UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator Inc.	**)**	**Docket Nos. ER11-2224-004**
	)	**ER11-2224-005**

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

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure,[1] the New York Independent System Operator, Inc. ("NYISO") submits this request for leave to answer, and its answer[2] to, the *Protest and Comments of the New York City Suppliers*[3] ("NYC Suppliers"), the *Comments and Limited Protest of Independent Power Producers of New York* ("IPPNY"), and the *Comments of Multiple Intervenors, the City of New York and the Utility Intervention Unit of the New York State Department of State's Division of Consumer Protection* (collectively, "Consumer Interests"), filed in response to the NYISO's March 29, 2011 compliance filing ("March Compliance Filing").[4] The NYISO submitted the March Compliance Filing in response to the Commission's January 28, 2011 order in the above captioned proceeding.[5] For the reasons set forth below, the Commission should accept the NYISO's

[1] 18 C.F.R. §§ 385.212 and 385.213 (2010).

[2] This filing should not be construed as a withdrawal or waiver of any argument made in the *Request for Rehearing, Alternative Request for Clarification, and Partial Request for Expedited Action of the New York Independent System Operator, Inc.*, Docket No. ER11-2224-000 (filed February 28, 2011) ("NYISO Request for Rehearing").

[3] The "NYC Suppliers" are the following incumbent generation owners in New York City: Astoria Generating Company, L.P., the NRG Companies, and TC Ravenswood, LLC.

[4] *Compliance Filing and Request for Flexible Effective and Implementation Dates*, Docket Nos. ER11-2224-004 and 005 (filed March 29, 2011), as supplemented on March 30, 2011 and modified on April 4, 2011 ("March Compliance Filing").

[5] *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,058 (2011) ("January Order").

proposed level of excess ("Excess Capacity Level") for each of the three Installed Capacity [6] ("ICAP") Demand Curves, and the compliance tariff revisions submitted in the March Compliance Filing, as just and reasonable and reject the protests.[7]

I. REQUEST FOR LEAVE TO ANSWER

The Commission's regulations authorize the NYISO to answer pleadings styled as "comments" as a matter of right.[8] The Commission also has discretion[9] 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.[10] The Commission should follow its precedent and accept the NYISO's answer in this instance. This

[6] Terms with initial capitalization that are not otherwise defined herein shall have the meaning set forth in the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff"), and if not defined therein, in the NYISO's Open Access Transmission Tariff ("OATT").

[7] The Commission should also reject the NYC Suppliers' suggestion that any period shorter than twelve business days between the date following the Commission's order on revised ICAP Demand Curves and the certification deadline, would be sufficient time to implement revised curves mid-Capability Period. *See* NYC Suppliers' Protest at 8, n. 32. In response to the Commission's January Order directive regarding an implementation date, the NYISO requested flexibility in the implementation date for new Demand Curves. The NYISO stated that it believed it could implement the revised ICAP Demand Curves if it had a "twelve-day period after a Commission order accepting specific numeric values for the revised ICAP Demand Curves (*i.e.*, 'an order that does not require further analysis or revised computations')," but noted that "if a Commission order requires further analysis or revised computations, the NYISO may need additional time to implement the new ICAP Demand Curves." *See* March Compliance Filing at 13. The NYC Suppliers' suggestion that the period could be shorter is wholly unsupported, and ignores the stated importance of implementing the revised ICAP Demand Curves prior to the ICAP Supplier and Load Serving Entity certification deadline. It also ignores the steps the NYISO must take to accurately effectuate revised ICAP Demand Curves. The NYC Suppliers' rationale that the period could be shorter because it needs to be computed for the opening of the ICAP Spot Market Auction and not the certification deadline (which is generally approximately two business days before the auction), is suspect in that the NYC Suppliers' acknowledge that it is necessary to have applicable ICAP Demand Curves in place during certification. See NYC Suppliers at 8, n. 34.

[8] *Id.* at § 385.213(a)(3).

[9] *Id.* at § 385.213(a)(2).

[10] *See e.g.*, *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting the NYISO's answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *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…").

proceeding involves a host of complex and highly technical issues. Indeed, the Commission previously accepted answers to protests in this proceeding whose sponsors argued that they were warranted because of these technical complexities.[11] The NYISO has limited the scope of this answer so that it focuses exclusively on clarifying potentially difficult points that may have been confused by the comments and protests. This answer will therefore be helpful in the Commission's decision-making process.

II. ANSWER

A. The Commission Should Reject Protestors' Arguments Regarding Excess Capacity Levels and Accept the Levels Proposed in the March Compliance Filing

In compliance with the January Order, the NYISO proposed new Excess Capacity Levels and fully supported them in the March Compliance Filing. The NYISO proposed the following Excess Capacity Levels for each of the ICAP Demand Curves for the reset period under review in this proceeding: 2.3% for NYC, 4.1% for Long Island, and 1.1% for NYCA.[12] The proposed Excess Capacity Levels are consistent with the Services Tariff requirement that the Demand Curves analysis be performed under conditions in which the available capacity would equal or slightly exceed the minimum Installed Capacity requirement."[13] These proposed Excess Capacity Levels were computed based on the MW of the peaking unit used to set each of the ICAP Demand Curves and they address the various factors described by Dr. Patton regarding the

[11] *See* January Order at P 24 (accepting answers to protests and answers "because they have provided information that assisted us in our decision-making process").

[12] The NYISO had not previously proposed these levels of excess. Contrary to what the NYC Suppliers' claim, *see* NYC Suppliers at 13. Therefore, the NYISO's proposal is "new."

[13] Services Tariff Section 5.14.1.2.

excess capacity level assumptions.[14] Contrary to the NYC Suppliers' assertion,[15] the January Order in no way "discredited" the use of the peaking unit MW to establish the Excess Capacity Levels. Instead, the Commission noted that 'it may be true that . . . the use of a peaking unit to compute average excess capacity would appear consistent with the proxy unit specified in the tariff for determining the net CONE" but took the position that the NYISO's November Filing[16] had not adequately supported that proposal.[17] The March Compliance Filing provided adequate support for the NYISO's revised Excess Capacity Levels, including an Affidavit from Dr. David Patton of Potomac Economics, LLC, its independent Market Monitoring Unit.[18] The Commission, therefore, should reject protestors' assertions that the NYISO's revised proposed Excess Capacity Levels are not fully supported.[19]

1. The January Order Did Not Require that the NYISO's Support for its Proposed Excess Capacity Levels be Qualitative or Quantitative

It is specious for IPPNY and the NYC Suppliers' to claim that the NYISO's supporting evidence is "quantitatively" insufficient. The January Order required that the NYISO provide "well-reasoned analyses and explanations" to support any alternative proposed excess capacity level assumptions. It did not require that those "analyses and explanations" be "quantitative." It

[14] March Compliance Filing at 9 and Attachment 8, Affidavit of David B. Patton, Ph.D. at PP 20-21 ("March Patton Affidavit").

