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November 28, 2011

Via Electronic Filing

PUBLIC VERSION

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: ***Seneca Power Partners, L.P. v. New York Independent System Operator, Inc.*, Answer to Complaint of New York Independent System Operator, Inc., Docket No. EL12-6-000**

Dear Secretary Bose:

Attached is the Answer to Complaint ("Answer") by the New York Independent System Operator ("NYISO"). The NYISO requests privileged treatment of portions of the Answer and Exhibits pursuant to 18 C.F.R. § 388.112 (2010). Portions of the Answer and Exhibits contain commercial information and confidential pricing, costs or operating information that is not publicly available and that is exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552.

The NYISO is submitting electronically a redacted Public Version and a confidential, non-public Privileged Version.

Please direct any questions to the undersigned at 202-955-1684.

Very truly yours,

William F. Young

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

SENECA POWER PARTNERS, L.P.	)	
	)	
Complainant,	)	
	)	
v.	)	**Docket No. EL12-6-000**
	)	
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.	)	
	)	
	)	
Respondent.	)	

ANSWER OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Pursuant to Rules 206(f) and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 C.F.R. §§ 385.206(f) and 385.213, the New York Independent System Operator, Inc. (the "NYISO") hereby submits this answer ("Answer") to the complaint requesting fast track processing (the "Complaint") of Seneca Power Partners, L.P. ("Seneca").[1]

[1] The NYISO filed an Opposition to Request for Fast Track Processing on November 1, 2011.

I. STATEMENT OF FACTS

A. Summary of Allegations

Stripped of its excess verbiage, Seneca's complaint is about the calculation of three elements of the reference levels that the NYISO has determined for Seneca's Batavia Generator ("Batavia").[2]

First, Seneca asserts that in setting reference levels for gas transportation, the NYISO should accept without question the local gas transportation rate set forth in a contract between Seneca and its affiliated entity Alliance Energy Transmission LLC ("AET").[3] This contract rate purports to cover the transportation of gas over an 11 mile lateral pipeline from the interconnection with an interstate pipelines supplier to Batavia.

Second, Seneca asserts that the minimum run time reference level for Batavia should be locked in at [redacted] hours and not subject to reduction.[4] The Complaint does not and cannot assert that the minimum run time reference level for Batavia has in fact been reduced from [redacted] hours, nor can or does it challenge the specific grounds for such a reduction, because to date the run time reference level has not been reduced.

Third, Seneca asserts that the NYISO should be directed to set the reference levels for operation and maintenance ("O & M") costs on the basis of a study of the Batavia plant by the General Electric Company ("GE Study"), notwithstanding that the GE Study was provided to the NYISO on October 18, 2011, less than two weeks before the Complaint was filed. Other than

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[2] Unless otherwise specified, capitalized terms have the meanings specified in the Market Administration and Control Area Services Tariff ("Services Tariff") of the New York Independent System Operator, Inc. ("NYISO").

[3] Complaint at 37.

[4] Complaint at 38.

providing the GE Study, the Complaint does not identify any specific O & M costs claimed by Seneca that were rejected by the NYISO, and in fact acknowledges that the NYISO has at least twice adjusted reference levels on the basis of O & M cost data provided by Seneca.[5]

B. Summary of Reference Level Requirements

As discussed further below, reference levels are designed to cause Market Parties to Bid as if they faced workable competition. Reference levels, in conjunction with the mitigation thresholds specified in the Market Power Mitigation Measures ("Mitigation Measures") that are set forth in Attachment H to the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff"), place a cap on the bids that can be submitted by Generators that are not subject to the bidding discipline of competitive markets.

The Commission has determined in other dockets that Batavia and certain other units in the Rest-of-State ("ROS") area of New York are not subject to competition when they are needed for local reliability and not selected for dispatch based on the economics of their Bids, but rather are dispatched as a Day-Ahead Reliability Unit ("DARU") or through a Supplemental Resource Evaluation ("SRE").[6] The Commission has also held that in order for reference levels to mimic the Bids that a given unit would have submitted under competitive conditions, reference levels must be based on the best available determination of a Generator's marginal costs.[7] Ideally, reference levels can be determined from the bidding behavior of a Generator

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[5] Complaint at 31-32.

[6] *See New York Independent System Operator, Inc.*, 133 FERC ¶ 61,030 at P. 52 (2010) ("October 2010 ROS Order"), *order denying reh'g*, 135 FERC ¶ 61,157 (2011) ("May 2011 ROS Order"), *appeal pending*, TC Ravenswood v. FERC, Case No. 11-1258.

[7] *See* October 2010 ROS Order at P. 50.

when it faces competition.[8] If such data is not available because a unit does not run sufficiently often under competitive conditions, [redacted], then reference levels can be set through evaluation of marginal cost data submitted by the Market Party, or if necessary on the basis of the best information otherwise available to the NYISO.[9]

C. The Facts Do Not Support the Relief Apparently Sought by the Compliant

Application of the principles underlying the determination of reference levels to the three elements of the Batavia reference levels addressed in the Complaint, combined with scrutiny of the allegations of the Complaint, shows that Seneca has not established that the NYISO has acted in violation of its tariff obligations, and that the Complaint does not provide the Commission with a record on which it could direct the NYISO to change any aspect of the three elements of Batavia's reference levels challenged in the Complaint.

1. Local Gas Transportation Charge

In developing Batavia's reference levels, the NYISO cannot simply accept on its face the local gas transportation price set forth in the Natural Gas Transportation Agreement[10] between Seneca and its affiliate AET, for several reasons.

First, the contract provides no breakdown between fixed and variable costs. In most circumstances, AET charges [redacted] of the 11 mile lateral pipeline to Seneca as a per decatherm charge of [redacted][11] Because

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[8] Mitigation Measures §§23.3.1.4.1.1 and 23.3.1.4.1.2.

[9] Mitigation Measures §§23.3.1.4.1.3 and 23.3.1.4.2.

[10] Copy attached to the Complaint as Exhibit A.

[11] Complaint Exhibit A, at 6. As stated in the Seneca/AET contract, a decatherm equals one million BTU, or 1 mmBTU. *Id.* at 2.

[redacted][12]

Seneca and its commonly controlled affiliate AET have elected to structure the inter-affiliate charge as a variable cost, in an attempt to recover all of the costs of the pipeline (both fixed and variable) in Batavia's reference levels. [redacted] Seneca would have an incentive to Bid at the level of Batavia's actual variable costs, including the variable costs of local gas transportation, in order to maximize the frequency with which the Generator is committed, thus increasing the opportunity to recover infra-marginal energy revenues.[13] As the Commission has held in the specific context of ROS Generators that are needed for reliability: "In contrast, the ability to include and recover costs in excess of marginal cost, including fixed costs, in bids during periods when the generators are required to run for reliability is evidence of market power."[14]

Second, even if the Seneca/AET contract did include a variable rate, the cost basis for any such charge would have to be verified, since the contract is between affiliated parties and not an arm's-length agreement.[15] The Natural Gas Transportation Agreement is so far from an

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[12] As confirmed by the affidavit of Mr. Timothy Duffy, the NYISO's Manager, MMA Production Processes, Attachment B to this Answer, [redacted] Duffy Affidavit at ¶5.

[13] *See, e.g., New York Independent System Operator, Inc.*, 131 FERC ¶ 61,169 at P 73 (2010) ("May 2010 ROS Order") (holding that "in a competitive market, a generator lacking market power would be expected to submit bids into the NYISO spot market at a level that, if accepted at that bid price, would be expected to cover the generator's marginal costs.").

[14] *Id.*

[15] Complaint at 15 (describing AET as "an affiliate of Seneca"); *see also* New York Public Service Commission, Declaratory Ruling on Review of a Transfer Transaction and Order Providing for Lightened Regulation, Case 09-G-0490 (2009) ("NYPSC Declaratory Ruling"), at

arm's-length, market-based agreement that it was signed by the same person on behalf of both parties.[16]

The NYISO's Market Mitigation and Analysis Department ("MMA") has asked Seneca to provide cost data for the pipeline, which has been a component of the Batavia generating plant since its inception, but Seneca has repeatedly refused MMA's requests to provide cost support for the local gas transportation charge. For example, Exhibit B to the Complaint is a memorandum dated November 23, 2010 from the MMA to Alliance, the parent company of Seneca and AET. Paragraph 1(b) of that memo states that the local gas transportation costs appear to be closer to [redacted]/mmBTU than the amount claimed by Alliance, and goes on to point out that "Alliance has not responded to repeated requests for current data on their local distribution costs/mmbtu."[17] Similarly, an e-mail from Alex Schnell of the NYISO to representatives of Seneca dated October 21, 2011 states:

> The additional data Alliance provided did not include any rates with marginal (per unit) cost components that were higher than the [redacted] mmbtu rate that the MMA is using to develop the reference level for the Batavia plant, and Alliance again refused to provide data indicating the actual cost its wholly-owned subsidiary incurs to provide the local delivery service to the Batavia plant.[18]

In an earlier e-mail, Mr. Schnell had stated: "MMA would be willing to consider basing the reference level on National Fuel Gas Distribution Corporation's (NFGDC's) charges to Alliance Energy Transmission (AET), but Alliance has refused to provide information about the

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2 (tracing the common corporate parent of Seneca and AET) (copy attached to the Complaint as Exhibit F).

[16] Complaint Exhibit A, at 12.

[17] Complaint Exhibit B, Memo dated Nov. 23, 2010, at 1.

