

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.)	

**MOTION FOR SUMMARY DISPOSITION OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rules 212 and 217 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§ 385.212 and 385.217, the New York Independent System Operator, Inc. (“NYISO”) respectfully moves for summary disposition of Seneca Power Partners, L.P.’s (“Seneca’s”) October 26, 2011, complaint in the above-captioned proceeding (“Complaint”).¹ As described below, there are no genuine issues of fact material to the disposition of Seneca’s Complaint. The Commission should, therefore, summarily dismiss Seneca’s Complaint, deny Seneca’s request for a hearing, and direct the parties to continue the reference level consultation process set forth in the Market Power Mitigation Measures in Attachment H to the NYISO’s Market Administration and Control Area Services Tariff (“Mitigation Measures”).

¹ Complaint of Seneca Power Partners Requesting Fast Track Processing (October 26, 2011) (“Seneca Complaint”).

I. SUMMARY

The record and authorities before the Commission show that it should dismiss Seneca's Complaint. The allegations in Seneca's Complaint boil down to a small number of issues concerning the NYISO's determination of three components of the reference levels for market power mitigation of Seneca's Batavia Generator ("Batavia"): (i) local gas transportation costs, (ii) minimum run time, and (iii) operating and maintenance costs.² Seneca alleges that the NYISO³ has not calculated these components in accordance with the Mitigation Measures and, for this reason, Seneca is unable to recover its costs.⁴ The Commission can and should dispose of these issues, and deny Seneca's request for a hearing, based on the evident lack of support for Seneca's allegations. Seneca, as the complainant, has the burden of proving the allegations in its Complaint,⁵ and it has not shown that there are genuine issues of fact material to the disposition of its complaint. As the NYISO clearly showed in its November 28, 2011, answer ("Answer"), Seneca has not established that the NYISO acted in violation of its Mitigation Measures,⁶ nor has Seneca provided a factual basis to support its allegations. Seneca has not submitted cost data

² Seneca's scattered attacks on the NYISO's process for setting and reviewing reference levels are nothing more than improper collateral attacks on the Commission's orders approving the Mitigation Measures and are not relevant for the Commission's disposal of this Complaint.

³ Unless otherwise indicated, the term "NYISO" as used in this submission includes both the NYISO's internal Market Mitigation and Analysis Department and its external Market Mitigation Unit – Potomac Economics. Unless otherwise specified, capitalized terms have the meanings specified in the NYISO's Market Administration and Control Area Services Tariff.

⁴ See Seneca Complaint at pp. 1, 26-33.

⁵ See, e.g., *Astoria Gas Turbine Power LLC v. New York Independent System Operator, Inc.*, 131 FERC ¶ 61,205 at P. 19 (citing 16 U.S.C. § 824e(b)).

⁶ Answer of the New York Independent System Operator, Inc. (November 28, 2011) ("NYISO Answer").

demonstrating that it is not able to recover Batavia's operating costs, despite repeated invitations to submit this information.⁷

Summary disposition is appropriate for each of the three issues raised by Seneca, and for Seneca's request for a hearing. First, Seneca asserts that in setting the reference levels for Batavia's local gas transportation costs, the NYISO must adopt the rate included in a contract between Seneca and its affiliate Alliance Energy Transmission LLC ("AET") for the use of a lateral pipeline connecting Batavia to an interstate pipeline ("Seneca/AET Contract").⁸ The NYISO, however, is required by its Mitigation Measures to set reference levels that accurately reflect Batavia's marginal operating costs.⁹ The Seneca/AET Contract does not provide any basis for the NYISO to verify that the contract rate reflects the marginal costs for delivering gas to Batavia. Despite repeated NYISO requests, Seneca has not provided cost information to substantiate the contract rate.¹⁰ The NYISO, therefore, was required to set the reference level based on the best available information, which in this case is the cost data for a comparable pipeline.¹¹

The specific issue for the Commission's determination is whether the NYISO has acted in accordance with its Mitigation Measures in requiring that the local gas transportation cost component of Batavia's reference levels reflect the marginal costs of delivering gas to Batavia. This is a question of tariff interpretation, which turns on the language in the Mitigation Measures

⁷ NYISO Answer at pp. 6-7, 24.