[15] NYC Suppliers at 9-10 (stating that "the Commission explicitly rejected as unsupported" the NYISO's approach to use the peaking unit MW to establish the level of excess capacity).

[16] *Tariff Revisions to Implement Revised ICAP Demand Curves for Capability years 2011/2012, 2012/2013 and 2013/2014*, Docket No. ER11-2224-000 (filed November 30, 2010) ("November Filing").

[17] January Order at P 121.

[18] March Compliance Filing at 8-12 and March Patton Affidavit.

[19] *See* IPPNY at 6-11, Affidavit of Mark D. Younger at PP 17-35 ("Younger Affidavit"), NYC Suppliers at 9-14.

is contrary to Commission precedent[20] for IPPNY and the NYC Suppliers to take the position that only quantitative data have probative force or that all "qualitative" support must represent nothing more than "conclusory statements."[21] Presumably, they do not believe that this is true of the "qualitative" arguments that they offered in this proceeding when it suited their position.[22] In addition, the Excess Capacity Levels that were approved by the Commission in the 2008 ICAP Demand Curve reset,[23] which IPPNY[24] and the NYC Suppliers[25] now support, because those levels are higher than those proposed in the March Compliance Filing, had far less "quantitative" support, and less support of any kind, than the NYISO's new proposal.[26]

As Dr. Patton explains in his Answering Affidavit appended to this answer, requiring "quantitative" evidence regarding Excess Capacity Level assumptions is unreasonable because, at this time, "many of the relevant factors that govern the development of a reasonable excess

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[20] Commission decisions are reviewed using the substantial evidence test which requires that a decision be reasonable (*i.e.*, "such evidence as a reasonable mind might accept as adequate to support a conclusion"). *See* CHARLES H. KOCH, ADMINISTRATIVE LAW AND PRACTICE § 11:22 (3d. ed. 2011). That standard has been more than met by the NYISO's proposal which has been supported by two Patton affidavits that have provided reasoned explanations for the proposed Excess Capacity Level. *See also, Midwest Independent Transmission System Operator, Inc.*, 133 FERC ¶ 61,221 at PP 431, 443 (2010) (accepting parts of a MISO proposal which was supported by a qualitative analysis over parties objections' that a quantitative analysis of impacts was required and rejecting other aspects of the proposal for unrelated reasons); January Order at P 119 (stating that "[i]n choosing a general methodology and inputs into the demand curve model, judgments must be made, and it is the Commission's responsibility to determine whether these judgments and the resultant outcomes fall within a zone of reasonableness").

[21] *See* IPPNY at 4, 9; NYC Suppliers at 9.

[22] *See, e.g., Protest of the New York City Suppliers* at Attachment A - Levitan Affidavit at PP 19-41, Docket No. ER11-2224-000 (filed December 21, 2010) (supporting the NYC Suppliers' Excess Capacity Level proposal with analysis of qualitative factors); *Motion to Intervene and Protest of Independent Power Producers of New York, Inc.* at Exhibit 2 - Affidavit of Mark D. Younger at PP 12-30 (supporting IPPNY's Excess Capacity Level proposal with analysis of qualitative factors), Docket No. ER11-2224-000 (filed December 21, 2010).

[23] *New York Independent System Operator, Inc.*, 122 FERC ¶ 61,064 at PP 31-34 (2008).

[24] IPPNY at 4.

[25] NYC Suppliers at 9.

[26] *Answering Affidavit of David B. Patton, Ph.D.,* at P 6 ("Patton Answering Affidavit").

capacity level cannot be quantified, but only qualitatively evaluated."[27] This is because there are still a relatively limited number of data points that could form the basis of a useful quantitative analysis.[28] Relying solely on quantitative analyses would also ignore important qualitative factors, and the interrelationship among them, such as those thoroughly considered and analyzed in the March Patton Affidavit. As Dr. Patton stated therein, "one must ultimately exercise reasoned judgment to choose a single value from a reasonable range of potential values that are consistent with a hypothetical investment pattern in the Demand Curve resource."[29] Imperfect entry coordination of multiple competing projects and imperfect investor foresight[30] are factors that do not readily lend themselves to quantitative analysis but do have impacts on the level of excess existing at any point in time. Dr. Patton explained that he had considered a range of permissible parameters, recognizing the impossibility of forecasting individual investment decisions.[31]

2. The March Compliance Filing Fully Considered the Factors Identified by the January Order

IPPNY and the NYC Suppliers argue that the NYISO failed to adequately address six factors which they claim the January Order required the NYISO to consider in developing proposed Excess Capacity Levels (enumerated below). As indicated above, these two parties misrepresent the January Order when they contend that the January Order required the NYISO to

[27] *Id.* at P 7.

[28] *Id.*

[29] *See* March Patton Affidavit at P 26.

[30] *Id.* at P 19.

[31] *Id.* at P 26.

provide "quantitative" evidence on these factors.[32] The January Order actually found that the then-existing record in this proceeding did not contain "adequate support" for the NYISO proposal, noted that "factors such as capacity addition lumpiness and reliability signals need to be considered," and directed the inclusion of "well-reasoned analyses and explanations" to support the proposal.[33] The NYISO and Dr. Patton considered the factors enumerated by the Commission and provided this support in the March Compliance Filing.[34] Further, although the NYISO disagrees that it is necessary to address all of the factors identified by IPPNY and the NYC Suppliers the fact remains that the NYISO fully addressed the factors those two parties enumerate. Specifically:

- "the size of the proxy unit"[35]and "lumpiness of capacity additions":[36] The NYISO and Dr. Patton both addressed the relationship between the size of the ICAP Demand Curve peaking units, the likely "lumpiness" of new entry, and Excess Capacity Levels.[37] Although Mr. Younger depicted proxy unit size and "lumpiness" as if they were separate factors, the Patton Answering Affidavit demonstrates that these factors are actually one in the same in considering Excess Capacity Level assumptions .[38] The Patton Answering Affidavit also refutes Mr. Younger's suggestion that tying the Excess Capacity Levels to the size of peaking unit might lead to absurd results in the future. As Dr. Patton explains, if Mr. Younger's hypothetical scenario[39] in which a "micro capacity resource" was identified as the peaking unit in some future ICAP Demand Curve reset process then "it would be reasonable to establish a minimum excess capacity level that recognizes that other factors would tend to dominate the lumpiness factor associated with the size of the proxy peaking unit."[40] The most important consideration is that "the lumpiness of

[32] *See* NYC Suppliers at 10.