[18] Complaint Exhibit B, email at 1.

contract between AET and NFGDC to the NYISO."[19] This e-mail goes on to conclude that: "Alliance's refusal to provide data to support the marginal costs it actually incurs to provide local gas transport service to the Batavia generator has made it significantly more difficult for the NYISO to develop the LDC [local distribution company] component of the Batavia generator's reference level."[20] It is noteworthy that the Seneca/AET contract includes a variable charge of [redacted] per decatherm of gas transported, but includes no fixed charges in most circumstances.[21] Nowhere does the Complaint show that responsive marginal cost information was provided to the NYISO in answer to these requests.

Third, in refusing to provide marginal cost support for the inter-affiliate charge under the Seneca/AET contract, Seneca argues that the contract rate that AET charges Seneca is on file with the New York State Public Service Commission ("NYPSC"), is subject to the NYPSC's regulatory jurisdiction and scrutiny, and is therefore somehow binding on the NYISO's determination of reference levels. The fact that the Seneca/AET contract is on file with the NYPSC does not provide the variable cost data that is necessary for the NYISO to determine an appropriate reference level, nor does the Complaint show that the use by the NYISO of the variable costs of the AET pipeline in setting reference levels would conflict with any holding of the NYPSC. The NYPSC Declaratory Ruling, Exhibit F to the Complaint, does not make any determination about the cost structure of the AET pipeline, much less one that would conflict in any way with a NYISO determination of reference levels based on the variable cost of gas

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19 *Id.*, email at 2.

20 *Id.*, email at 3.

21 As noted in n.11 above, a decatherm equals one million BTU, or 1 mmBTU.

transportation by that pipeline, and the Complaint does not cite any other NYPSC order that makes such a determination.

The NYPSC Declaratory Ruling indicates that the NYPSC relies on Batavia's participation in a competitive wholesale electric market to discipline the price that AET charges Seneca for local gas distribution service. The NYPSC Declaratory Ruling explains that "entities providing utility service on a competitive basis do not require the degree of regulatory scrutiny applied to monopoly suppliers."[22] The NYPSC premised the application of lightened regulation for AET on the assumption that Batavia, AET's only customer, would be selling into competitive markets. [redacted]

In the absence of data from Seneca or AET, the NYISO has no alternative to basing the reference level on variable cost data for a comparable pipeline, such as Niagara Mohawk.[23]

2. Minimum Run Time for Batavia

The Complaint does not and cannot contest the basis for a decision by the NYISO to set the minimum run time reference level for Batavia at some period less than [redacted] hours. In fact, the minimum run time now being applied as a reference level for Batavia is [redacted] hours.[24] This aspect of the Seneca Complaint is premature, and the Seneca pleading is more in the nature of a request for a declaratory order under §385.207 of the Commission's rules, rather than a complaint under §206.

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22 NYPSC Declaratory Ruling, at 4.

23 Mitigation Measures §§23.3.1.4.2 and 23.3.1.4.2.1; *see* Complaint Exhibit B.

24 Duffy Affidavit at ¶4.

Seneca complains that the NYISO and its external Market Monitoring Unit ("MMU") "have arbitrarily determined that a [redacted] hour minimum run time is appropriate," but does not cite any documents showing that the NYISO or the MMU have reached this conclusion or assertedly erroneous grounds for it, nor does the Complaint provide any specific cost justification for a [redacted] hour run time.[25] Rather, the Complaint in essence simply asserts that because Batavia "was designed to operate in a base-loaded configuration under a long term PURPA contract," it should always have a [redacted] hour run time, even though the PURPA contract expired some time ago.[26]

An on-going analysis of the operating performance and minimum run time Bids of comparable units, as well as other data, by the NYISO and its MMU has raised significant questions about whether, under competitive conditions, a Generator with the characteristics of Batavia would maintain a [redacted] hour minimum run time. In connection with raising these concerns with Seneca, Seneca has been asked to quantify any increase in start-up costs that might result from unit wear and tear or other factors consequent to a shorter minimum run time. As with the variable costs data for the AET pipeline, Seneca has not responded to these requests.[27] The result of all this is that the record before the Commission on this Complaint does not support an order directing the NYISO to lock in a [redacted] hour minimum run time for Batavia.

3. Changes to O & M Reference Levels Based on the GE Study

While the Complaint makes a number of general assertions about NYISO inquiries regarding the O & M costs for Batavia, a close reading again reveals that it does not identify any specific line item of O & M costs as to which the NYISO and Seneca are in disagreement. To

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[25] Complaint at 33. The Complaint refers to the MMU as the Independent Market Monitor, or IMM.

[26] Complaint at 20.

[27] Potomac Economics Affidavit, at ¶21.

the contrary, the Complaint acknowledges that on two occasions the NYISO "restored" reference levels when supporting O & M cost data that the MMA requested was supplied by Seneca.[28]

Rather than identifying any specific contested component of Batavia's O & M costs that the MMA, in consultation with the MMU, has refused to include in Batavia's reference levels, the Complaint attaches a GE Study that was completed on October 12, 2011 and provided to the MMA on October 18, 2011, and requests that the Commission declare that the "NYISO should be directed to recognize the legitimate and verifiable results of the GE study and adjust the reference level for operation and maintenance accordingly."[29] The Complaint does not mention that the GE Study was furnished to the NYISO less than two weeks before the Complaint was filed.

The MMA and the MMU have begun their evaluation of the GE Study, and have determined that there are a number of reasons why the results of the GE Study cannot be imported wholesale into the Batavia reference levels. Costs that are newly identified in the GE Study may be appropriate for inclusion in Batavia's reference levels, but additional support and explanation is required before the MMA can agree to include these costs. As stated in the attached affidavit of Mr. Timothy Duffy, the NYISO would require, for example: (a) data to substantiate the claim in the GE Study that [redacted] as well as the underlying data and calculations used by GE to calculate the [redacted] fired hour cost for labor; (b) further definition of the nature of the [redacted] fixed cost for "chemicals" recommended by the GE Study, since it is unclear whether this is a one-

[28] Complaint at 31.

[29] Complaint at 38.

time investment, or a per run-hour or per-start cost, along with underlying data and calculations used by GE to calculate the overall cost of [redacted] fired hour; (c) back-up data and calculations, including the cost normalization methodology, for the "utilities" costs presented in the GE Study; (d) further definition of the nature of the [redacted] fixed cost for "equipment maintenance" cited in the GE Study, as well as the underlying data and calculations for the overall cost of [redacted] fired hour, and an explanation as to why Batavia's claimed "variable equipment maintenance" costs are nearly [redacted]; (e) justification for the continued need to fire the Batavia unit at a temperature [redacted] thus dramatically increasing major maintenance costs, along with data on historic firing temperatures at the plant.[30]

In short, this aspect of the Complaint is again premature, and in the nature of a request for a declaratory judgment. Analogous to the minimum run time situation, the record before the Commission does not support an order directing the NYISO to modify the Batavia reference levels on the basis of the GE Study.

D. Disposition of the Complaint

Seneca has not shown that the NYISO has determined reference levels for Batavia that violate the standards for the determination of reference levels set forth in the Mitigation Measures. Instead, Seneca makes scattered attacks on the process for setting reference levels, all of which amount to collateral attacks on the prior Commission orders approving that process and its timelines. At the same time, Seneca's acknowledgment that the NYISO has "restored" certain reference levels based on data provided by Seneca in the consultation process confirms the

[30] Duffy Affidavit at ¶¶ 6 and 7.

efficacy of that process.[31] Accordingly, the Complaint should be dismissed, and the parties should be directed to continue the reference level consultation process specified in the NYISO Services Tariff.

II. TARIFF REQUIREMENTS FOR THE DETERMINATION OF REFERENCE LEVELS

A. The Purpose of the NYISO Market Power Mitigation Measures is to Ensure Competitive Outcomes in NYISO Markets

Pursuant to the Mitigation Measures, the NYISO monitors Market Party conduct in the NYISO markets and mitigates the market effects of conduct that would substantially distort competitive outcomes.[32] The NYISO imposes mitigation measures to remedy Market Party conduct that is significantly inconsistent with competitive conduct and would result in a material change in prices in the NYISO markets or in a production cost guarantee payment amount.[33] If mitigation is required, the NYISO substitutes a default bid in place of the unit's bid at the reference level that the NYISO determines for that unit and bid element.[34] The intended result is the restoration of the outcomes that would have occurred if the mitigated Generator had faced competition.[35]

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[31] Complaint at 31.

[32] Mitigation Measures §23.1.1.

[33] Mitigation Measures §23.2.3.1.

[34] Mitigation Measures §23.4.2.

[35] *See New York Independent System Operator, Inc.*, 99 FERC ¶61,246 (2002) at 62,038 ("Comprehensive Mitigation Measures Order") (finding that a default Bid based on reference levels is "designed to cause a market participant to bid as if faced by a competitive market, for participants who exceeded thresholds for withholding.").

B. A Generator's Reference Levels Must Be Based on Its Marginal Costs

Since a Generator's reference level is intended to be an approximation of the Bid that the unit would be expected to submit in a competitive market, the NYISO is required to set the reference level for a Generator based on its marginal costs.[36] The Commission has determined that "a generator can be expected to bid at its marginal cost level in a competitive market."[37] This is because "under the NYISO's uniform market-clearing price auction procedures, a seller's profits are maximized by marginal cost bidding."[38] The NYISO Tariffs do not provide for, and the NYISO does not include, a unit's fixed costs in the determination of the unit's reference level as the inclusion of fixed costs is not consistent with expected bidding behavior in a competitive market. As noted by the Commission, "the ability to include and recover costs in excess of marginal costs, including fixed costs, in bids during periods when the generators are required to run for reliability is evidence of market power."[39]

C. The NYISO Must Determine Appropriate Reference Levels Based on its Assessment of Available Data

The NYISO sets a Generator's reference level in accordance with the requirements in Section 23.3.1.4 of its Mitigation Measures (Attachment H to the Services Tariff), following consultation with its MMU. Section 23.3.1.4 sets forth several different methods the NYISO can use to determine a Generator's reference levels. The approach that the NYISO employs in a

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[36] Mitigation Measures §23.3.1.4.1.3.