⁸ Seneca Complaint at p. 26.

⁹ NYISO Answer at p. 13.

¹⁰ *Id.* at pp. 6-7, 24.

¹¹ *Id.* at p. 24.

and Commission precedent. The NYISO has shown in its Answer that it acted in accordance with these authorities in setting Batavia's reference levels based on the best available evidence of the marginal costs of delivering gas to Batavia.¹²

Seneca has the burden to prove its allegation that the NYISO acted in violation of its Mitigation Measures. Seneca, however, has failed to cite any authority or provide any evidence that the local gas transportation cost component of Batavia's reference levels should be exempt from the marginal cost principle for determining reference levels. Moreover, Seneca has not submitted to the NYISO or the Commission any data on the local transportation costs of the AET pipeline, much less any data that would justify the Commission in requiring Batavia's local gas transportation cost reference levels to be set at the rate included in the Seneca/AET Contract.

The NYISO's Answer and the comments submitted by the New York Public Service Commission ("NYPSC") show that there is no merit to Seneca's assertion that the NYISO is somehow required by NYPSC regulations to accept the rate specified in the Seneca/AET Contract because it is on file with the NYPSC.¹³ The NYISO's Answer also shows that reference levels are subject to review and adjustment as additional data regarding a Generator's marginal costs becomes available to the NYISO, and must reflect current cost levels.¹⁴ For these reasons, the Commission should dismiss Seneca's request to direct the NYISO to adopt the Seneca/AET Contract rate, and should, instead, direct Seneca to provide appropriate cost data to the NYISO through the consultation process.

¹² *Id.* at p. 24.

¹³ *Id.* at pp. 25-27; Notice of Intervention and Answer of the New York State Public Service Commission (November 28, 2011) ("NYPSC Comments").

¹⁴ NYISO Answer at pp. 19-20.

Second, Seneca asserts that the minimum run time for Batavia should be “restored to” and maintained at the number of hours requested by Seneca.¹⁵ The NYISO, however, has not changed the minimum run time from the level requested by Seneca.¹⁶ Rather, based on its analysis of comparable Generators, the NYISO has raised questions with Seneca through the consultation process as to whether Batavia’s lengthy minimum run time would be expected under competitive conditions and has requested that Seneca provide information to support this minimum run time.¹⁷ As the NYISO has not changed the reference level for Batavia’s minimum run time, Seneca’s arguments solely amount to an assertion that it is unreasonable for the NYISO even to review Batavia’s minimum run time reference level through its consultation process. The evidence submitted by the NYISO shows that Seneca cannot meet this burden, as reasonable questions exist regarding the appropriateness of Batavia’s minimum run time.¹⁸ The Commission should dismiss Seneca’s request as, at best, premature and direct Seneca to assist the NYISO in determining the appropriate minimum run time for Batavia in the consultation process.

Third, Seneca asserts that the NYISO has refused to recognize certain operation and maintenance (“O&M”) costs in Batavia’s reference levels.¹⁹ Seneca, however, has not challenged any specific line item of the O&M reference levels. Instead, Seneca argues that the NYISO must revise the O&M reference levels based on a recent study of the Batavia plant

¹⁵ Seneca Complaint at p. 33.

¹⁶ NYISO Answer at pp. 22-23, 28.

¹⁷ *Id.* at pp. 29-31.

¹⁸ *Id.*, Exhibit C, Affidavit of Pallas LeeVanSchaick, Ph.D. (November 28, 2011) (“Potomac Economics Affidavit”) at ¶¶25-29.