[33] *See* January Order at P 128.

[34] *See, e.g.,* Patton Answering Affidavit at P 8; and at PP 13-14.

[35] *See* Younger Affidavit at P 21.

[36] *See* Younger Affidavit at P 21.

[37] *See* March Compliance Filing at 8-11, March Patton Affidavit at PP 27-33.

[38] *See* Patton Answering Affidavit at 9.

[39] See Younger Affidavit at P 34.

[40] Patton Answering Affidavit at P 9.

investment in capacity resources … should be addressed in the excess capacity level assumption based on investment in the proxy peaking unit."[41]

- "NYISO Tariff/process and regulatory oversight protections against a capacity shortage":[42] Dr. Patton previously specified that his conclusion on the NYISO's revised Excess Capacity Levels "is consistent with the NERA/S&L Report, which explains that actual capacity excesses are not relevant because the Excess Capacity Level assumption is 'not attempting to hold the entrant harmless from excess capacity that results because load growth slows, developers enter the market even with an excess or when technologies other than the peaker are the lowest net cost. The NYISO tendency to not allow the market to go short is the only factor [NERA/S&L] adjust for." Thus, looking to historic levels or accounting for other generalized forms of "merchant risk," as certain parties have suggested in this proceeding, would be over-compensatory."[43] The Patton Answering Affidavit counters Mr. Younger's attack on this rationale by highlighting Mr. Younger's underlying premise: "the assumption that the uncertainties related to capacity requirements and investment will necessarily produce excess capacity."[44] As Dr. Patton explains, it is not reasonable for Mr. Younger to assume that these uncertainties will always result in surpluses and never shortages.[45] Nor can Mr. Younger reasonably conclude that the NYISO's proposed Excess Capacity Levels are too low.[46]

- "the fact that entry is not coordinated":[47] Dr. Patton analyzed the short- and long-term expectations and implications.[48]

IPPNY's other suggested points for consideration in setting Excess Capacity Levels are not appropriate and are readily refuted:

- "the fact that entry commitment is made years in advance of actual conditions": Neither IPPNY nor Mr. Younger attempt to offer facts to support their statement. Further, in a separate Commission proceeding regarding the NYISO's tariffs, actual data from the

[41] *Id*. at 10.

[42] *See* Younger Affidavit at P 21.

[43] *See* March Patton Affidavit at P 22, quoting "Independent Study to Establish Parameters of the ICAP Demand Curve for the New York Independent System Operator" ("NERA/S&L Report") at 72; and citing "certain parties" as IPPNY's Motion for Leave to Answer and Answer of Independent Power Producers of New York, Inc. at 7-8, Docket No. ER11-2224-000 (filed January 7, 2011). NERA/S&L Report is Attachment 2 to the November Filing.

[44] *See* Patton Answering Affidavit at 11.

[45] *Id.* at PP 11-12.

[46] *Id.* at 12.

[47] *See* Younger at P 21.

[48] *See* March Patton Affidavit at PP 20 - 22.

New York Control Area demonstrates that, for the vast majority of projects, the initial date a project proposes as a date of entry changes significantly.[49] Also, IPPNY's and Mr. Younger's use of the phrase "entry commitment" gives the misleading impression that the "commitment" occurs on a single discrete date, and that once a decision to invest is made, there is never a decision to delay or abandon a project. It also ignores the fact that the Demand Curves are designed to send investment signals not just to new entrants but also to existing capability resources.

- "Imperfect [load] forecasts":[50] Again, IPPNY and Mr. Younger contradict themselves. In IPPNY's Limited Protest, IPPNY and Mr. Younger in effect want to propose to add a factor for a lack of precision in load forecasting. Adjusting Excess Capacity Levels for load forecasting errors would be the equivalent of adjusting the forecast for the recent recession. The NYISO's expert ICAP Demand Curve Consultant specifically declined to adjust for the recession and other factors finding that "[w]hile it is clearly possible to imagine modelling (*sic*) which would elicit these effects, we firmly believe that such adjustments cannot be implemented objectively enough to introduce additional clarity to the estimates."[51] Most importantly, to adjust for imperfect load forecasts would equate to setting the Excess Capacity Levels based on the actual level of excess. The Commission already rejected using the actual level of excess.[52] The March Patton Affidavit confirmed the soundness of that decision by highlighting the risk that the use of the actual level would result in the perpetuation of artificially high Excess Capacity Levels.[53] In addition, variations between load forecasts and actual load arise from both systematic and random conditions that are difficult to predict.[54] The Patton Answering Affidavit explains that load forecasting uncertainty can result in both under- and over-forecasts. Although it is possible that these uncertainties would still tend to favor excess Capacity, because of the potential that regulatory action would counter the effects of under-forecasting, it is unreasonable for Mr. Younger to suggest that only over-forecasts should be considered when establishing Excess Capacity Levels. The Patton Answering Affidavit also concludes that it is impracticable given the relatively limited availability of relevant data to quantify the magnitude of expected long-term forecast errors.[55] Thus, the

[49] *New York Independent System Operator, Inc.*, Initial Compliance Filing and Request for Expedited Action No Later Than December 14, 2010, Docket No. ER10-3043-001 at Affidavit of David J. Lawrence.

[50] *See* Younger at P 21.

[51] *See* November Filing at Attachment 2, Independent Study to Establish Parameters of the ICAP Demand Curve for the New York Independent System Operator at 55, September 3, 2010 (revised September 7, 2010), prepared by NERA Economic Consulting ("NERA/S&L Report").

[52] January Order at P 117 ("The current state of significant capacity surplus in the NYCA is not relevant to the specification of the demand curves….").

[53] March Patton Affidavit at P 16.