[37] October 2010 ROS Order at P. 45; *see also* May 2011 ROS Order at P. 24 ("[T]he Commission has previously ruled . . . that bidding above marginal cost in the energy market is not conduct expected in a competitive energy market.").

[38] May 2010 ROS Order at P. 73.

[39] May 2010 ROS Order at P. 73; *see also* May 2011 ROS Order at P. 24 ("NYISO's energy markets are not designed or expected to recover more than marginal costs of the energy.").

particular instance is based on the data available to the NYISO. Ideally, the NYISO determines reference levels based on Bids submitted for the Generator that caused the Generator to be committed through a competitive, economic evaluation.[40] In the case, however, of a Generator [redacted] that is not regularly committed based on an economic evaluation of its Bids, the NYISO necessarily sets the reference level based on its determination of the Generator's marginal costs.[41] The NYISO develops this determination through an assessment of the data provided by the Market Party, or through data that is otherwise available to the NYISO.[42]

Pursuant to Section 23.3.1.4.1.3 of the Mitigation Measures, the NYISO will initially attempt to determine a unit's reference level by consulting with the Market Party and assessing the data that it provides. The Market Party is responsible for providing the NYISO with its unit's operating costs.[43] The NYISO will then determine the unit's marginal costs by assessing the unit's incremental costs through the following formula: ((heat rate * fuel costs) + (emissions rate * emissions allowance price) + (other variable operating and maintenance costs)).[44] This section of the Mitigation Measures expressly sets forth the NYISO's responsibility to make its own assessment of the data used in the foregoing formula, stating that:

> The ISO's determination of a Generator's marginal costs shall include an assessment of the Generator's incremental operating costs in accordance with the [foregoing] formula, and such other factors or adjustments as the ISO shall

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[40] *See* Mitigation Measures §§ 23.3.1.4.1.1 (Incremental Energy and Minimum Generation) and 23.3.1.4.4.4.1 (Start-Up).

[41] Mitigation Measures §23.3.1.4.1.3.

[42] Mitigation Measures §§23.3.1.4.1.3 and 23.3.1.4.2.

[43] Mitigation Measures §23.3.1.4.1.3.

[44] *Id.*

reasonably determine to be appropriate based on such data as may be furnished by the Market Party or otherwise available to the ISO.[45]

If the NYISO cannot determine the reference level through consultation with the Market Party or if the reference level produced by the consultation process does not reasonably approximate a Generator's marginal costs, the NYISO is required to determine an appropriate reference level in accordance with Section 23.3.1.4.2 of the Mitigation Measures, based on (i) its estimate of the costs or physical parameters of the Generator, taking into account available operating costs data, appropriate input from the Market Party, and the best information available to the NYISO, or (ii) an appropriate average of competitive Bids by one or more similar Generators.

In its Complaint, Seneca incorrectly states that the "NYISO's Tariff ***requires*** [the NYISO] to take cost data provided by the Market Party and incorporate it into reference prices."[46] There is nothing in Section 23.3.1.4 of Attachment H that requires that the NYISO substitute a Market Party's assessment for its own regarding the validity of the data used to determine a Generator's marginal price or to set a Generator's reference level. Such a reading of the Mitigation Measures would reduce the NYISO's market monitoring and mitigation functions to the role of a rubber stamp, which would be inconsistent with the express purpose of the NYISO's market power mitigation measures: "[T]o provide the means for the ISO to mitigate the market effects of any conduct that would substantially distort competitive outcomes in the NYISO Administered Markets . . . ."[47] The reference level provisions clearly contemplate that the NYISO, acting in consultation with the MMU, will be responsible for an independent

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[45] *Id.*

[46] Complaint at p. 25 (emphasis in original).

[47] Mitigation Measures §23.1.1.

assessment and determination of a Generator's marginal costs in order to determine reference levels. For example, Section 23.3.1.4.1.3 expressly provides for "[t]he ISO's determination of a Generator's marginal costs" and indicates that the NYISO can assess "such other factors or adjustments as the ISO shall reasonably determine to be appropriate" based on the available data. In addition, Section 23.3.1.4.2 foresees the possibility that the NYISO may not be able to agree on a reference level with a Market Party and authorizes the NYISO to determine the reference level based on its own estimate of the costs or physical parameters of the Generator. The NYISO's estimate must take into account "available operating cost data, appropriate input from the Market Party, and the best information available to the NYISO."[48] However, the NYISO's assessment of the available data is not constrained by the Market Party's assessment.

All of these procedures have operated for many years with the express approval of the Commission. As the Commission stated in an order resulting from a comprehensive review of the Mitigation Measures in 2002, "we approve today NYISO's process for setting Reference Levels and believe that NYISO offers adequate optional methods to calculate Reference Levels which will allow participants the opportunity to include appropriate production cost."[49] More recently, the Commission has stated that the "NYISO's development and use of reference levels is well-defined in the tariff as previously approved by the Commission."[50] In its initial approval of the Mitigation Measures, the Commission specifically approved the use of reference levels,

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[48] Mitigation Measures §23.3.1.4.2.1.

[49] Comprehensive Mitigation Measures Order at 62,045.

[50] May 2010 ROS Order at P 73.

and held that: "The NYISO does retain some limited discretion as to when to use mitigation and for how long, but we think that this level of discretion is desirable . . ."[51]

Seneca's confusion appears to be the result of its misreading of the provisions in Section 23.3.1.4.7 of the Mitigation Measures. Seneca cites to these provisions for the proposition that the NYISO does not have the discretion to review or to refuse to incorporate into Batavia's reference levels the local gas transportation costs that Seneca states are established by its contract with its affiliate AET.[52] Specifically, Seneca quotes the requirement in Section 23.3.1.4.7.4 that "the ISO shall use fuel type and fuel price information that Market Parties or their representatives submit to develop Generator reference levels" unless the information is inaccurate, not timely submitted, or misleading.

Contrary to Seneca's expansive reading, however, Section 23.3.1.4.7 of the Mitigation Measures does not provide a license to a Market Party to make any fuel-related costs it may submit binding on the NYISO. The fuel indexing provisions of Section 23.3.1.4.7 are designed to enable owners of generation to reflect in their Bids, and for the NYISO to reflect in related reference levels, fuel-related costs that vary on a day-to-day basis. The local delivery charge on the AET pipeline is not a cost component that varies on a daily basis. It is a set charge that Seneca can and should present to the MMA and the MMU for their review. The MMA has invited Seneca to submit cost support that would justify, on a variable cost basis, the Seneca/AET contract price for local gas transportation, but Seneca has not responded to the MMA's repeated invitations.

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[51] *Central Hudson Gas & Electric Corp.*, 90 FERC ¶61,317 (2000) at 62,055 (also finding that the NYISO's limited discretion in applying the Mitigation Measures was consistent with the Commission's directives in its November 23, 1999 initial order in the *Central Hudson* docket, 89 FERC ¶61,196 (1999)).

[52] Complaint at 8 and 26.

The fuel price/type indexing rules set forth in Section 23.3.1.4.7, *et seq.* of the Mitigation Measures do not provide authority for Seneca to attempt to re-introduce on a day-by-day basis the [redacted]/decatherm rate in the Seneca/AET contract, which has been in effect since March, 2010. Section 23.3.1.4.7.1 explains that the purpose of those provisions is to permit Market Parties to "contact the ISO to request an adjustment to Generator reference level(s) ***when the Generator's fuel type or fuel price change***."[53] Section 23.3.1.4.7.3 states that "Market Parties shall notify the ISO ***of changes in fuel type or fuel price*** by [specified means of communication],"[54] Section 23.3.1.4.7.4 provides that "the ISO shall use fuel type and fuel price information that Market Parties or their representatives submit to develop Generator reference levels unless (i) the information submitted is inaccurate . . . ." Finally, all of the foregoing are subsections under Section 23.3.1.4.7, which states that: "The ISO shall use the best information available to it to adjust reference levels to reflect appropriate fuel cost." The Seneca/AET contract is not the best information available on the variable local gas transportation cost for Batavia.

Further support for the proper interpretation of Section 23.3.1.4.7 and its subsections can be found in Appendix B to the *Reference Level Software User's Guide* that the NYISO developed to instruct Market Parties on how to use the Reference Level Software ("RLS") functionality that permits Market Parties to submit updated fuel prices with their Bids. This document explains:

- For ***Rest of State natural gas costs***, burden may include the following:
    - Any applicable local/municipal sales taxes

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[53] Emphasis added.

[54] Emphasis added.

- Pipeline Transport Costs, for delivery from the point of the spot quotation to the metering point where the gas LDC picks up the gas
- Local Distribution Costs (charges by the gas LDC to deliver gas from an Interstate Pipeline metering point to the site of the generator)
- Fuel Acquisition Brokerage Fees (pre-contracted $/mmBtu procured)

In general, the tax rates and adders that determine the burden will rarely change: When these burden parameters do happen to shift, the new values should be submitted through the normal RLS [Reference Level Software] Submission process. Changes in burdened reference fuel costs made through IBRT [Increasing Bids in Real-Time] should typically reflect deviations in the commodity cost of the fuel, rather than changes in the more static burden parameters.