¹⁹ Seneca Complaint at p. 32.

performed by the General Electric Company (“GE Study”).²⁰ The NYISO, however, is required by its Mitigation Measures to independently assess the cost information that a Market Party submits for its Generator, and cannot simply accept at face value the findings of Seneca’s hired consultant.²¹ The NYISO received this study less than two weeks before Seneca initiated its Complaint and is in the process of evaluating the study results with Seneca through its consultation process.²² Seneca has provided no evidence that it is unreasonable for the NYISO to assess the GE Study through its consultation process. The Commission should, therefore, dismiss Seneca’s request as, at best, premature, and direct the parties to continue their consultation regarding the study results.

Finally, the Commission should deny Seneca’s request for a hearing.²³ Seneca is the sole party in this proceeding with access to the most relevant cost data. If Seneca had cost data supporting the Complaint, it would have come forward with it. Seneca can supply (or could have supplied) this data to the NYISO at any time and request the NYISO’s consideration of a change to its reference levels on the basis of facts that would justify such a change. Seneca, however, has chosen not to provide this information, despite numerous NYISO requests.²⁴ Seneca has similarly failed to submit any supporting cost data to the Commission, nor has it otherwise shown that there are any issues of fact as to its reference level costs that warrant resolution through a hearing or other evidentiary process. The Commission should not permit Seneca to

²⁰ Seneca Complaint at p. 32.

²¹ NYISO Answer at pp. 10-11, 32.

²² *Id.* at pp. 10 and 32.

²³ Motion for Leave to Answer and Answer of Seneca Power Partners to Answer of NYISO and NYPSC (December 13, 2011) (“Seneca Answer”).

²⁴ NYISO Answer at pp. 6-7, 24.

use the hearing process to bypass or opt out of the consultation process established in the Mitigation Measures.

II. SUMMARY DISPOSITION

A. Standard for Summary Disposition

Pursuant to Rule 217(b) of the Commission's Rules of Practice and Procedures, the Commission can summarily dispose of all or a part of a proceeding if it "determines that there is no genuine issue of fact material to the decision of a proceeding or part of a proceeding."²⁵ The Commission has found summary disposition to be appropriate when the following conditions have been met:

(1) the non-moving party must have been afforded a reasonable opportunity to present arguments and factual support and the evidence must be viewed in the light most favorable to the non-moving party; and (2) the Commission must find that a hearing is unnecessary and would not affect the ultimate disposition of the issue because there are no material facts in dispute or because the facts presented by the non-moving party have been accepted in reaching the decision.²⁶

B. Commission Should Grant Motion for Summary Disposition

The Commission should summarily dismiss Seneca's Complaint. Seneca has had the opportunity through its Complaint and its answer to the NYISO Answer to provide support for the allegations in its Complaint. As described below, there are no genuine issues of fact material to the Commission's decision in this proceeding.²⁷ Seneca has failed to provide a factual basis for the assertions in its Complaint and has not provided any cost data to the Commission that

²⁵ 18 C.F.R. § 385.217(b).

²⁶ *Moussa I. Kourouma d/b/a Quntum Energy LLC*, 135 FERC ¶ 61,245 at P 10 (June 16, 2011) (citing *KGen Hinds, LLC*, 117 FERC ¶ 63,004, at P 44 (2006); *Coastal States Marketing, Inc.*, 25 FERC ¶ 61,164 at 61,452 (1983)).

²⁷ Even if the Commission were to conclude that there is a genuine issue of fact material to its determination of one of the components of Seneca's Complaint, the Commission should summarily dismiss the remaining components of the Complaint.

supports its allegations. Seneca has not raised any issues that require resolution through a hearing or other evidentiary process.

