

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

Independent Power Producers)	
of New York, Inc.,)	
)	
Complainant,)	
)	
v.)	Docket No. EL13-62-000
)	
New York Independent System Operator, Inc.)	
)	
Respondent.)	

**ANSWER OF THE
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. (“NYISO”) respectfully submits this answer to the *Complaint Requesting Fast Track Processing of the Independent Power Producers of New York, Inc.* (“Complaint”). The arguments advanced by the Independent Power Producers of New York, Inc. (“IPPNY”) are wholly without merit. IPPNY has failed to satisfy its burden of proof under the Federal Power Act (“FPA”) and there is no basis for revising the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).² Accordingly, the Complaint, including both of its alternative proposals to revise the Services Tariff and each of its other requests for relief, should be denied.

As discussed in Section II.A of this answer and in the affidavit of Dr. David B. Patton (“Patton Affidavit”) (Attachment 1), the Complaint is predicated on fundamental flaws that

¹ 18 C.F.R. § 385.213 (2013).

² Terms with initial capitalization that are not otherwise defined herein have the meaning set forth in the Services Tariff.

completely invalidate its arguments. These include IPPNY's: (i) flawed economic assertions that the Cayuga Operating Company, LLC ("Cayuga") and Dunkirk Power, LLC ("Dunkirk") generating facilities are not economic; (ii) flawed notion of what constitutes a competitive capacity market; (iii) flawed understanding that the Cayuga and Dunkirk units should not be permitted to clear in the capacity market; and (iv) flawed assumption that a competitive offer should include Going Forward Costs ("GFCs") but exclude revenues from competitive Reliability Services Support Agreements ("RSSAs").³ Dr. Patton explains that it is reasonable for the Cayuga RSSA, and to the extent that they include such a provision, the Dunkirk RSSAs,⁴ to require that generating facilities offer their "capacity value into the NYISO UCAP Auction at a *de minimis* price in compliance with NYISO market rules" ("Cayuga RSSA Bidding Requirement").⁵

The Patton Affidavit further establishes that the only circumstances in which RSSAs would raise competitive concerns would be: (i) when there is no legitimate need for a resource; or (ii) the need addressed by an RSSA is already fully captured by capacity market requirements. There is no dispute in this proceeding that the Existing RSSAs were entered into in order to

³ See Section II.A, below.

⁴ Under the first Dunkirk RSSA, Dunkirk agreed to provide reliability support services from two units rated at 100 MW each to National Grid from September 1, 2012 through May 31, 2013. Under the second Dunkirk RSSA, Dunkirk will provide service from one 100 MW unit from June 1, 2013 through May 31, 2015. See Complaint at 13-14. Solely for ease of reference, when this answer refers to the Cayuga RSSA and to the "first" and "second" Dunkirk RSSAs collectively it refers to them as the "Existing RSSAs." The NYISO's use of this drafting convention is not intended to indicate, and should not be construed as indicating, that the Dunkirk RSSAs contain bidding requirements comparable to the Cayuga RSSAs. As the Complaint notes, the portions of the Dunkirk RSSAs where bidding requirements would be located are confidential. See Complaint at 14.

⁵ The Complaint assumes, but IPPNY acknowledges that it does not know and has simply inferred, that the Dunkirk RSSAs include a capacity bidding requirement that is identical or very similar to the one in the Cayuga RSSA. See Complaint at 13-14.

address legitimate reliability needs.⁶ Dr. Patton also explains that the reliability needs addressed by the Existing RSSAs are not otherwise captured by NYISO capacity market requirements.⁷

The Patton Affidavit supports the NYISO's position that "there has been, and currently is, no exercise of buyer-side market power or 'artificial price suppression' in the NYCA capacity market related to the 'uneconomic retention' of existing resources."⁸ It also agrees with the NYISO that "there is no reason for the Commission to require revisions to the Market Administration and Control Area Services Tariff and that the Complaint should be rejected."⁹

The Complaint's remaining concerns about possible future threats to the NYISO capacity markets are unsubstantiated and it would be premature for the Commission to address them now. For example, the Complaint suggests that the Services Tariff must be revised to protect the markets against additional RSSAs that may be executed in the future.¹⁰ Even if there are "Future RSSAs" they would only be harmful if they fell into one of the two categories that Dr. Patton has explained would raise competitive concerns. The Complaint briefly mentions various pending New York State initiatives and proposed legislation that IPPNY asserts might someday threaten the NYISO capacity markets. Cursory and unsupported statements regarding problems that might arise in the future fall short of what is required to satisfy a complainant's burden of proof.