[54] In particular, the load forecast figures cited by Mr. Younger reveal the difficulty and transience of predicting a recession three years in advance of its occurrence. *See* Younger Affidavit at MDY-2.

[55] Patton Answering Affidavit at P 16.

most reasonable approach, at this time, is to anticipate that random conditions that cause forecasts and actual loads to diverge will largely net out over time. The systematic conditions should be dealt with as noted in the NERA/S&L report.

- "Variability in the minimum reserve requirement":[56] The Patton Answering Affidavit responds to Mr. Younger's contention that possible fluctuation in New York's installed reserve margin ("IRM") is a separate factor that must be considered in establishing Excess Capacity Levels. Dr. Patton explains that Mr. Younger's claims are exaggerated. Minimum ICAP requirements have been very stable in New York City, which would see the largest change in its Excess Capacity Level under the NYISO's proposal. Minimum ICAP requirements for the NYCA as a whole have fluctuated on a year-to-year basis in a manner that would cause increases to largely offset the decreases. Mr. Younger also focuses exclusively on reductions in those requirements that might increase actual Excess Capacity Levels while ignoring the fact that increases in the requirements lead to reductions in actual Excess Capacity Levels.[57]

3. Protestors' Other Purported Challenges to the NYISO's Support for the Revised Excess Capacity Levels Also Fail

IPPNY's and the NYC Suppliers' attempts to challenge the NYISO are chiefly driven by assumptions based on the actual level of excess; for example, the suggestion to adjust for load forecast errors and changes in the IRM.[58] As such, their arguments should be rejected because, as the January Order states, "[t]he current state of significant capacity surplus in the NYCA is not relevant to the specification of the demand curves."[59]

Mr. Younger also makes assertions regarding the March Patton Affidavit's description of the correlation between the In-City buyer-side mitigation rules and the actual levels of excess.[60] Mr. Younger (and the NYC Suppliers in reliance on Mr. Younger's affidavit) misinterprets and mischaracterizes the March Patton Affidavit. Dr. Patton described that the In-City buyer-side mitigation rules and the ICAP Demand Curves send developers price signals regarding the

[56] Younger at P 21.

[57] *See* Patton Answering Affidavit at 13-14.

[58] *See, e.g.*, Younger Affidavit at P 27.

[59] January Order at P 117.

[60] Younger Affidavit at PP 30-32.

timing of entry.[61] The Patton Answering Affidavit, addresses Mr. Younger's argument[62] by explaining that it is appropriate to consider the effect of the buyer-side mitigation rules on the Capacity market, as "any factors that would affect the distribution of future excess capacity levels (by reducing the frequency of very high excess capacity conditions) is material and must be considered in establishing reasonable excess capacity level assumptions."[63] Mr. Younger is incorrect when he characterizes the NYISO's proposed Excess Capacity Levels as being too low to induce entry.[64] He is incorrect because as Dr. Patton states "the costs of the most economic resource types today … are well below the net entry costs of the default peaking unit [making] it … highly unlikely that the ICAP Demand Curves will be 'too low to induce required entry.'"[65] The fact that buyer-side mitigation measures will be triggered at the reasonable Excess Capacity Levels proposed by the NYISO is evidence that those measures have an effect and so must be factored into the analysis.

4. The Commission Should Reject IPPNY's and the NYC Suppliers' Proposal to Continue to Use the Excess Capacity Levels that Were Accepted in the 2008 ICAP Demand Curve Reset

IPPNY and the NYC Suppliers both propose that the Excess Capacity Levels used in the 2008 Demand Curve reset be used in this proceeding. Thus, their proposal would use 4% for New York City and Long Island, and 1.5% for the NYCA. Neither IPPNY nor the NYC Suppliers offers any support for that proposal. Nor do they refute Dr. Patton's finding that "retaining the higher Excess Capacity Level assumptions used in the 2008 Demand Curve reset

[61] March Patton Affidavit at PP 35-36.

[62] Younger Affidavit at PP 32-33.

[63] Patton Answering Affidavit at P 18.

[64] *Id.* at P 17.

[65] *Id.* at P 20.

for New York City and the NYCA is no longer reasonable because those levels would likely perpetuate a substantial surplus by creating incentives to invest inefficiently, the costs of which would ultimately be borne by New York's consumers."[66]

IPPNY's and the NYC Suppliers' proposal to continue the 2008 Excess Capacity Levels includes using a 1.5 % level of excess for the NYCA Demand Curve. The NYISO and Dr. Patton propose a 1.1 % level of excess for the NYCA Demand Curve. Although the NYISO has identified the flaws in IPPNY's and the NYC Suppliers' arguments, even if they were valid, their own arguments would also undermine their proposed NYCA level of excess. For example, IPPNY's arguments regarding the variation in the IRM and the load forecasting error[67] apply equally to IPPNY's proposed 1.5% level of excess and the NYISO and Dr. Patton's proposed 1.1 % level of excess.

5. The Commission Should Reject the NYC Suppliers' Arguments that Combined Cycle Gas Turbine Unit Costs Should be Disregarded

The NYC Suppliers erroneously argue that the combined cycle gas turbine ("CCGT") net cost of new entry ("CONE") proffered in the March Compliance Filing is "irrelevant and beyond the scope of the NYISO's compliance obligation, and because the NYISO' estimate has not been vetted through the stakeholder process."[68] The purpose for which the NYISO submitted the information was clear to IPPNY, of which the NYC Suppliers are members. IPPNY's comment and limited protest stated that "[i]n his affidavit, Dr. Patton uses the CCGT Net CONE to attempt

[66] March Patton Affidavit at P 17; *see also* March Patton Affidavit at P 30 (explaining that "the four percent Excess Capacity Level that underlies the current ICAP Demand Curve implies a fluctuation in the excess capacity level from zero to almost 700 MW (almost 3.5 times the size of the default peaking resource). It is not reasonable to expect that this hypothetical investment process would routinely produce excess capacity levels equal to the size of three and a half peaking resources").