1. Local Gas Transportation Costs

The NYISO is required by its Mitigation Measures and Commission precedent to set a Generator's reference levels based on its marginal costs.²⁸ Nothing in the Mitigation Measures excludes a Generator's local gas transportation costs from this principle. Under the Mitigation Measures, Batavia's reference levels should reflect the marginal costs of transporting gas from its point of interconnection with the interstate pipeline to Batavia, in order for the reference level to reflect the outcome that would be expected in a competitive market.²⁹ When, however, the Generator and pipeline are affiliates, incentives plainly exist to structure the gas delivery contract in a manner that does not reflect the pipeline's true marginal costs for delivering gas to the Generator.³⁰ In its filings Seneca simply asserts that in setting the reference level for local gas transportation costs for Batavia, the NYISO must adopt the local gas transportation rate set forth in the Seneca/AET Contract.³¹

The Seneca/AET Contract does not provide a breakdown between fixed and variable costs, nor does it substantiate AET's cost to provide service to its affiliate. The NYISO has repeatedly asked Seneca to identify and substantiate the costs used to establish the Seneca/AET Contract rate to verify that these costs reflect the marginal costs for transporting gas to Batavia.³² Seneca or its affiliate AET are the only parties in a position to provide cost information regarding AET's system, which is comprised of the same local gas pipeline delivery facilities previously owned by Seneca. Seneca, however, has failed to identify the cost basis for the rate in the

²⁸ NYISO Answer p. 13.

²⁹ Potomac Economics Affidavit at ¶ 12.

³⁰ NYISO Answer at pp. 23-25; Potomac Economics Affidavit at ¶¶ 12-15.

³¹ Seneca Complaint at p. 26.

³² NYISO Answer at pp. 6-7, 24.

Seneca/AET Contract or to substantiate that the costs used in the rate reflect the marginal costs for transporting gas to Batavia. In the absence of this cost data from Seneca, the NYISO has been required pursuant to its Mitigation Measures to consider the best information available in setting the reference levels, which the NYISO determined to be the local gas transportation rate on a similar system.

The Commission should summarily dispose of Seneca's request that the NYISO be required to adopt the Seneca/AET Contract rate. The central issue for the Commission's determination is whether the NYISO acted in accordance with its Mitigation Measures and Commission precedent in requiring that a Generator's reference levels for local gas transportation costs reflect the marginal costs of transporting the gas from the point of interconnection at the interstate pipeline to Batavia. This is a question of tariff interpretation and Commission policy. The NYISO has shown in its Answer that it acted in accordance with its Mitigation Measures and Commission precedent to set reference levels for Batavia that reflect the local gas transportation rate on a similar system.³³

There is no genuine issue of fact material to the Commission's finding that the NYISO is applying the proper standard for establishing the reference levels for local gas transportation costs. Seneca has the burden to prove its allegation that the NYISO has not set reference levels in accordance with its Mitigation Measures, and Seneca has not and cannot cite to any Commission authority or provide any other evidence to establish that the NYISO must blindly accept and incorporate into reference levels whatever information a Market Party submits without further inquiry. Seneca has failed to submit any cost data to the Commission to quantify and substantiate its local gas transportation costs or to demonstrate that it is not recovering the marginal costs that its affiliate AET incurs to provide local gas transport service to Batavia.

In support of its position that the NYISO must adopt the Seneca/AET Contract rate without review, Seneca has provided a NYPSC order approving the transfer from Seneca to AET

³³ Mitigation Measures §§ 23.3.1.4.2, 23.3.1.4.2.1; NYISO Answer at p. 24.

of the 11 mile lateral pipeline, and also cites certain unrelated pipeline contracts or tariffs. Based on these documents Seneca alleges that the PSC has approved the Seneca/AET Contract and claims that the rate in the Seneca/AET Contract is similar to the rates charged by other “similarly-situated” pipelines. Seneca also asserts that the Mitigation Measures require the NYISO to accept any Market Party's submissions relating to gas costs without question, and claims that the Seneca/AET Contract Rate incorporates the local gas transportation rate previously approved by the NYISO and that the NYISO has not identified grounds for reducing this rate.³⁴

As the NYISO and the NYPSC have shown, the NYPSC has not approved the rate in the Seneca/AET Contract and the NYISO is not otherwise required to use the contract rate merely because it is on file with the NYPSC.³⁵ The NYISO has also shown that the other pipeline documents do not support Seneca's position and in any event are irrelevant because Seneca does not need to rely on proxies to determine its own costs (Seneca, or its affiliate, has direct access to the relevant cost information).³⁶ In addition, the NYISO has shown that the specific Mitigation Measures provisions on the use of a Market Party's gas costs submissions simply do not apply to the costs at issue here.³⁷