⁶ See Patton Affidavit at P 12; Section I.C below. The NYISO uses the term "reliability need" in this answer in the same general way that the Patton Affidavit uses it and the Complaint uses the "system condition." References herein to "reliability needs" should not be construed as necessarily referring to "Reliability Needs" as defined in the NYISO's Open Access Transmission Tariff.

⁷ See Patton Affidavit at P 20.

⁸ *Id.* at P 15.

⁹ *Id.*

¹⁰ See Complaint at 33-38 and Attachment B – Affidavit of Mark D. Younger ("Younger Affidavit") at P 29.

The NYISO and the independent Market Monitoring Unit (“MMU”)¹¹ have the authority to address any genuine market power issues that may arise. Further, there is no basis to presume that the NYISO would not act to address future threats to the market as (and if) they appear.

Finally, although IPPNY is not legally barred from filing the Complaint, neither it nor its members (with one very limited exception,)¹² made an effort to first address their concerns through the NYISO stakeholder process. IPPNY’s approach is contrary to Commission policy and precedent.¹³ This is especially true in this proceeding because IPPNY was aware of the core issues addressed by the Complaint for at least nine months¹⁴ and is now attempting to unilaterally impose its own preferred tariff revisions on the NYISO-administered markets and other stakeholders. IPPNY had ample time and opportunity to raise these issues in the NYISO stakeholder process but never did.¹⁵ The Commission should take this opportunity to remind IPPNY and its members that it strongly discourages such “end-runs” and will treat them with disfavor. It should also encourage IPPNY to bring any remaining concerns about Future RSSAs, or other potential future issues, to the stakeholder process.

¹¹ The independent MMU is Potomac Economics, Ltd. Dr. Patton is the President of Potomac Economics.

¹² A single IPPNY member, TC Ravenswood, LLC (“TCR”) raised “uneconomic retention,” including current and future RSSAs, as part of a proposal to revise the Services Tariff at one ICAP Working Group Meeting (on April 30, 2013). When TCR next presented its proposal in the stakeholder process, it removed the aspects related to “uneconomic retention.” These very limited efforts by TCR do not excuse IPPNY’s clear and admitted failure to attempt stakeholder resolution of its issues, before submitting its proposed tariff modifications in this Complaint.

¹³ See Section II.B, below.

¹⁴ See Complaint at 13 (noting August 16, 2012, New York Public Service Commission order approving the “Dunkirk Term Sheet” and stating that “the parties should have expected and we would expect that the capacity associated with Dunkirk Units 1 and 2 will be bid into the capacity market at a correspondingly *de minimis* price.”).

¹⁵ IPPNY is an active participant in the NYISO shared governance process as a guest, and IPPNY’s Managing Director is the Chair of the ICAP Working Group.

I. BACKGROUND

A. The NYISO and the Independent Market Monitoring Unit Strongly Support Buyer-Side Market Power Measures When and Where they Are Needed

The NYISO recognizes the importance of having effective “supplier-side” and “buyer-side” market power mitigation measures, when and where appropriate, to mitigate the potential exercise of market power. When such measures are in place, the NYISO applies them impartially and with equal diligence.¹⁶ New York has had buyer-side mitigation measures since 2008 to prevent “uneconomic entry” from artificially suppressing prices in New York City. The MMU was a principal advocate for such measures both in New York and elsewhere.¹⁷ The NYISO has proposed that the existing framework of buyer-side mitigation measures that currently applies only to New York City (Load Zone J) be adapted for use in New Capacity Zones,¹⁸ including the new “G-J” Locality that it has proposed to establish in pending Docket No. ER13-1380-000.¹⁹ In short, the NYISO and the MMU both have a record of supporting the creation of effective buyer-side mitigation rules that are appropriate and necessary.