[67] Younger Affidavit at PP 23-27, IPPNY at 10, NYC Suppliers at 11-12.

to show generally that the proposed Demand Curves would provide incentives to construct CCGT -- a very limited application of this information."[69] The NYISO and Dr. Patton do not, as Mr. Younger postulates, suggest "the CCGT is to be treated as the proxy plant."[70]

The NYISO's purpose in providing the CCGT costs was very clear: it was to demonstrate "that there are other technologies that are more economic than the ICAP Demand Curve peaking plants."[71] The costs were used by the NYISO and Dr. Patton to support the NYISO's proposed Excess Capacity Levels, as directed by the January Order. As stated in the March Patton Affidavit "the known presence of substantially lower cost alternative technologies justifies the use of an Excess Capacity Level assumption that is at the lower end of the reasonable range, as is the case for the NYISO proposal."[72] Dr. Patton's use of the CCGT's unit net CONE demonstrates that the combined cycle unit has a lower cost than the Demand Curve peaking unit and would be able to enter.[73] Neither Dr. Patton nor the NYISO proposed to use the CCGT as the Demand Curve peaking unit and, thus, the Commission should reject the NYC Suppliers' protest.

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[68] NYC Suppliers at 14-15, IPPNY at 5.

[69] IPPNY at 15.

[70] Younger at P 51. Further, contrary to IPPNY's and the NYC Supplier's assertions, the NYISO's Consultant, Christopher Ungate of Sargent & Lundy did present to and discuss with NYISO stakeholders the costs of a combined cycle unit at the May 21, 2010 Installed Capacity Working Group meeting. *See* ICAPWG meeting materials, May 21, 2010, available at: <http://www.nyiso.com/public/webdocs/committees/bic_icapwg/meeting_materials/2010-05-21/S_L_Demand_Curve_Review_5_21_10.pdf>.

[71] March Compliance Filing at 10, fn. 41.

[72] March Patton Affidavit at P 39.

[73] March Patton Affidavit at P 37.

Further, Mr. Younger's indication of 6.8% excess capacity clearing In-City[74] is based on his above-quoted erroneous statement. Dr. Patton's analysis is based on ICAP Demand Curves established using the peaking unit, and not the CCGT. Thus, the Commission should similarly reject IPPNY's protest on this point.

B. The NYISO's Proposed Tariff Revisions Are All Within the Scope of this Compliance Proceeding and the Tariff Revisions Proposed by Protestors Are Not and Should Be Rejected

1. The Proposed Compliance Tariff Revisions are Consistent with the January Order's Directives

Contrary to the Consumer Interests' pleading, the NYISO's proposed compliance tariff revisions are consistent with the January Order's directives and do not go beyond its scope.[75] The Commission directed the NYISO to "revise section 5.14.1.2 of the Services Tariff so that it is clear that the demand curves will be developed using an internally consistent determination of excess capacity." The level of excess proposed and the manner in which it would be computed in accordance with the NYISO's proposed tariff revisions would be clear and internally consistent. For the reasons discussed in the March Compliance Filing, the use of the quantity of MW of the peaking unit is appropriate to establish the level of excess Capacity. Further, as discussed in the March Compliance Filing and in this filing including the Patton Answering Affidavit, the MW of peaking unit will effectively address the factors identified in the January Order as those to be considered when proposing new Excess Capacity Levels.[76] Further, the

[74] Younger Affidavit at P 52.

[75] *See* Consumer Interests Comments at 16-19.

[76] March Compliance Filing at 9; *see also* March Patton Affidavit at P 9 (wherein Dr. Patton agrees "with the NYISO that Excess Capacity Levels for New York City …, Long Island…, and the New York Control Area should be based on the size of the peaking plants that the Commission has accepted for purposes of establishing the respective ICAP Demand Curves").

proposed compliance tariff revision also would provide greater predictability for stakeholders to make their own assessment of the Demand Curves that may be established in the future.

2. The Commission Should Reject the Alternate Tariff Revisions Suggested by IPPNY and the NYC Suppliers

The Commission should not accept IPPNY's and the NYC Suppliers' suggested tariff revisions to specify that the NYISO must perform a quantitative analysis of any or all of their suggested seven factors. Unlike the NYISO's proposed revisions, IPPNY's and the NYC Suppliers' proposed revisions are outside the scope of this compliance proceeding because the January Order did not require the NYISO to perform "quantitative" analyses or to separately evaluate each of the seven factors. Several of IPPNY's proposed factors, namely: "(1) the size of the proxy unit, (2) lumpiness of capacity additions, (3) NYISO Tariff/process and regulatory protections that ensure that, on average, capacity shortages will never be permitted to offset capacity surpluses, … and (5) the fact that entry is not coordinated,"[77] would already effectively be incorporated into the tariff by utilizing the size of the Demand Curve peaking unit to establish the level of excess. Thus, and as demonstrated above and in the March Compliance Filing in the context of the NYISO's proposed Excess Capacity Levels under consideration in the current proceeding, Mr. Younger's argument that the size of the proxy unit is the "sole factor"[78] is misleading because, the use of the ICAP Demand Curve peaking unit MW to establish the level of excess recognizes and accommodates the consideration of other factors.

In addition, IPPNY's suggested factors "(4) the fact that entry commitment is made years in advance of actual conditions, …(6) imperfect load forecasting, and (7) potential minimum

[77] IPPNY Protest at 4.

[78] Younger Affidavit at P 34.

reserve margin variability"[79] are flawed for use in future ICAP Demand Curve resets for the same reasons discussed in Section II.A.2 above and in the Patton Answering Affidavit in the context of the current ICAP Demand Curve reset. In addition, IPPNY's factors 6 and 7 serve to set the level of excess based on an actual level of excess, rather than to establish the appropriate level to result in ICAP Demand Curves that send the appropriate right price signal to retire or develop new generation.

C. The Commission Should Accept the NYISO's Analyses and Conclusions Regarding System Deliverability Upgrade ("SDU") and System Upgrade Facility ("SUF") Costs and Reject Protestors' Suggestions and Proposals

All parties that filed comments on the March Compliance Filing agree that the Commission should accept the NYISO's SDU analysis and conclusion, and the New York City SUF cost estimate.[80] However, IPPNY and the NYC Suppliers argue that the Commission should impermissibly expand the scope of this compliance proceeding by using it as an opportunity to provide guidance regarding the methodology to be used in future ICAP Demand Curve resets. They would also require certain calculations regarding the determination of SDU and SUF costs to be included in the peaking plant CONE. The various proposals set forth by the two protestors should be rejected by the Commission for the reasons specified below.

[79] *Id.*

[80] *See* NYC Suppliers at 18, IPPNY at 13, and Consumer Interests at 6.