Finally, the NYISO has shown that reference levels are not static numbers. They are subject to continuous review and adjustment as additional data regarding a Generator's marginal costs become available to the NYISO.³⁸ As described in the memorandum provided by the NYISO to Alliance Energy, New York, LLC (“Alliance”), Seneca's owner, in November 2010 and attached by Seneca to its Complaint as Exhibit B, fuel reference cost components were

³⁴ Seneca Complaint at pp. 26-31; Seneca Answer at pp. 5-6.

³⁵ NYISO Answer at pp. 25-27; NYPSC Comments at pp. 3-5.

³⁶ NYISO Answer at pp. 24-25; NYPSC Comments at pp. 6-7.

³⁷ NYISO Answer at pp. 15-19; 23-24.

³⁸ *Id.* at pp. 19-20.

constructed for Batavia based on worksheets initially submitted by Alliance in 2006.³⁹ When in response to requests that were part of the NYISO's due diligence review the NYISO received actual daily fuel cost data from Alliance in December 2009 for the 2006 through 2009 period, it was clear that Batavia's actual fuel costs were significantly lower than the fuel costs that Alliance had previously submitted, and that the NYISO had accepted.⁴⁰ In particular, the new data showed that the upstream pipeline transport costs included in Batavia's reference levels should be revised downward.⁴¹ At the same time, the NYISO reviewed the local gas distribution costs, the reference level component at issue here. That component was reduced to the level of a similar pipeline because "Alliance has not responded to repeated requests for current data on their local distribution costs/mmbtu."⁴²

As indicated in the November 2010 memo, the NYISO has invited Seneca on multiple occasions to submit cost data that would substantiate its assertion that the updated reference level for local gas transportation costs should be set at the level included in the Seneca/AET Contract rate.⁴³ Instead, Seneca repeatedly claims that "nothing has changed" since it first submitted the rate to the NYISO in 2008.⁴⁴ If so, it should be a straightforward matter for Seneca or AET to submit its substantiation for a contract rate for which the NYISO cannot find past substantiation in its records. Despite Seneca's protestations, the fact remains that Seneca has not provided the NYISO, and does not provide the Commission in this proceeding, with current—or any—cost information that would quantify and substantiate its asserted reference level for local gas transportation costs.

³⁹ Seneca Complaint, Exhibit B.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ NYISO Answer at pp. 6-7, 24; Seneca Complaint, Exhibit B.

⁴⁴ *See* Seneca Answer at p. 5-6.

Seneca asserts that “pipeline ratemaking is not made based on the marginal costs of operating the pipeline.”⁴⁵ But, the issue here is not NYPSC standards for setting rates for regulated local distribution companies, but the Commission’s approved methodology for setting reference levels. Seneca also asserts that the “NYISO’s claims that Seneca does not currently face competition as justification for disallowing the transportation rate is similarly flawed.”⁴⁶ But, Seneca then recites a series of hypothetical circumstances in which Batavia might face competition, plainly acknowledging that it currently does not.

As a result, even viewing the material submitted and assertions made by Seneca in a light most favorable to Seneca’s position does not change the fact that this material is not germane to the Commission’s determination of whether the NYISO acted in accordance with its Mitigation Measures and Commission precedent to set Batavia’s natural gas local transportation costs reference levels based on the best available evidence of the Generator’s marginal costs.

The Commission, therefore, should confirm that the NYISO has applied the appropriate standard in setting Batavia’s reference levels based on marginal costs, deny Seneca’s request to direct the NYISO to adopt the rate in the Seneca/AET Contract, and direct Seneca to provide the NYISO with the appropriate pipeline cost data through the consultation process, so that the NYISO can determine reference levels that reflect Batavia’s marginal costs.