In this case, the MMA and the MMU reviewed Seneca's proposal to base its local gas delivery cost on the rate in the Seneca/AET contract, and rejected the contract rate as inaccurate and overstated. The NYISO has also appropriately rejected Seneca's attempts to re-introduce the unchanging contract rate as a "change in fuel price or fuel type" under Section 23.3.1.4.7, *et al.*, of the Mitigation Measures.

D. Reference Levels are Subject to Continuous Review and Adjustment to Reflect Up-To Date Cost Information

A Generator's reference level is not a static number. The NYISO is required to continuously review and make adjustments to reference levels to ensure that they continue to reflect the marginal costs of the unit. For example, pursuant to Sections 23.3.1.4.1.1 and 23.3.1.4.1.2 of the Mitigation Measures, the reference level for a unit active in the NYISO's competitive markets changes on a regular basis to retain a rolling ninety-day period of applicable data. For units that are not active in the NYISO's competitive markets, [redacted] the NYISO regularly monitors and makes adjustments to the reference level as the data underlying the Generator's marginal costs changes, or as new data becomes available that provides additional information on a Generator's marginal costs.

This process is illustrated by the memorandum of November 23, 2010, that is attached to the Complaint as Exhibit B. The memo recites that fuel-related reference cost components were first constructed for Batavia after Seneca was acquired by Alliance Energy, New York, LLC ("Alliance"), based on worksheets Alliance submitted to the NYISO in early 2006. In December 2009, Alliance provided updated daily fuel cost data for Batavia, which made it clear that in several respects actual fuel costs for Batavia were lower than the costs that the NYISO had agreed to allow up to that point in the absence of daily cost data. With the newly submitted daily data, it was then appropriate to revise Batavia's reference levels to incorporate the updated fuel cost information. In short, under the Mitigation Measures, the determination of reference levels is a continuous, on-going process.

E. The NYISO Consults with Market Parties Regarding Generator Reference Levels in Accordance with the Processes Set Forth in the Mitigation Measures

Section 23.3.3.1 of Attachment H sets forth specific processes through which the NYISO and Market Parties can review a Generator's reference levels. Pursuant to these processes, a Market Party can provide the NYISO with additional data and analysis regarding its Generators, and the NYISO is required to assess the data in coordination with its MMU and to determine whether adjustments to the Generator's reference levels are warranted.

A Market Party may initiate a consultation with the NYISO at any time regarding the information and analysis used by the NYISO to determine a unit's reference level.[55] The Market Party may submit cost data and other information in support of its position.[56] If the Market Party's data indicates to the satisfaction of the NYISO (following consultation with the MMU)

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[55] Mitigation Measures §23.3.3.1.4.

[56] *Id.*

that the reference levels should be changed, the NYISO will work with the MMU to develop revised reference levels.[57] Revised reference levels are implemented on a going-forward basis.[58]

A Market Party may also challenge the reference levels used for the mitigation of the Bids of a ROS Generator, such as Batavia, upon receiving notice of the potential mitigation. The NYISO notifies a ROS Generator that was committed or dispatched for reliability reasons that it may be subject to ROS reliability mitigation within ten business days of the relevant market day.[59] The Market Party then has fifteen days to initiate a consultation request regarding the mitigation, which includes (i) the Market Party's explanation for why the reference level used by the NYISO was inappropriate or the Generator's bid was consistent with competitive behavior, and (ii) documents supporting its claim.[60] The NYISO consults with the Market Party to determine whether the information available to the NYISO presents an appropriate basis for modifying the reference level or determining that the unit's bid was consistent with competitive behavior.[61] The NYISO may also request additional data from the Market Party, who is expected to undertake all reasonable efforts to provide the requested data promptly.[62] The NYISO has fifty business days to make a determination regarding the mitigation.[63] Any revised payment, with interest, that may result from a decision to rescind mitigation, or to revise

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57 *Id.*

58 *Id.*

59 Mitigation Measures §§23.3.3.3.1.3.1, 23.3.3.3.1.3.2, and 23.3.3.3.1.3.3.

60 Mitigation Measures §§23.3.3.3.1.4 and 23.3.3.3.1.5.

61 Mitigation Measures §23.3.3.3.1.7.1.

62 Mitigation Measures §23.3.3.3.1.7.3.

63 Mitigation Measures §23.3.3.3.1.7.2.

reference levels, would then occur through the normal billing and settlement process.[64] If the NYISO does not affirmatively determine that the mitigation that was initially applied should be modified within the allowed 50 days, the Bid remains mitigated.[65]

F. Current Reference Level for the Batavia Unit

The NYISO sets the reference level for Batavia based on the Generator's marginal costs as determined by assessing data supplied by Seneca and other data available to the NYISO. In its Complaint, Seneca describes a number of different components of Batavia reference levels, but only disputes three: (i) the local gas transportation costs, (ii) the minimum run time, and (iii) O & M costs. As of the date of this Answer, Batavia's reference levels for these components are:

Local Gas Transportation Cost: [redacted]/mmBTU (in the Reference Level Software the [redacted]/mmBTU amount associated with the AET pipeline is included in a [redacted]/mmBTU "Adder" amount under the heading "Fuel Details").

Minimum Run Time: [redacted] Hours

Operation and Maintenance Costs: [redacted] for all three specified output levels (58, 59 and 60 MW).

Other variable costs: [redacted] for all three specified output levels (58, 59 and 60 MW).

These figures are provided by Mr. Timothy Duffy, the NYISO's Manager of MMA Production Processes, as the current values in the NYISO's Reference Level Software as of the latest revisions to the Batavia reference levels effective Aug. 11, 2011.[66] A print out from the Reference Level Software showing the current reference level minimum run time of [redacted] hours for

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[64] The NYISO's billing and settlement process is set forth in Article 7 of the Services Tariff.

[65] Mitigation Measures §23.3.3.3.1.7.2.

[66] Duffy Affidavit at ¶¶2 - 4.

Batavia is provided with this Answer as Attachment A.[67] The information provided through the NYISO's Reference Level Software regarding the Batavia unit's reference level is accessible by both NYISO and Seneca.

III. RESPONSES TO REFERENCE LEVEL ALLEGATIONS

A. The Record Does Not Support Use of the Seneca/AET Contract Price as the Reference Level for Local Gas Transportation Cost.

1. The Reference Level Should Be Based on the Variable Cost of Local Gas Transportation

The Commission has long recognized that reference levels should be based on a unit's marginal cost.[68] The attached affidavit from Potomac Economics (Attachment C to this Answer) confirms that this principle applies equally to Batavia's local gas transportation costs, and nothing in the Complaint establishes that local gas delivery costs should be exempt from the marginal cost principle for determining reference levels. Here, the incentives to bid at marginal costs inherent in competitive markets are reversed, since (a) Batavia does not face competition when dispatched as a DARU or because of a SRE, and (b) Seneca and AET, the pipeline owner, are affiliated entities. Under these circumstances, the common incentive of both entities is to include fixed costs in the pipeline's ostensibly variable rate, with the expectation that these costs would then be recovered by the affiliated generator through their inclusion in reference levels. Determining the minimum generation cost reference level for Batavia on the basis of the Seneca/AET contract as opposed to the proxy identified by the NYISO would increase the reference level by approximately [redacted] MWh.[69] Thus, it is not enough for Seneca simply to

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[67] Duffy Affidavit at ¶2.

[68] *See* Answer, Section II(B), above.

[69] Potomace Economics Affidavit ¶30.

point to the contract with AET and claim that it is entitled to include in its reference level whatever price is specified in that contract.

2. Seneca Has Never Provided Any Data to Substantiate the Variable Cost of Gas Transportation on the AET Pipeline

Because of its obligation to consider only variable costs in its determination of reference levels, the NYISO has repeatedly asked Seneca to identify and substantiate the variable cost component of the [redacted]/decatherm rate specified in the Seneca/AET contract. The history of these requests is documented in Section I(C)(1) above.

In the absence of variable cost data from Seneca, the NYISO has had no alternative to following the requirement of its Tariff to consider the best information available, which it has determined to be the [redacted]/mmBTU local gas transportation rate on the Niagara Mohawk system.[70] If Seneca is able to provide cost data for AET's pipeline that would justify a higher variable cost rate it should provide the information to the NYISO, as Seneca has been asked to do on numerous occasions. While the NYISO is required to look to proxies such as Niagara Mohawk if that is the best available data, Seneca faces no such imperative since it has the relevant data. Rather than attempting to identify comparable local gas transport facilities, Seneca should come forward with cost information regarding its affiliate AET's system (which is comprised of the same local gas pipeline delivery facilities Seneca owned from 2005 to 2010, when it transferred the facilities to AET).

While Seneca should be coming forward with data rather than pointing to assertedly comparable pipelines, it is noteworthy that the documents relating to other pipelines attached to the Complaint do not contradict the [redacted]/mmBTU figure used by the NYISO. The Nornew

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[70] Complaint Exhibit B, Memo dated Nov. 23, 2010, at 1. As noted in n.11, $0.63/mmBTU = $0.63/decatherm.

Energy Supply, Inc. ("Nornew") report attached to the Complaint as Exhibit C shows that Nornew collected $56,000/month from its customers over a 33 month period, despite average monthly volumes of delivered gas that varied significantly over that period. Thus, the rate in the Nornew document is fixed rather than variable. Similarly, the rate structures in the documents attached as Exhibit D and E to the Complaint do not support a variable charge (*i.e.*, a charge per decatherm of gas transported) in the range sought by Seneca. For one of the eight Niagara Mohawk Power Corporation customers referenced in Exhibit D there is only a fixed monthly charge, while for the other seven, the variable components range from $0.055/mmBTU to $0.60/mmBTU. The St. Lawrence-AG Energy contract attached to the Complaint as Exhibit E specifies a variable charge of only $0.05/mmBTU.

