, 2013) (the "Complaint").

<sup>3</sup> Capitalized terms that are not otherwise defined in this affidavit have the meaning specified in the NYISO's Market Administration and Control Area Services Tariff or, if not defined there, in the NYISO Answer.

Producers of New York, Inc. ("IPPNY"), and Entergy Nuclear Power Marketing, LLC ("Entergy").

7. I was personally involved in preparing, and in supervising others' work related to the preparation, of both the "June 18 Workbook" and the "July 15 Workbook" (as defined in the NYISO Answer). I reviewed the comments and protests, including the affidavits submitted by IPPNY and Entergy.
8. In my opinion, the NYISO Answer correctly observes that the comments and protests have overstated the significance of the corrections and changes included in the July 15 Workbook and provided to stakeholders on July 15, 2015 (the "July 15 Updates"). These corrections and changes do not invalidate the Compliance Report's conclusions and recommendations. If I believed that they had, I would have urged the NYISO to bring them to the Commission's attention directly.
9. I agree with the MMU that the July 15 Updates make the potential profit from subsidized uneconomic new entry in the ROS appear to be stronger when viewed relative to the calculations included in the June 18 Workbook. But I do not believe that the July 15 Updates indicate "significant incentives" exist for Load Serving Entities to attempt to suppress prices.
10. It is also my opinion that the conclusions presented in Compliance Report were, and continue to be, reasonable and based on reasonable assumptions. This is true notwithstanding the changes and corrections made to produce the July 15 Updates. Based on the analyses that the NYISO conducted, it is unlikely that Load Serving Entities would seek to suppress prices by subsidizing uneconomic entry in ROS in order to capture the minimal profits that the July 15 Updates suggest might be available in a small number of scenarios. I believe that this is especially true given the inherent uncertainty and risk surrounding real-world price suppression efforts.
11. The Compliance Report, stated that the analyses performed did not constitute a "definitive showing" that there is no incentive to suppress prices with subsidized uneconomic entry in ROS.
12. I believe that the MMU has identified certain additional analyses and alternative assumptions that the NYISO might have reasonably used. I do not believe that the existence of potential enhancements invalidate the assumptions that the NYISO used or the results of the analysis.
13. On the other hand, IPPNY proposed alternative assumptions and methodologies that have some theoretical appeal, but that are undeveloped and lack sufficient support. For example, IPPNY used data developed as part of a consultant's evaluation of a forward capacity market design to challenge the NYISO's assessment of the "longevity" of cost savings. While it might be theoretically desirable to base an analysis of the price responsiveness of internal capacity on Going Forward Costs, it is questionable whether those data are directly translatable for purposes of a ROS new entry mitigation analysis.

14. I believe that the Compliance Report was correct to state that there is no historic evidence of problematic market behavior related to new entry in the ROS. No party has made a case to the contrary. The absence of historic evidence of problematic behavior increased my confidence in my determination that that buyer-side mitigation rules for new entry in ROS are not necessary. I believe that the Commission should also attach substantial weight to the absence of such evidence.
15. I disagree with IPPNY's and Entergy's assertions that the NYISO failed to analyze whether there is an incentive to suppress prices through uneconomic retention and repowering of uneconomic generators. The NYISO Answer and the Compliance Report both explain the NYISO conducted and is continuing that analysis. The NYISO simply decided, in my view appropriately, that it would be unreasonable to complete the analysis without considering the effect of the rules in the RMR Compliance Filing.
16. It is also inaccurate for IPPNY and Entergy to claim that the NYISO did not discuss this analysis, or its analysis of ROS buyer-side mitigation, with stakeholders. Furthermore, this analysis, and the manner in which the analyses presented by the NYISO to stakeholders was leveraged to study the question of uneconomic retention, is described in Attachment II of the Compliance Report.
17. In my opinion, it would be unreasonable, premature, and a waste of the Commission's, stakeholders', and the NYISO's resources to require that the NYISO's analysis of the uneconomic retention and repowering issue be completed earlier than was proposed in the Compliance Report.
18. I believe that the NYISO's proposal to complete its analysis within ninety days of the submission of the RMR Compliance Filing is reasonable. A ninety day period would allow the NYISO sufficient time to conduct a thorough review informed by the RMR Compliance Filing and stakeholder and MMU input.
19. For these reasons, the Commission should not accept IPPNY's and Entergy's proposals that the NYISO be forced to develop new capacity market power mitigation measures at this time. The NYISO's analyses did not show, and IPPNY and Entergy have not shown, that such measures are needed now.
20. 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.

  
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Lorenzo P. Seirup

Subscribed and sworn to before me  
this 31st day of July 2015

  
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Notary Public

My commission expires: 5/31/2019

THOMASINE DeSHAW  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01DE4513447  
Qualified in Rensselaer County  
My Commission Expires May 31, 2019