2. Minimum Run Time

In its Complaint, Seneca asserts what it claims the minimum run time for Batavia should be and asks the Commission to direct the NYISO to “restore and maintain” the minimum run time at this level.⁴⁷ As described by the NYISO in its Answer and confirmed by the printout from the Reference Level Software attached to its Answer, Batavia’s minimum run time is currently at the level requested by Seneca.⁴⁸ Seneca’s argument, therefore, is at best premature

⁴⁵ Seneca Answer at p. 7.

⁴⁶ *Id.*

⁴⁷ Seneca Complaint at p. 33.

⁴⁸ NYISO Answer at pp. 23-23, 28.

as the NYISO has not changed the minimum run time, and there is therefore no genuine dispute as to the NYISO's basis for determining a shorter run time. Rather, Seneca seeks through its Complaint to disrupt the NYISO's on-going review of Batavia's minimum run time.

Seneca's argument is in effect a request for a declaratory order locking in place Batavia's current minimum run time. This is procedurally improper under the Commission's rules, and can only rest on the premise that there are no reasonable grounds on which the NYISO could question Batavia's requested minimum run time. The NYISO, however, is required to set reference levels that reflect a Generator's expected response to competition.⁴⁹ Based on its on-going analysis of comparable units, the NYISO and its Market Monitoring Unit have raised significant questions with Seneca about whether, under competitive conditions, a Generator with the characteristics of Batavia would maintain Batavia's current minimum run time.⁵⁰ Seneca has incorrectly stated in this proceeding that the NYISO has not taken into account Batavia's operating characteristics in addressing its minimum run time reference level.⁵¹ As demonstrated in its Answer, the NYISO and its Market Monitoring Unit have identified Generators with similar operating characteristics to Batavia—GE Frame 6 turbines—that have minimum run times substantially less than the level claimed by Batavia.⁵² Batavia's minimum run time is clearly an outlier to this group and its lengthy minimum run time results in increased costs to New York consumers. For this reason, the NYISO has requested through the consultation process that Seneca justify the continued use of the currently effective minimum run time.

On this record, the Commission could not reasonably conclude that Seneca has provided evidence that the NYISO has no reasonable basis, and is otherwise not acting in accordance with its Mitigation Measures, in reviewing Batavia's reference levels through its consultation process.

⁴⁹ *Id.* at pp. 12-13.

⁵⁰ *Id.* at pp. 29-31; Potomac Economics Affidavit ¶¶16-29.

⁵¹ Seneca Complaint at p. 33; Seneca Answer at p. 11.

⁵² NYISO Answer at pp. 30-31; Potomac Economics Affidavit ¶¶25-29.

Given the large difference in minimum run times between Batavia and Generators with similar operating characteristics, the NYISO is required to review Batavia's reference levels and verify that they reflect the Generator's expected response to competition. The Commission should, therefore, dismiss Seneca's request for an order declaring a specific minimum run time for Batavia, as Commission action would be at best premature, would lack substantial evidence, and would disrupt an ongoing consultation process. Instead, the Commission should direct Seneca to assist the NYISO and the Market Monitoring Unit in their ongoing effort to evaluate Batavia's appropriate minimum run time, and determine whether costs and other relevant operating data would warrant a shorter run time. Seneca's anxieties about the possible future outcome of this consultation process are not a sufficient basis for the Commission to permit the filing of the Complaint to substitute for completion of the consultation process.

3. Operation and Maintenance Costs

In its Complaint, Seneca asserts that the NYISO has refused to recognize certain O&M costs in Batavia's reference levels.⁵³ Seneca, however, has not challenged any specific line item of the O&M reference levels or provided evidence that the NYISO has not permitted it to recover any specific O&M Costs.⁵⁴ Seneca has, instead, attached a recent GE Study of the Batavia plant and broadly asserted 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."⁵⁵

The fact that a cost may be identified in a study performed by Seneca's paid consultant, GE, does not make it "legitimate" or "verified." Seneca is again, in effect, seeking a declaratory order that the NYISO must incorporate Seneca's cost assertions into Batavia's reference level

⁵³ Seneca Complaint at p. 32.