3. Neither the Fact that the Seneca/AET Rate is in a Contract Nor the Fact that the Contract Is on File with the NYPSC Requires that the Local Gas Transportation Cost in Batavia's Reference Level be Determined by the Contract Rate

The 11 mile long gas distribution pipeline that supplies Batavia was constructed at approximately the same time that Batavia was constructed,[71] has never served any facility or customer other than Batavia,[72] and was owned by the same entity that owned Batavia until 2010, when Seneca transferred the pipeline to AET, an entity under common corporate ownership with Seneca.[73]

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[71] *See* New York Public Service Commission, Order Granting Certificate of Environmental Compatibility and Public Need and Approving Environmental Management and Construction Plan, Case 91-T-0669 (1992).

[72] New York Public Service Commission, Order Approving Amendment and Transfer of Certificate, Case 09-T-0489 at pp. 1-2 (2009) ("NYPSC Certificate Transfer Order").

[73] *See id.* at p. 4 (noting that "the ultimate ownership, operation and maintenance of the gas transmission line authorized in the Certificate will not change."). The NYPSC's statement in the NYPSC Certificate Transfer Order is consistent with the Seneca and AET statement in their petition to transfer the pipeline that "the transfer of the pipeline involves a mere intra-corporate

Were the Commission to accept Seneca's assertion that the NYISO should be required to use the rate specified in the Seneca/AET contract to set Batavia's reference level without further inquiry, the Commission would provide a ready means for entities owning or controlling generating assets to convert fixed costs into variable costs for purposes of setting their Generators' reference levels. In addition to spinning off lateral pipelines that supply generating facilities to an affiliated entity, owners could, for example, spin off equipment such as step-up transformers to an affiliate, and then enter into a contract with the affiliate to provide "step-up transformer service" at a nominally variable rate that included all or a significant portion of the fixed costs of the step-up transformer. Any such strategy directly contradicts the marginal costs mandates of the Mitigation Measures.

Nothing in the NYPSC Order would prevent, or conflict with, the NYISO's establishing reference levels based on Batavia's marginal costs, as required by its FERC-approved tariff.[74] To the contrary, the NYPSC order does not even discuss, much less make any findings on, the cost structure of the AET pipeline. The Seneca/AET Joint Petition to the NYSPC and the resulting NYSPC Order addressed only two specific issues, namely: (i) whether the transfer of the pipeline from Seneca to AET required NYPSC approval pursuant to Section 70 of the Public Service Law; and (ii) whether AET qualified for lightened regulation.[75]

In granting the Seneca/AET Joint Petition, the NYPSC only ordered that AET file the natural gas transportation contract between AET and Seneca, and that AET make annual filings

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restructuring." New York Public Service Commission, Cover letter for Joint Petition for Approval of Amendment to and Transfer of Certificate of Environmental Compatibility and Public Need, Case 09-T-0489 at p. 1 (June 11, 2009).

[74] *See* NYPSC Declaratory Ruling, Complaint, Exhibit F.

[75] *Id.*

"detailing its revenues received and volumes transported."[76] It follows, and a search of the public records confirms, that the NYPSC has never conducted an assessment of, or issued a ruling on, the transportation costs associated with the AET lateral pipeline, as (i) the transportation contract contains no cost data, and (ii) the annual filings do not require the submission of cost data. Thus, there is nothing in the NYPSC order that could conflict with a determination of reference levels based on the marginal cost of gas transportation by the lateral pipeline, and there have been no proceedings before the NYPSC dealing with the issues relevant to the reference level for local gas transportation service over the AET.[77]

As shown in Section I(C)(1) above, the NYPSC's Declaratory Ruling presumes that Batavia operates in competitive markets.[78] In fact, that is not the case, and only effective mitigation of Batavia's Bids to its variable costs ensures that result. Thus, the adoption of appropriate reference levels through NYISO's tariff satisfies a prerequisite for the NYPSC's decision to grant lightened regulation, and does not present any conflict with NYPSC regulation.

In light of the foregoing, it is clear that the state law requirement to file the Seneca/AET contract with the NYPSC does not mandate that the contract rate be incorporated into the reference levels for the Batavia unit.

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[76] Seneca Complaint at 29; *see also* NYPSC Declaratory Ruling at 5.

[77] Seneca does not and cannot cite any authority requiring that the NYISO participate in a NYPSC proceeding to determine such costs, when the FERC-approved Tariff entrusts such determination to the NYISO.

[78] *See* NYPSC Declaratory Ruling at 4 (stating "entities providing utility service on a competitive basis do not require the degree of regulatory scrutiny applied to monopoly suppliers.").

4. Conclusion

For the foregoing reasons, the Commission should (a) reject Seneca's request to adopt the rate in the Seneca/AET contract as the local gas transportation cost in determining reference level for Batavia, (b) determine that the NYISO's actions were consistent with requirements of the Mitigation Measures, and (c) require Seneca to provide to the NYISO appropriate data from which the NYISO can determine the variable cost of local gas transportation for Batavia.

B. The Record Does Not Support a Requirement That the NYISO Lock in a [redacted]-Hour Minimum Run Time Reference Level for Batavia.

1. The [redacted]-Hour Minimum Run Time Has Not Been Lowered, so There Is No Record on This Issue from the Consultation Process.

Attachment A to this Answer is a printout from the reference level database for the Batavia unit. As confirmed by the affidavit from Mr. Timothy Duffy, this printout shows that the minimum run time reference level for the Batavia unit continues to be set at [redacted] hours.[79] Both the MMA and the MMU have raised significant questions, however, about whether such a lengthy run time would be expected under competitive conditions, and have requested that Seneca justify its continued use by Batavia.

At this point in the consultation process on the minimum run time component of Batavia's reference level, Seneca is improperly using the vehicle of a complaint to seek a declaratory order that the current minimum run time reference level for Batavia is somehow inviolable. In addition to being procedurally improper, this effort is also inconsistent with the reference level concept embodied in the NYISO's Mitigation Measures. As discussed above, reference levels are always subject to review and modification on the basis of current data and changing conditions.

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[79] Duffy Affidavit ¶2.

2. Analysis by the MMU Shows That the Minimum Run Time Reference Level for Batavia Should Be the Subject of Further Discussions in the Consultation Process.

As the Complaint indicates, in the reference level consultations between Batavia, the NYISO and the MMU, there have been discussions of whether [redacted] hours is necessarily the correct reference level minimum run time for Batavia, but the Complaint does not accurately characterize those discussions.

On page 21 of the Complaint, Seneca asserts that the NYISO's MMU takes the position that "the actual operational characteristics of the unit are irrelevant," and that "the only characteristics that should govern are environmental restrictions/limitations or a physical limitation."[80] This is not correct. The MMU agrees that the minimum run time reference level for a Generator should be sufficiently high to account for physical and environmental limitations. The MMU also believes that minimum run time reference levels for a Generator should be set at levels that enable Generators to manage cycling costs and other variable O & M costs more efficiently. As explained in the attached Potomac Economics affidavit, locational prices typically rise during the day and fall at night.[81] As a result, as a general matter a generator that has operating costs that are higher than overnight prices must decide whether it is more economic to shut down overnight, when it is not needed for reliability, and start up the next morning, or simply stay online overnight.[82] Accordingly, as one means of assessing Seneca's assertions about the necessity of the [redacted]-hour minimum run time for Batavia, Potomac Economics evaluated the scheduling information for the Batavia unit for the period from May to September

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80 Complaint at 21.

81 Potomac Economics Affidavit at ¶18.

82 *Id.*

2011 against this cost management and efficiency principle. Considering the prevailing locational prices, and the average start-up cost and minimum generation cost reference levels for Batavia, the data for this period suggest that it would be more efficient for Batavia to have a minimum run time of less than [redacted] hours and to cycle off overnight in most cases. In other words, it would be more efficient for Batavia to incur additional start-up cost than the losses inherent in operating during the low-priced overnight periods.[83]

The MMA and MMU both acknowledge that increased on-off cycling of Batavia could increase the Generator's start-up costs, were such additional cycling to occur. Seneca has not responded, however, to invitations to provide the necessary data and to work with the NYISO to evaluate and quantify any possible increase in start-up costs.

On page 20 of the Complaint, Seneca contends that a [redacted]-hour minimum run time is appropriate because Batavia "was designed to operate in a base-loaded configuration under a long-term PURPA contract."[84] That fact alone does not mean that in a competitive environment Batavia would have a [redacted]-hour minimum run time reference level. Rather, competitive pressures should induce a more sophisticated analysis of Batavia's cycling costs. These costs may well be higher for Batavia then they would be had the unit originally been designed to cycle relatively frequently. Seneca has nonetheless declined invitations to engage the issue of cycling costs in the reference level consultation process.

Seneca also complains that the MMU has engaged in a faulty analysis of minimum run times by looking at unit with a LM6000 turbine, while the Batavia unit incorporates a GE Frame

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83 Potomac Economics Affidavit at ¶20.

84 Complaint at 20.

6 turbine.[85] In fact, Potomac Economics has looked at data on a number of Frame 6 units, both in New York and in New England. As explained in the attached affidavit, both reference level and run time offer data for these Frame 6 units indicates that these Generators have minimum run times that are substantially less than [redacted] hours.[86]

By insisting on a [redacted] hour minimum run time, Seneca effectively thwarts any effort to assess its true cycling costs by burying those costs in the lengthy run time. This masking of actual costs is antithetical to the NYISO's obligation to set reference levels that are consistent with the efficient, cost-minimizing outcomes of competitive markets.