That does not mean, however, that the NYISO, or the MMU, must necessarily support all proposals to extend buyer-side market power mitigation to encompass new forms of conduct. Both entities must determine whether a claimed incident of “artificial price suppression” really represents the exercise of buyer-side market power. They must also consider that over-

¹⁶ The NYISO recognizes that IPPNY’s members have disagreed with a number of the implementation decisions that it has made under the uneconomic entry mitigation rules for New York City but notes that IPPNY strongly defended the NYISO’s application of them in Docket No. EL12-98-000. *See Motion to Intervene and Protest of Independent Power Producers of New York, Inc.*, Docket No. EL12-98-000 (filed Nov. 13, 2012).

¹⁷ *See, e.g.*, Patton Affidavit at P 8.

¹⁸ *See New York Independent System Operator, Inc., Further Compliance Filing*, Docket No. EL12-360-001 (filed June 29, 2012).

¹⁹ *See Proposed Tariff Revisions to Establish and Recognize a New Capacity Zone and Request for Action on Pending Compliance Filing*, Docket No. ER13-1380-000 (filed April 30, 2013).

mitigation can do as much to impede necessary investments in new and existing capacity resources as under-mitigation.²⁰

B. The NYISO and the Independent MMU Have Consistently Agreed that “Uneconomic Retention” Is Not Causing Artificial Price Suppression in the NYISO Capacity Markets

In this proceeding, and in pending Docket No. ER13-405 (the “Cayuga RSSA Proceeding”), IPPNY has advanced a novel but fundamentally flawed hypothesis that it extrapolated from the Commission’s uneconomic entry precedent. According to IPPNY, “uneconomic retention” is necessarily the economic equivalent of uneconomic entry.²¹ IPPNY also asserts that the Cayuga RSSA Bidding Requirement, and any similar requirement that may exist in the Dunkirk RSSAs, effectuate the exercise of buyer-side market power and thus are causing artificial price suppression in the NYCA Capacity markets.²²

The NYISO is not aware of the Commission ever having approved a proposal to extend the reasoning underlying its uneconomic entry precedent to encompass “uneconomic retention” of existing resources and IPPNY does not point to any such rulings. IPPNY notes that the Commission’s May 2010 Order²³ indicated that buyer-side mitigation of existing resources might conceivably be needed in the future. The May 2010 Order rejected a request for rehearing

²⁰ See, e.g., *New York Independent System Operator, Inc.*, 136 FERC ¶ 61,077 at P 28 (2011) (“The whole purpose of the NYC mitigation program is to deter uneconomic entry, not economic entry”); *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,172 at P 121 (accepting a proposal that “both protects consumers from market power, while also avoiding over-mitigation that can cause reliability problems to the extent that it keeps capacity out of the market over the longer term”); *Midwest Independent Transmission System Operator, Inc.*, 123 FERC ¶ 61,297 at P 63 (2008) (finding that the conduct threshold proposed “strikes an appropriate balance between the need to protect consumers from the exercise of market power and the goal of avoiding over-mitigation that may keep capacity out of the market”).

²¹ See Complaint at 20-21; Younger Affidavit at 3, 27, 70-71, 77-83.

²² Complaint at 38.

²³ See Complaint at 4; see also *New York Independent System Operator, Inc.*, 131 FERC ¶ 61,170 (2010) (“May 2010 Order”).

that called for existing resources to be subject to buyer-side mitigation. The Commission stated that:

We reject Ravenswood's claim that a change in contractual or financial arrangements pertaining to an existing generation facility should transform that facility into a unit subject to new entry mitigation rules. As we concluded earlier, new entry mitigation is intended to deter the construction of uneconomic capacity and such deterrence would not apply in this case. We understand that Ravenswood remains concerned that entities with buyer market power may have an incentive to suppress market clearing prices below the competitive level by retaining uneconomic capacity that should be mothballed or retired, and that they might attempt to exercise this market power through contractual means, i.e., that *new* uneconomic entry is not the only mechanism available for generators to exercise such market power. However, we find the possibility for such action too speculative at this point to require an immediate remedy. We conclude that the evidence to date supports only the offer floor mitigation for uneconomic new entry by generators and SCRs (see discussion below) that this order addresses. Ravenswood's concerns ***should be addressed in the annual report prepared by the independent market monitor to the extent the monitor finds evidence to support their concerns.***²⁴