1. The Commission Should Reject IPPNY's and the NYC Suppliers' Suggestion that the Methodology for Future ICAP Demand Curve Resets Should Be Established at this Time

IPPNY[81] and the NYC Suppliers[82] both request that the Commission use its ruling on the March Compliance Filing to "provide further guidance on the appropriate methodology and stakeholder procedures for developing its estimate of [SDU] and [SUF] costs in future reset proceedings."[83] Those requests should be rejected. They are clearly beyond the scope of a protest to the March Compliance Filing and are tantamount to untimely requests for rehearing because they seek new relief not authorized by the January Order. Moreover, these parties contradict themselves. On the one hand, they take the position that certain items should be vetted in the stakeholder process.[84] On the other hand, they argue on this issue that their position should be unilaterally imposed on all stakeholders in future ICAP Demand Curve resets without any stakeholder vetting or a fully developed record.

Consistent with the January Order, the March Compliance Filing did not propose that the Commission establish in the Services Tariff or otherwise the SDU methodology to be used in future reset proceedings. The NYISO stated that "[a]lthough it may be appropriate to utilize it, or elements of it, in future resets, there are several reasons that militate against committing now to do so in the future."[85] Should the Commission nevertheless entertain at this time IPPNY's

[81] IPPNY at 12-14.

[82] NYC Suppliers at 18.

[83] *Id.* at 3.

[84] IPPNY at 16 (stating that "the CCGT Net CONE included in the Compliance Filing has not been subject to market participant review and therefore cannot be relied on by the Commission as the basis of any decisions", *citing*, Younger Affidavit at P 48); NYC Suppliers at 15 (stating that "the CCGT Net CONE calculation [has not] ever been presented in–much less vetted through–the stakeholder process to ensure that the methodology and assumption used are valid and the estimated Net CONE values are accurate").

[85] March Compliance Filing at 5, n. 18.

and the NYC Suppliers' suggestions regarding the methodology and/or the procedures to be used in the next reset proceeding, their "proposal" should be rejected on the merits. First, they provide no support for any aspect of it. Second, any study methodology needs to account for changes in the NYISO's market rules that may be in place at the time of the next ICAP Demand Curve reset. For example, the outcome of the pending Commission proceeding concerning the proposed criteria for the creation of new Capacity zones in Docket No. ER04-449-023 may affect the manner in which SDU and SUF analyses are conducted in the future. In addition, a methodology established now may be inconsistent with the processes and procedures that will be in place under Attachment S to the NYISO's Open Access Transmission Tariff at the time of the next ICAP Demand Curve reset. Finally, "locking in" a specific methodology now for future use would prevent the NYISO and its ICAP Demand Curve consultant from vetting their approach to future analyses with stakeholders based on the then-current deliverability rules.

2. The Commission Should Reject IPPNY's Proposal Regarding the New York State Electric and Gas Corporation's ("NYSEG") Existing Transmission Capacity for Native Load ("ECTNL") Component

IPPNY takes specific issue with the use in the deliverability analysis for future ICAP Demand Curve resets of the NYSEG ETCNL without derating it. IPPNY argues that the SDU analysis should be performed by prorating it proportionate to the proration of other capacity.[86] IPPNY's proposal is based on its argument that the process used should be consistent with the inputs used to establish the IRM for the NYCA. However, IPPNY's proposal ignores two critical points. First, OATT Attachment S requires that the NYISO use the NYSEG ECTNL.[87] Thus, in order to determine whether system deliverability upgrades are required, the analysis

[86] IPPNY at 13-14, Younger at P 41.

[87] *See* OATT Attachment S Section 25.7.11.

needs to be consistent with OATT Attachment S. Second, to accept IPPNY's proposal would require that NYSEG have an obligation to disclose to all stakeholders whether it had a long term contract. NYSEG's only requirement today is to notify the NYISO before the start of each Capability Period the MW of its ECTNL that it intends to utilize.[88] For these reasons, IPPNY's specific proposal that the Commission prescribe now the methodology to treat ECTNL should be rejected.

3. The Commission Should Reject IPPNY's Proposal Regarding the Use of Actual Site Specific Costs

IPPNY, through the Younger Affidavit,[89] appears to be arguing that site-specific cost data from specific locations must be utilized in future SDU and SUF analyses. The NYISO and its ICAP Demand Curve consultants have used actual cost data to determine the estimated costs of the peaking unit used to establish the Demand Curves. Further, the Attachment S Class Year methodology uses specific locations to analyze whether an SDU is required in the Class Year process. Likewise, the methodology used to perform the deliverability analysis for the Demand Curve reset needed to identify and utilize a location to perform the analysis. However, the NYISO did not use and did not need to use specific locations to estimate SUF costs. The NYISO's analysis estimated SUF costs in the March Compliance Filing at the different possible levels of interconnection and different types of substations in New York City: 345 kV open air, 345 GIS, and 138 kV open air.[90] It stated those locations because it used actual data associated

[88] Installed Capacity Market Manual at § 4.9.2.3 (April 2011), *available at* < http://www.nyiso.com/public/webdocs/documents/manuals/operations/icap_mnl.pdf >.

[89] Younger Affidavit at P 38.

[90] *See* March Compliance Filing at Affidavit of Christopher D. Ungate at PP 24-27.

with specific locations to prepare cost estimates for three different types of interconnections. However, it may be appropriate to use another methodology in the future.

D. The Commission Should Reject IPPNY's Suggestion that the NYISO's Sensitivity Analysis Be Ignored

IPPNY[91] requests that the Commission disregard the NYISO's calculation of the changes to the ICAP Demand Curve attributable to changes in underlying ICAP Demand Curve components that were directed by the January Order. The calculations and related analyses are set forth in the Lawrence Affidavit, Attachment III to the March Compliance Filing. The purpose of the Lawrence Affidavit was "to present the percentage impact of each of the changes to the components of the ICAP Demand Curve" by performing a single sensitivity analysis.[92] That analysis is the same analysis the November Filing provided in relation to the NYISO's proposed Demand Curves therein.[93] IPPNY does not challenge or question the accuracy of those calculations. The inclusion of that analysis was appropriate both for consistency with the November Filing and because actual data on ICAP Demand Curve impacts is clearly pertinent to the Commission's evaluation of whether each of the ICAP Demand Curves in the March Compliance Filing will result in just and reasonable rates.

[91] IPPNY at 5, 17-18.