3. Conclusion

For the foregoing reasons, the Commission should (a) reject Seneca's request to fix the minimum run time reference level for Batavia at [redacted] hours, (b) determine that the NYISO's actions were consistent with the requirements of its Mitigation Measures, and (c) instruct Seneca to cooperate with the ongoing effort by the MMA and MMU to determine an appropriate minimum run time and related cycling costs for Batavia.

C. The Record Does Not Support Requiring the NYISO to Adopt the GE Study in Setting Reference Level for Variable Operations and Maintenance Costs.

1. The GE Study Was Only Recently Provided to the NYISO and Is Still Being Vetted by the NYISO and the MMU.

Rather than challenge any specific line item of the O & M reference levels on the basis of facts developed during the consultation process, Seneca broadly asserts that the "NYISO should be directed to recognize the legitimate and verifiable results of the GE study and adjust the

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85 Complaint at 21, 33, and 38.

86 Potomac Economics Affidavit at ¶¶25-29.

reference level for operation and maintenance accordingly."[87] Seneca glosses over the fact that the GE Study was provided to the NYISO on October 18, only eight days before the filing of the Complaint on October 26, 2011.[88] While the NYISO and the MMU are in the process of evaluating the GE Study, it is patently unreasonable for Seneca to dump that study on the NYISO, distract its attention with a complaint filed only a few days later, and then complain that the study results have not been incorporated into Batavia's reference levels.

2. Preliminary Analysis by the NYISO and the MMU Indicates That There Are a Number of Issues That Would Need to Be Resolved before the GE Study Could Be Used As a Basis for Reference Levels.

The Complaint states that: "Seneca spent significant amounts to GE to prepare the report that details the fact that the operation and maintenance costs associated with the Batavia plant are higher than those costs Seneca had previously submitted to the NYISO."[89] Thus Seneca apparently does not contend that the GE Study provides a basis for changing any past reference levels. Going forward, as just noted, the NYISO and the MMU are evaluating the GE Study. This analysis is ongoing, but as discussed in Section II(C)(3) above preliminary results indicate that a number of questions and concerns would need to be resolved before cost information in the GE Study could be used in setting reference levels. Accordingly, the Complaint is premature, in the nature of a request for a declaratory order, and does not provide a record on which the Commission could order the adoption of the GE Study in the setting of reference levels for Batavia.

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87 Complaint at 38.

88 Duffy Affidavit at ¶6.

89 Complaint at 31.

3. Conclusion

For the foregoing reasons, the Commission should (a) reject Seneca's request to require the NYISO to incorporate the costs proposed in the GE Study into Batavia's reference levels without further inquiry, (b) determine that the NYISO's actions were consistent with the requirements of its Mitigation Measures, and (c) instruct Seneca to cooperate with the ongoing efforts by the MMA and MMU to review, consider, and incorporate where appropriate, the costs identified in the GE Study into Batavia's reference levels.

IV. COMMUNICATIONS AND CORRESPONDENCE

All communications, pleadings, and orders with respect to this proceeding should be sent to the following individuals:

Robert E. Fernandez General Counsel Belinda F. Thornton Director of Market Mitigation and Analysis Raymond Stalter Director of Regulatory Affairs Timothy P. Duffy Manager of Market Mitigation and Analysis Production Processes *Alex M. Schnell James Sweeney Attorney New York Independent System Operator, Inc. 10 Krey Boulevard Renssalaer, NY 12144 518 • 356 • 8707 518 • 356 • 7678 Fax aschnell@nyiso.com	* William F. Young * Michael J. Messonnier Hunton & Williams LLP 2200 Pennsylvania Ave., N.W. Washington, D.C. 20037 202 • 955 • 1500 202 • 778 • 2201 Fax wyoung@hunton.com mmessonnier@hunton.com

* Persons designated for receipt of service. The NYISO requests a waiver of the limitation of 18 C.F.R. § 385.203(b)(3) to permit service on the persons designated above at the electronic addresses specified.

V. COMPLIANCE WITH RULE 213 OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE

A. Disputed Material Allegations

As demonstrated throughout this Answer, the NYISO specifically denies each of the material allegations in the Complaint, including the following:

- The NYISO denies that the Seneca/AET contract price is the appropriate basis for setting the reference level for local gas transportation costs for the Batavia unit.
- The NYISO denies that market mitigation reference levels should provide for the recovery of fixed costs.
- The NYISO denies that the minimum runtime for the Batavia unit should be locked in at [redacted] hours.
- The NYISO denies that the reference level for variable operations and maintenance costs for the Batavia unit should be automatically revised on the basis of the GE Study.
- The NYISO denies that the setting of reference levels for the Batavia unit has in any way violated the requirements of the Services Tariff.

B. Law Upon Which This Answer Relies

The law upon which the Answer relies is set forth in the Answer, including primarily the NYISO's Mitigation Measures, which are set forth in Attachment H to the NYISO's Services Tariff, and related Commission decisions cited in this Answer.

C. Defenses

The defenses relied upon are:

- The requirements of the Service Tariff, and in particular Attachment H to the Services Tariff;
- The failure of the Complaint to provide a record on which any of the relief sought in the Complaint could be granted; and

- Such other defenses as are set forth in the Answer.

D. Process for Resolution of the Complaint

1. The Complaint should be dismissed on the pleadings.

2. The parties should be directed to continue the reference level consultation process specified in the NYISO's Mitigation Measures.

E. Attachments

The following documents are attached to this Answer:

A. Minimum Run Time Reference Level printout for Batavia.

B. Affidavit of Mr. Timothy Duffy.

C. Affidavit of Potomac Economics.

IV. CONCLUSION

WHEREFORE, for the reasons set forth above, the NYISO respectfully requests that the Commission dismiss the Complaint, and direct the parties to continue reference level consultations.

Respectfully submitted,

_____/s/_*William F. Young*_____

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Attorneys for New York Independent System Operator, Inc.

Dated: November 28, 2011

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 these proceedings in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Washington, D.C. this 28th day of November, 2011.

/s/ *William F. Young*
William F. Young
HUNTON & WILLIAMS LLP
2200 Pennsylvania Ave., N.W.
Washington, D.C. 20037
202 • 955 • 1500
202 • 778 • 2201 Fax

EXHIBIT A

ISO REFERENCE LEVEL SOFTWARE

Timothy Duffy (DUFFYTO) | Logout

Generator Cost Data | Reference Levels | Execution | Reports | Administration | Site Map

Home ▸ List Reference Levels

Filtering

Generator	SITHE___BATAVIA (24024) *
Market Date	11/15/2011 *
Market Hour	11/15/2011 12:00:00 AM EST - 11/15/2011 10:00:00 AM EST *
Final References Only	☐
MIS Retrieved Only	☐

Search

Reference Values

Expand All | Collapse All

Show Details

NG DOMINION NP - Energy Refs

STARTUP

NG DOMINION SP - Energy Refs

ENERGY

MINGEN

NG DOMINION SP - Ancillary Services Refs

10 MINUTE SPIN

30 MINUTE

NG DOMINION SP - Time-based Refs

EMERGENCY RR

MAX STOPS

MIN DOWN TIME

MIN RUN TIME

				Similar Unit			
Reference Hierarchy Type	**Market**	**HOURS**	**Non Fuel Adjusted**	**HOURS**	**Non Fuel Adjusted**	**Reference Level Source**	
ISO OVERRIDE BID	DAM	[redacted]	[redacted]			ISO OVERRIDE BID	Copy
ENGINE-TYPE-BASED	DAM					ENGINE-TYPE-BASED	Copy
FINAL	DAM					ISO OVERRIDE BID	Copy
ISO OVERRIDE BID	RT					ISO OVERRIDE BID	Copy
FINAL	RT					ISO OVERRIDE BID	Copy

SITHE__BATAVIA (24024), NG DOMINION SP, 11/15/2011 12:00:00 AM EST

MINGEN MW

NORMAL RR

SU NOTIFICATION TIME

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

SENECA POWER PARTNERS, L.P.	)	
	)	
Complainant,	)	
	)	
v.	)	**Docket No. EL12-6-000**
	)	
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.	)	
	)	
	)	
Respondent.	)	

AFFIDAVIT OF TIMOTHY P. DUFFY

State of New York :

: ss:

County of Albany :

I. Qualifications

1. I, Timothy P. Duffy, am Manager, MMA Production Processes for the New York Independent System Operator, Inc. ("NYISO"). My present responsibilities include oversight of the NYISO staff tasked with the development and maintenance of generator reference levels and for consulting with suppliers on requested changes to their reference levels. I have been employed by the NYISO since August 1999 in varying capacities. I served as the Manager, Customer Settlements from March 2006 to May 2009 and the Manager, Compliance and Assistant Compliance Officer from May 2009 to August 2010.

II. Current Reference Levels for the Batavia Unit

2. The NYISO calculates generator reference levels and reports reference level information through its Reference Level Software, which is accessible by both the NYISO and the applicable generator. For purposes of the NYISO's answer to the Seneca Power Partners, L.P.'s ("Seneca's") complaint in FERC Docket No. EL12-6-000, on November 9, 2011, I reviewed the cost-based values, including the Local Gas Transportation Cost, Operation and Maintenance Cost and Other Variable Costs, currently approved in the Reference Level Software, having been made effective Aug. 11, 2011. In addition, on November 15, 2011, I reviewed and generated a report from the Reference Level Software of Seneca's Batavia unit's current minimum run-time reference level information. The NYISO is submitting a screen-shot of this report as Attachment A to the NYISO's answer

3. I attest that the reference level information for the following bid components referenced in the NYISO's answer reflects the current values in the Reference Level Software:

A. Local Gas Transportation Cost: [redacted]/mmBTU. The [redacted]/mmBTU amount associated with the AET pipeline is included in the total [redacted]/mmBTU adder.