⁵⁴ Seneca has, in fact, acknowledged that the NYISO has "restored" O&M costs. Seneca Complaint at p. 31 ("While NYISO ultimately restored the reference level"; "NYISO has also restored the reference level for major maintenance expenses").

⁵⁵ Seneca Complaint at p. 38.

calculations without critical review. This is not only procedurally improper, but ignores the plain fact that the NYISO is required pursuant to its Mitigation Measures to independently assess data that a Market Party submits for its Generator.⁵⁶ The NYISO cannot simply accept at face value and without review the findings of Seneca's hired consultant. There is nothing in the Mitigation Measures that would require the NYISO to substitute a Generator's or its consultant's assessment of a Generator's data for the NYISO's own assessment. Seneca has not provided the NYISO, or the Commission, with the data and assumptions that underlie the recently completed GE Study's results.

As acknowledged by Seneca, the NYISO received the study less than two weeks prior to Seneca's filing of its Complaint.⁵⁷ Notwithstanding the distractions of the Complaint, the NYISO has begun its evaluation of the study results through its consultation process. As demonstrated by the NYISO's December 9, 2011, letter to Seneca, which is attached to the Seneca Answer, the NYISO has requested that Seneca provide data to clarify the NYISO's understanding of certain study findings.⁵⁸

On this record, the Commission should summarily dispose of Seneca's request that the Commission direct the NYISO, without critical review, to revise Batavia's reference levels for O&M costs to incorporate all of the costs proposed in the GE Study. There are no genuine issues of fact material to the Commission's decision on this issue. Seneca has provided no evidence showing that the NYISO's actions are not in accordance with its Mitigation Measures. Under the Mitigation Measures the NYISO is required to independently review and verify the GE Study findings through the consultation process.⁵⁹ The Commission should, therefore, deny Seneca's

⁵⁶ NYISO Answer at pp. 15-17.

⁵⁷ Seneca Answer at p. 12. It is disingenuous for Seneca to file a Complaint requiring a NYISO response immediately after providing the NYISO with the GE Study and then to complain that it has taken the NYISO some time to address the GE Study.

⁵⁸ Seneca Answer, Exhibit A.

⁵⁹ NYISO Answer at pp. 15-17 (citing §§23.1.1, 23.3.1.4.1.3, and 23.3.1.4.2 of the Mitigation Measures).

request for Commission action as such action would be at best premature, cannot be justified on the basis of the GE Study alone, and would disrupt ongoing consultations. Instead, the Commission should direct Seneca to assist the NYISO in its current efforts to evaluate the GE Study. As with the other reference level elements contested by Seneca, the Commission should not allow Seneca to substitute an unsupported complaint for the consultation process specified in the Mitigation Measures.

C. The Commission Should Deny Seneca's Request for a Hearing

The Commission should deny Seneca's request for a hearing. Seneca is the sole party in this proceeding with access to the relevant cost data. Seneca has had, and continues to have, the opportunity to supply its cost data to the NYISO through the consultation process to address the NYISO's concerns regarding its reference levels and has failed to do so despite numerous invitations to submit this data by the NYISO.⁶⁰ Seneca has also failed to submit to the Commission in its filings any data that supports its allegations or demonstrates that it is not recovering Batavia's marginal operating costs through its current reference levels. Seneca has failed to take advantage of numerous opportunities to provide the relevant cost data and should not be permitted to withhold its data as a device to bypass or opt out of the consultation process and into a complaint proceeding.

⁶⁰ *Id.* at pp. 6-7, 24.

III. CONCLUSION

WHEREFORE, for the reasons set forth above, the NYISO respectfully requests that the Commission summarily dismiss Seneca's Complaint, deny Seneca's request for a hearing, and direct the parties to continue the reference level consultation process set forth in the Mitigation Measures.

Respectfully submitted,

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Dated: January 6, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in 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 6th day of January, 2012.

/s/ William F. Young
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