[92] March Compliance Filing at Affidavit of Mr. David Lawrence at PP 2, 5 ("Lawrence Affidavit").

[93] *See* November Filing at Lawrence Affidavit Exhibit DJL-1.

III. CONCLUSION

For the reasons set forth above, the Commission should grant the NYISO leave to submit this limited answer, accept the clarifications offered herein, and accept the tariff revisions submitted in the March Compliance Filing.

Respectfully Submitted,

/s/Gloria Kavanah

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May 4, 2011

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document 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 Rules of Practice and Procedure, 18 C.F.R. §385.2010.

Dated at Rensselaer, NY this 4th day of May, 2011

/s/ Mohsana Akter

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc) Docket No. ER11-2224-004

Answering Affidavit of David B. Patton, Ph.D.

I. Purpose and Summary

1. My name is David B. Patton. I am an economist and President of Potomac Economics. Our offices are located at 9990 Fairfax Boulevard, Fairfax, Virginia 22030. Potomac Economics is a firm specializing in expert economic analysis and monitoring of wholesale electricity markets.

2. I filed an affidavit previously in this case ("March Affidavit"[1]) in support the levels of excess capacity ("Excess Capacity Levels") that the NYISO proposed in its March 29, 2011 compliance filing ("March Compliance Filing"). In my March Affidavit, I explained why it is appropriate for the NYISO to link the Excess Capacity Level assumption to the Installed Capacity ("ICAP") Demand Curve peaking resource ("proxy peaking resource").

[1] March Compliance Filing at Attachment VII.

3. The purpose of this affidavit is to respond to *Comments and Limited Protest of Independent Power Producers of New York* ("IPPNY") and *Protest and Comments of the New York City* ("NYC Suppliers") attempting to challenge the NYISO's proposed Excess Capacity Levels and the assumptions underlying the proposed levels, and discuss the flaws in their arguments.

II. Basis for Recommended Excess Capacity Assumption

4. The IPPNY protest, supported by the affidavit of Mr. Mark Younger, challenges the proposed excess capacity assumptions contained in the NYISO's March Compliance Filing. My March Affidavit contained much of the support cited in the NYISO compliance filing. The IPPNY protest and Mr. Younger's affidavit primarily assert that I was not responsive to the Commission's January 28, 2011 Demand Curve Order indicating a need for additional support for the proposed Excess Capacity Levels:

> However, the MMU does not adequately support its use of 1.0 times the capacity of the new entry peaking unit for New York City and Long Island, a number that is squarely between NYISO's proposal and the Consultant's proposal. The MMU states only that its figure would account for two investors entering simultaneously and for the fact that that one to two years of "typical" demand growth could be lost due to economic slowdown. Further, the MMU does not discuss the considerations it used in arriving at this factor. The MMU also does not identify how it has arrived, or describe the parameters of, its undefined reasonable range for the level of average excess capacity. We note that no other party supported the MMU's proposed excess capacity levels for New York City or Long Island. An explanation of these

considerations is requisite for the Commission to regard these statements as support.[2]

5. The Commission also noted that no other parties provided adequate support for any other proposed excess capacity level assumptions, including the NYISO. Hence, it ordered the following:

> To support proposed levels for the adjustments, NYISO must provide well-reasoned analyses and explanations of how the various elements that underlie the proposals translate to the proposed excess capacity levels and complete explanations of why the elements and assumptions are reasonable. Parties that do not agree with NYISO's proposal must show why it is unreasonable and provide reasons and support for any alternative proposals. It is not adequate to simply disagree with the result of the proposals; such disagreement must be supported with analyses and explanations of any asserted infirmities in the underlying assumptions and other factors used in the determinations. [3]

6. Mr. Younger makes much of the fact that the support provided in my March Affidavit lacks quantification of the various factors underlying the proposed excess capacity level assumptions. However, FERC did not require quantitative support, but rather "well-reasoned analyses and explanations". In fact, no quantification of the various relevant factors were provided in the prior ICAP Demand Curve reset process that established the excess capacity level assumptions the Commission previously found just and reasonable for the period 2008/09 – 2010/2011. Additionally, Mr. Younger provides no quantification of any of these factors in his affidavit, arguing that the NYISO proposal is not just and reasonable.

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[2] *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,058 (2011), (hereinafter "Demand Curve Order"), P. 125.

[3] *Id.* at 128.

7. The fundamental problem is that many of the relevant factors that govern the development of a reasonable excess capacity level assumption cannot be quantified, but only qualitatively evaluated. For example, it is undeniably relevant that investment through the competitive wholesale electricity markets is not perfectly coordinated so multiple investors may build in response to the economic signals provided by the market and produce a temporary capacity surplus. However, with only seven years of experience using ICAP Demand Curves in the NYISO markets,, there is a relatively limited number of data points on which to draw a conclusion about the market signals. There is simply not enough data to credibly forecast potential future investment behavior by private parties. A simulation to determine investors' responses to market signals based on the available data would be of limited value given the limited number of data points. Such simulations would be required if the only means to support the just and reasonableness of the proposed excess capacity level assumptions is to provide quantitative support as Mr. Younger argues.

8. With the exception of the variability in the minimum reserve requirement, all of the factors listed by Mr. Younger are qualitatively assessed in my March Affidavit. I will briefly address each of those factors below.

A. Size of the Proxy Unit and Lumpiness of Capacity Additions

9. One of the key points explained in my March Affidavit is that the excess capacity assumption should be based on the size of the proxy peaking unit. Although Mr. Younger indicates that the lumpiness of capacity additions is a separate factor, it is

actually one in the same. When one considers the effect of lumpiness on excess capacity in the market, one must assume a particular resource to evaluate this factor. My March Affidavit explained why it is important to evaluate the lumpiness of capacity additions in the context of an investment cycle in the proxy peaking unit technology type. I would, however, agree with Mr. Younger that if the proxy peaking unit were extremely small (Mr. Younger hypothesizes a capacity resource of less than 10 MW for example), this approach could lead to an unreasonably low Excess Capacity Level. It is possible that in some future ICAP Demand Curve reset proceeding, were a micro-unit the identified proxy unit, it would be reasonable establish a minimum excess capacity level that recognizes that other factors would tend to dominate the lumpiness factor associated with the size of the proxy peaking unit. However, establish that minimum size is not an issue for the Excess Capacity Levels proposed by the NYISO in its March Compliance Filing due to the size of the proxy peaking resources..