B. Operation and Maintenance Costs: [redacted] for all three specified output levels (58, 59 and 60 MW).

C. Other Variable Costs: [redacted] for all three specified output levels (58, 59 and 60 MW).

4. The attached report includes the reference level information for the following bid component referenced in the NYISO's answer:

Minimum Run Time: [redacted] Hours

III. Seneca Bidding Behavior

5. [redacted]

IV. Evaluation of GE Study

6. Seneca provided the GE Study of the Batavia unit to the NYISO on October 18, 2011. The NYISO and MMU have begun our evaluation of the GE Study, and we have determined that there are a number of reasons why the results of the GE Study cannot be imported wholesale into Batavia's reference levels. Costs that are newly identified in the GE Study may be appropriate for inclusion in Batavia's reference

levels, but additional support and explanation is required before we can agree to include these costs.

7. The NYISO would require, for example:

(a) data to substantiate the claim in the GE Study that [redacted] as well as the underlying data and calculations used by GE to calculate the [redacted] fired hour cost for labor;

(b) further definition of the nature of the [redacted] fixed cost for chemicals recommended by the GE Study, since it is unclear whether this is a one-time investment, or a per run-hour or per-start cost, along with underlying data and calculations used by GE to calculate the overall cost of [redacted] fired hour;

(c) back-up data and calculations, including the cost normalization methodology, for the utilities costs presented in the GE Study;

(d) further definition of the nature of the [redacted] fixed cost for equipment maintenance cited in the GE Study, as well as the underlying data and calculations for the overall cost of [redacted] fired hour, and an explanation as to why Batavia's claimed variable equipment maintenance costs are [redacted] and

(e) justification for the continued need to fire the Batavia unit at a temperature [redacted] thus dramatically increasing major maintenance costs, along with data on historic firing temperatures at the plant.

8. This concludes my affidavit.

Timothy P. Duffy
Manager, MMA Production Processes
New York Independent System Operator, Inc.

Subscribed and sworn to before me this 28th of November 2011.

Notary Public

My commission expires: March 21, 2013

DIANE L. EGAN
Notary Public, State of New York
Qualified in Schenectady County
No. 4924890
Commission Expires March 21, 2013

EXHIBIT C

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Seneca Power Partners, L.P.	)	
	)	
Complainant	)	
	)	**Docket No. EC12-6-000**
vs.	)	
	)	
New York Independent System Operator, Inc.	)	
	)	
Respondent	)	

AFFIDAVIT OF PALLAS LEEVANSCHAICK, PH.D.

November 28, 2011

I. Qualifications

1. My name is Pallas LeeVanSchaick. I am an economist and vice president at 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, and is the Market Monitoring Unit ("MMU") for the New York Independent System Operator, Inc. ("NYISO"). Potomac Economics serves in a substantially similar role for ISO New England ("ISO-NE"), the Midwest Independent Transmission System Operator, Inc., and the Electric Reliability Council of Texas ("ERCOT").

2. As the MMU for the NYISO, Potomac Economics is responsible for assessing the competitive performance of the market, for identifying potential market design flaws and abuses of market power, and for commenting on the NYISO's implementation of the mitigation rules. This has included providing advice on numerous issues related to the determination of generator reference levels. I currently serve as the Director of the MMU for the NYISO.

3. I have worked as an energy economist for ten years, focusing primarily on wholesale power markets. I have provided advice to Regional Transmission Organizations on transmission pricing, market design, congestion management issues, and market power mitigation. I have co-authored a number of studies evaluating the competitiveness of market outcomes in the NYISO, ISO-NE, and ERCOT. I have provided expert testimony related to the efficient design of operating reserve markets before the Federal Energy Regulatory Commission ("Commission").

4. I have a Ph.D. in Economics and a M.A. in Economics from George Mason University, and a B.A. in Economics and in Physics from the University of Virginia.

II. Purpose and Summary of this Affidavit

5. The NYISO's Market Power Mitigation Measures ("Mitigation Measures") were designed to limit the exercise of market power, while avoiding unnecessary market intervention.[1] To properly identify and mitigate conduct that likely constitutes an exercise of market power, the Mitigation Measures establish well-defined criteria for determining whether mitigation is warranted. In general, mitigation is warranted when conduct deviates from what would be expected from a competitive supplier and when such conduct is likely to have a significant impact on market clearing prices or other payments. For each generator, the NYISO establishes reference levels, which are used to determine whether the generator's conduct deviates from what would be expected from a competitive supplier.

6. The purpose of this affidavit is to describe the advice I have given to the NYISO relating to several aspects of the reference levels of the Batavia generator and to clarify the MMU's position on an issue that was mischaracterized in the Seneca complaint. Specifically, this affidavit describes my recommendations to the NYISO regarding: (1) how the local gas distribution contract between Seneca and its corporate affiliate should be considered in the calculation of the fuel cost portion of the reference level, and (2) how to set the minimum run time of the Batavia generator given the information that has been submitted thus far by Seneca.

7. My affidavit is divided into the following sections. Section III discusses general principles that should be applied in the process of determining reference levels. Section IV explains how contracts for local gas distribution should be considered in the calculation of reference levels and why Seneca's contract with its corporate affiliate should not be used. Section V explains factors that should be considered in the determination of the Batavia generator's minimum run time reference level and why it should be reduced well below the current level of [redacted] hours.

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[1] The Mitigation Measures are contained in Section 23 (or Attachment H) to the NYISO Market Services Tariff.

III. General Principles Used in Calculating Reference Levels

8. Wholesale power markets are susceptible to the exercise of market power in transmission constrained areas where a single supplier is often needed to resolve the constraint. Accordingly, the purpose of the Mitigation Measures is to ensure that suppliers behave competitively even when they do not have competitive incentives (but for the Mitigation Measures).[2] In a competitive market, a supplier is expected to produce output when its marginal cost is less than the price.[3] Hence, when a generator is mitigated, the Mitigation Measures direct the NYISO to replace the generator's offer with its reference level, which is an estimate of its marginal cost. Mitigation does not prevent the generator from earning revenues that exceed its reference level, since the generator still receives revenues based on market clearing prices.

9. Since reference levels, in conjunction with mitigation thresholds, limit the ability to exercise market power in a manner that would affect market clearing prices and/or guarantee payments to generators, a supplier that has market power would generally benefit from an inflated reference level. Accordingly, suppliers have incentives to provide information in the consultation process that leads their reference levels to be higher than their true marginal costs. For this reason, it is important for the NYISO to verify that submitted information is accurate before incorporating it into the development of a generator's reference level.

10. Some of the costs that make up a generator's reference level change over time. For example, natural gas commodity costs ordinarily change from day-to-day, so the NYISO updates the natural gas index prices that are used in reference levels on a daily basis. Likewise, other costs that vary according to market conditions should also be revised as often as necessary to ensure the reference level remains an accurate estimate of a generator's marginal cost.

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2 See the Mitigation Measures, Section 23.1.1.

3 See *New York Independent System Operator, Inc.*, 131 FERC ¶ 61,169 (2010) ("May 20, 2010 Order"), P 69.

11. In its complaint, Seneca uses the term "harassing" to describe the NYISO's efforts to recalculate components of the reference level of the Batavia generator.[4] However, these efforts to update the reference level to accurately reflect the generator's cost under current market conditions are both appropriate and necessary to satisfy the NYISO's responsibilities in administering the Market Power Mitigation Measures.

IV. Batavia's Local Gas Distribution Cost Adder

12. In principle, a generator's reference level should reflect the generator's marginal cost of transporting gas from the point of interconnection with the interstate pipeline to the generator. For many generators, this marginal cost is determined by a tariff rate that is set by the New York Public Service Commission. For other generators, this marginal cost is determined by an arms-length contract with the local pipeline company. Under the facts presented, it would be inappropriate to use the contract between Seneca and its corporate affiliate AET to calculate the reference level of the Batavia generator because Seneca and its affiliate have an incentive to set the terms of the contract so as to inflate the Batavia generator's reference level in order to maximize their collective revenues.[5]

13. For the Batavia generator, it would be inappropriate to use the schedule of charges in the contract with the local pipeline for two reasons. First, the local pipeline and the generator are corporate affiliates, so the contract between them is not arms-length. The contract reflects internal transfer payments rather than the marginal cost or market value of moving natural gas. Second, the Batavia generator is frequently paid according to its reference level, and thus, has an incentive to inflate its reference level by "negotiating" a contract with the affiliated local pipeline that inflates variable charges for gas distribution. This is because any inflated variable charges that are permitted to be reflected in Batavia's reference levels would be passed-through to National Grid's customers and increase the profits of the affiliated gas distribution firm.

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4 See Complaint at 31.

5 The local pipeline and the generator are so closely affiliated that the individual who signed the contract on behalf of the pipeline was the same individual who signed on behalf of the generator.

14. The pricing terms of the contract for local gas distribution to the Batavia generator highlight the incentives to inflate the reference level of the Batavia generator. The contract includes a variable charge of [redacted] for each MMbtu of natural gas moved 11 miles from the interstate pipeline to the Batavia generator, and it includes no fixed charges under most circumstances. When the pricing terms are reflected in the Batavia generator's offers, they over-state the marginal cost of the Batavia generator, leading it to receive fewer economic commitments than if it were offered at its true marginal cost. Hence, the pricing terms of the gas distribution contract are inefficient and would not be selected by a supplier that was actively competing against other suppliers to be scheduled. To establish an appropriate reference level for the Batavia generator, the NYISO has requested information on the marginal cost of moving gas across the 11 mile pipeline, but Seneca has declined to provide the requested information.

15. The pricing structure in the Batavia generator's gas distribution contract differs substantially from the pricing structures in the contracts of other generators. For example, Seneca's complaint refers to nine local gas distribution contracts, which have variable charges ranging from $0.00 to $0.60 per MMbtu, and all of them include fixed charges (*i.e.*, charges that do not vary with the quantity of gas consumed). Hence, even the contracts provided as examples in Seneca's complaint support the conclusion that the contract for the Batavia generator should not be used in the calculation of its reference level.

V. Batavia's Minimum Run Time

16. This section discusses my recommendations relating to the minimum run time reference level of the Batavia generator. Sub-section A explains the position of the MMU on how the NYISO should account for cycling costs when it determines the minimum run time reference level of the Batavia generator. Sub-section B responds to Seneca's assertion that the minimum run time reference level should be set to [redacted] hours to reflect that the Batavia generator was originally designed to operate as a baseload unit. Sub-section C recommends that the NYISO reduce the minimum run time reference level of the Batavia generator from [redacted] hours based on criteria set forth in the Mitigation Measures.

A. Accounting for Cycling Costs

17. As Seneca stated in its complaint, the position of the MMU is that minimum run time reference levels should be sufficiently high to account for the physical and environmental limitations on the facility. However, contrary to statements in Seneca's complaint, the position of the MMU is that minimum run time reference levels may also be increased when doing so would help the generator manage cycling costs and other variable O&M costs more efficiently.[6] In this sub-section, I explain how to determine whether the minimum run time reference level should be increased to account for cycling costs, which include the costs from shutting-down and starting-up the next day for the Batavia unit.

18. In wholesale power markets, clearing prices typically rise during the day and fall at night. Hence, a generator that has operating costs that are lower than daytime prices and higher than overnight prices must decide whether it is more economic: (a) to shutdown overnight and start-up the next morning, or (b) to simply stay online overnight. For example, if a generator has a minimum output level of 50 MW and a running cost of $50/MWh and the LBMP is $30/MWh for 10 hours overnight, the generator will lose $10,000 by staying online overnight. If the total cost to the generator from shutting down and starting-up is less than $10,000, the generator would shutdown, and if the cost is greater than $10,000, the generator would stay online overnight. Hence, a generator that has high shut-down and start-up costs may in some cases effectively manage those costs by offering an increased minimum run time, since this could enable the generator to avoid being cycled off overnight. Before determining whether Batavia's cycling costs would justify an increased minimum run time, it is appropriate to compare Batavia's cycling costs to the inefficiency of running the unit overnight when it is not needed for reliability.

19. I reviewed the scheduling information for the Batavia unit from May to September 2011 to determine whether it would have been cost-effective to reduce the minimum run time of the unit from [redacted] hours to [redacted] hours or lower. During this period, the Batavia unit was committed for local reliability on [redacted] days, usually for the [redacted] hours from [redacted] The Batavia unit ran for an additional [redacted] hours on [redacted] occasions to fulfill a minimum run

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6 The Complaint at 21 & 22 includes several mischaracterizations of the MMU's position on this issue.

time when it was not actually needed for local reliability. During this period, the Batavia unit had an average start-up cost reference level [redacted]/start and an average minimum generation cost reference level of [redacted] MWh for [redacted] MW of output.

20. I compared (a) the cost of operating the unit for usually eight hours on each occasion rather than cycling the unit offline to (b) the LBMP and ancillary services revenue the generator earned on each occasion. The cost of the Batavia unit exceeded the LBMP and ancillary services revenues it earned by an average [redacted] on these occasions and by over [redacted] of these occasions. Given that the start-up reference level of the unit averaged [redacted]/start on these occasions, it would be more cost-effective for the unit to have a minimum run time of less than [redacted] hours and to cycle offline overnight in most cases.

21. It may be that cycling the unit more frequently would increase the start-up cost of the unit. The NYISO has indicated its willingness to work with Seneca to adjust the start-up cost reference level of the Batavia unit if necessary. However, Seneca has not indicated a desire to provide the necessary data.

B. Considering the Original Design of the Generator

22. Seneca has asserted that the Batavia unit should have a [redacted]-hour minimum run time reference level because the unit was originally designed in 1992 to run as a baseload generator. This sub-section explains why the original design does not by itself provide a valid rationale for a [redacted] hour minimum run time reference level.

23. Most of the generators in New York State were originally designed to operate more consistently than they currently do. As older generators are superseded by newer and more efficient technologies, it is natural for generators that were originally baseload to become intermediate or peaking facilities, and eventually, to retire completely.

24. In the case of the Batavia generator, the cost of cycling the unit may be higher than it would be if the unit were originally designed to cycle frequently. The cost of cycling should be appropriately reflected in the start-up cost reference level of the unit. However, the minimum run time reference level of the unit should be reduced from [redacted] hours if doing

so would lead the unit to be cycled offline overnight when it would be inefficient for the unit to remain online.

C. Comparing the Batavia Generator to Other Similar Generators

25. When the NYISO does not have a sufficient number of bids accepted during competitive periods to calculate a bid-based reference level and the market participant has not provided sufficient information to determine a consultative reference level, the Mitigation Measures permit the NYISO to calculate a reference level based on an average of similar units.[7] In this sub-section, I explain that a review of similar generators suggests that it would be appropriate to set Batavia's minimum run time reference level to a value much lower than [redacted] hours.

26. I reviewed the air permits of generators in New York and New England and identified ten GE Frame 6 combustion turbines that are currently in service (not including units owned by Seneca or its affiliates). Of these combustion turbines, four are located at cogeneration facilities with significant steam or electrical load[8] and six are located at combined cycle facilities.[9] Both public and non-public data for these GE Frame 6 units indicate that the units have minimum run times that are much lower than [redacted] hours.

27. The EPA publishes hourly operating data on each of these units, which can be used to determine how long these units ran after each start-up. Using the EPA data, it is possible to infer the minimum amount of time these units typically operate after each start-up, since these units ordinarily run for a period of time that is greater than or equal to their minimum run time offer.

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7 See Section 23.3.1.4.2.

8 They are Indeck Silver Spring (www.dec.ny.gov/dardata/boss/afs/permits/prr_956320001000016_r1.pdf), Indeck Oswego (www.dec.ny.gov/dardata/boss/afs/permits/735120000500006.pdf), Indeck Yerkes (www.dec.ny.gov/dardata/boss/afs/permits/prr_914640015300004_r1.pdf), and Indeck Olean (www.dec.ny.gov/dardata/boss/afs/permits/prr_904120004200011_r1.pdf).

9 They are Pittsfield Generating LP (www.mass.gov/dep/air/approvals/opp/pittsgen_041911.pdf), Capitol District Energy Center (www.dem.ri.gov/programs/benviron/air/opperms/pawtpwr1.pdf), Dartmouth Power Associates (www.mass.gov/dep/air/approvals/opp/op_cwnbenergy.pdf), and Pawtucket Power Associates (www.dem.ri.gov/programs/benviron/air/opperms/pawtpwr1.pdf)

28. The following table summarizes the minimum run times of each GE Frame 6 unit that I reviewed using public data from January 2008 to September 2011. Since the public data reports the actual run time of the unit rather than the minimum time the unit could have run, I report the 15th percentile of the actual run time (i.e., if a generator started-up and ran on 100 distinct occasions, the 15th percentile would be the duration of the 15th-shortest occasion). I did not report the shortest identified period for which each unit ran, since there may have been occasions when a unit tripped offline prematurely. Instead, I conservatively report the 15th percentile of the actual run time, which is likely to over-estimate the minimum run time of each unit.

Generator	Run Hours[10]	Actual Run Time (15th Pct)
New England Units:		
Capitol District Energy Center	1,171	5
Pawtucket Power	2,837	5
Dartmouth	2,418	10
Pittsfield Generating (Unit 1)	4,350	8
Pittsfield Generating (Unit 2)	5,018	8
Pittsfield Generating (Unit 3)	5,099	8
New York Units:		
Indeck Yerkes	798	10
Indeck Olean	83	7
Indeck Oswego	508	6
Indeck Silver Spring	927	8

29. The public data reported in the table above suggests that units similar to Batavia most likely have minimum run times ranging from 5 to 10 hours. [redacted]

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[10] For New York units, the table excludes run hours during commitments in which the unit was needed for reliability (which is public information), so the information in the table reflects market-based scheduling. This led to the exclusion of 276 hours for Indeck Yerkes13,630 hours for Indeck Olean, and 278 hours for Indeck Oswego.

[redacted] The NYISO Tariff permits the NYISO to use information from similar units when setting Batavia's reference level when there is insufficient information from other sources. Although this does not preclude Seneca from providing information to support a longer minimum run time reference level, it does place the burden on Seneca to provide information to support using a longer reference level.

VI. Effect of Fuel Cost on Batavia's Reference Level

30. The NYISO has asked me to estimate how the Batavia generator's minimum generation cost reference level is affected by the differential between (a) the gas distribution cost the NYISO assumes of [redacted]/MMbtu and (b) the gas distribution cost claimed by Seneca for the Batavia generator of [redacted]/MMbtu.[11] Given that the Batavia generator's reference level assumes a heat rate of [redacted] MMbtu/MWh, the differential between the gas distribution costs results in a differential of [redacted] MWh for the minimum generation cost reference level.[12]

31. This concludes my affidavit.

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11 I use [redacted] MMbtu rather than [redacted] MMbtu, since the contract escalates the charge to account for the rate inflation.

12 [redacted]

ATTESTATION

I am the witness identified in the foregoing Affidavit of Pallas LeeVanSchaick, Ph.D. dated November 28, 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.

Pallas LeeVanSchaick
November 28, 2011

Subscribed and sworn to before me
this 28th day of November 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: 11/30/2013