10. The most important point related to the lumpiness of investment in capacity resources is that this factor should be addressed in the excess capacity level assumption based on investment in the proxy peaking unit. The fact that other types of resources are actually being built and leading to higher levels of surplus capacity is immaterial and should not be considered in developing a reasonable excess capacity level assumption. That fact simply indicates that the default proxy peaking unit is not the most economic resource type. However, investments in lower cost resources that result in higher excess capacity levels in reality will not cause the ICAP Demand Curve to result in inadequate investment, but exactly the opposite.

B. Protections Against a Capacity Shortage

11. Much of the discussion in Mr. Younger affidavit is premised on the assumption that the uncertainties related to capacity requirements and investment will necessarily produce excess capacity. However, if such uncertainties are randomly distributed around zero (*e.g.*, load is as likely to be over-forecasted as under-forecasted), then these factors will not produce excess capacity on an expected basis. In other words, the uncertainties will produce shortages and surpluses that offset one another.

12. That said, I would agree that these factors have the potentially to lead to a bias in favor of excess capacity because the planning process will support regulatory actions to address shortages. However, it is unreasonable to simply assume that these factors will never result in shortages. If one recognizes that regulatory actions may require a substantial amount of time to implement, such as building new peaking resources in an area, then it will be the case that many of the uncertainties discussed in Mr. Younger's Affidavit, and in my March Affidavit and in this Affidavit, can result in shortages when they occur in timeframes shorter than the time required to build new resources. I was conservative in the qualitative analyses and explanations in my March Affidavit by assuming that actual excess capacity levels will always fluctuate between zero and a maximum excess capacity level. In reality, most of the factors that can lead to excess capacity in the market can also contribute to transitory shortages, which tends to mitigate the concerns raised by Mr. Younger that the proposed excess capacity levels are too low.

C. Changes in Minimum Capacity Requirements

13. Mr. Younger asserts that the fluctuation in the minimum Installed Capacity requirements is a factor that should be considered in establishing the excess capacity levels. His arguments are overstated. The most substantial change in proposed excess capacity levels is in New York City where the minimum Installed Capacity requirements have been very stable.

14. Additionally, minimum Installed Capacity requirements in the New York Control Area have fluctuated on a year-to-year basis in a manner that would cause the increases to largely offset the decreases. Mr. Younger focuses only on reductions in the requirements that might increase actual excess capacity levels, ignoring the fact that increases in requirements lead to reductions in actual excess capacity levels. Such reductions occur in timeframes that are generally too short for regulatory backstop solutions to be implemented if the increases in the minimum requirements will create a capacity shortage.

D. Imperfect Load Forecasting

15. One of the factors that Mr. Younger and I agree can affect excess capacity levels is uncertainty in forecasted load. When load is over-forecasted a few years out, investment may outpace the growth in load and result in a capacity surplus. However, under-forecasting the growth in load can result in inadequate investment that may not be recognized in time to prevent a capacity shortage through regulatory intervention. This scenario is another instance where I would agree that

such uncertainty will tend to lead to a bias in favor of excess capacity because some of the results of under forecasting (those occurring in time frames longer than 1 to 2 years) will likely be addressed through regulatory intervention. However, it is not reasonable to simply assume that only over-forecasts should be considered in developing a reasonable levels of excess capacity.

16. Additionally, it is impracticable given the relatively limited history of these markets to quantify the magnitude of expected long-term forecast errors, or the extent to which these errors would be biased in favor of creating excess capacity. I would note that Mr. Younger likewise provided no quantification of this factor.

E. Buyer-Side Mitigation

17. Mr. Younger argues in effect that the implementation of buyer-side mitigation in the capacity market, which is expressly designed to prevent uneconomic investment that would create high levels of excess capacity, is not material in developing a reasonable excess capacity level assumption.

18. While there is some possible variation regarding the point at which this mitigation will begin deterring new investment, one cannot reasonably argue that it will not lead to a reduction in expected excess capacity levels. Any factors that would affect the distribution of future excess capacity levels (by reducing the frequency of very high excess capacity conditions) is material and must be considered in establishing reasonable excess capacity level assumptions. The fact that the buyer-side mitigation provisions did not exist when the current ICAP Demand Curves were

developed is a key reason why the Commission must revisit the levels of excess capacity for the new ICAP Demand Curves.

19. Mr. Younger attempts to dismiss the effects of the buyer-side mitigation measures by asserting that my:

> …argument fundamentally fails because it is based on his flawed premise that the risk of average excess capacity in the market can be limited by prescribing a low level of average excess capacity in the development of the demand curve and then relying upon on Uneconomic Entry Mitigation Rules to enforce tighter investment decisions… The Demand Curves must be set using an average excess capacity level that recognizes these risks. One cannot merely aggressively assume a low average excess capacity level in setting the demand curve and then rely upon the uneconomic entry mitigation rules to force down the actual excess capacity level to conform with these ill-based assumptions.[4]

20. What Mr. Younger fails to recognize is that the Excess Capacity Levels proposed by the NYISO in its March Compliance Filing are not "low average excess capacity levels" as Mr. Younger asserts, but are reasonable levels in light of the factors discussed in both my March Affidavit and Mr. Younger's Affidavit. Therefore, the buyer-side mitigation measures will trigger at levels that support the NYISO's proposed levels of excess capacity. Given the costs of the most economic resource types today, which are well below the net entry costs of the default peaking unit, it is highly unlikely that the ICAP Demand Curves will be "too low to induced required entry" as Mr. Younger asserts.

[4] *See* Younger Affidavit at PP 32 - 33.

III. Conclusion

21. For the foregoing reasons, Mr. Younger's arguments (and IPPNY's and the NYC Suppliers' arguments associated therewith) are generally inaccurate or overstated. Hence, I continue to support the Excess Capacity Levels proposed by the NYISO in its March Compliance Filing.

22. This concludes my affidavit.

ATTESTATION

I am the witness identified in the foregoing Affidavit of David B. Patton, Ph.D. dated May 4, 2011 (the "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.

David B. Patton

May 4, 2011

Subscribed and sworn to before me

this 4th day of May, 2011

MATTHEW JAMES CARRIER
Notary Public
City/County of Fairfax
Commonwealth of Virginia
Notary registration number - 7233763
My commission expires - Nov. 30, 2013

Notary Public

My commission expires: Nov. 30, 2013