The MMU, however, has never found evidence that would justify adopting rules to mitigate the "uneconomic retention" of existing resources either before or after the issuance of the May 2010 Order. None of its annual *State of the Market Reports* identify any possible need for tariff changes or make any other recommendations related to "uneconomic retention." This includes the recent *2012 State of the Market Report*²⁵ which was issued well after IPPNY first expressed concerns about the RSSAs.²⁶

As noted in the Patton Affidavit, the MMU has been aware of the Existing RSSAs, and IPPNY's claims regarding them since it was first determined that they were needed for

²⁴ See May 2010 Order at P 43 (emphasis added).

²⁵ See *2012 State of the Market Report for the New York ISO Markets* (April 2013) available at <http://www.nyiso.com/public/webdocs/markets_operations/documents/Studies_and_Reports/Reports/Market_Monitoring_Unit_Reports/2012/NYISO2012StateofMarketReport.pdf>.

²⁶ See Section I.D below.

reliability.²⁷ The MMU has consistently advised the NYISO that those claims are fundamentally flawed and that the Cayuga RSSA Bidding Requirement, and any other comparable requirement that may exist in the Dunkirk RSSAs, are efficient given the identified need not addressed by the market.²⁸ The MMU has never suggested that the NYISO should take any action to “remedy” IPPNY’s concerns or recommended Services Tariff revisions. The MMU’s reasoning is set forth in the Patton Affidavit and in Section II.A of this answer.

The NYISO has previously noted that it was “not a party to, and was not involved in the development of . . .” the Cayuga RSSA.²⁹ It likewise was not a party to or involved in the development of the Dunkirk RSSAs. Nevertheless, the NYISO has monitored the Commission’s proceedings involving the Existing RSSAs and their impacts on its markets. The NYISO’s Market Mitigation and Analysis department has consistently agreed with the MMU’s conclusions and recommendations regarding the Existing RSSAs.

C. There Is No Question that the Existing RSSAs Address Legitimate Reliability Needs

The Complaint notes that the Dunkirk RSSAs were executed because the local New York Transmission Owner, *i.e.*, Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”) “conducted an analysis that found that the loss of Units 1 and 2 of the Dunkirk Facility would have adverse reliability impacts.”³⁰ Similarly, it observes that the Cayuga RSSA was instituted because the relevant local New York Transmission Owner, *i.e.*, New York State Electric & Gas Corporation (“NYSEG”), “found that the Cayuga Facility would need to address

²⁷ See Patton Affidavit at P 9.

²⁸ *Id.* at PP 9, 39.

²⁹ See *Limited Comments of the New York Independent System Operator, Inc.*, Docket No. ER13-405-000 (filed Jan. 22, 2013).

³⁰ Complaint at 11.

an identified system condition.”³¹ IPPNY has “acknowledged the need to address identified system conditions” and made it clear that its objection to the RSSAs has to do solely with its theory that the RSSAs’ bidding requirements are resulting in artificial price suppression in the NYCA capacity market.³²

D. IPPNY Had Ample Time and Opportunity to Raise the Issues Addressed in the Complaint Through the NYISO’s Shared Governance Process

As the NYISO noted in its *Initial Answer Opposing Fast-Track Processing* in this proceeding, the purported market harm alleged by IPPNY (*i.e.*, the supposed “artificial suppression” of NYCA capacity prices) supposedly began with the February 2013 ICAP Spot Market Auction.³³ The results of that auction were posted in January 2013.

IPPNY has been aware of the Dunkirk and Cayuga RSSAs, which the Complaint cites as the cause of the alleged “artificial suppression” of prices,³⁴ since at least August 2012. As the Patton Affidavit demonstrates, and as discussed below, IPPNY’s arguments concerning the Existing RSSAs have no economic underpinning. Despite IPPNY’s dire warnings of the adverse consequences that the Existing RSSAs will supposedly bring, it has inexplicably failed to address the root of its concerns, *i.e.*, the content of certain contract terms approved in the New York

³¹ *Id.* at 15.

³² *Id.* at 17 (citing *Protest of Independent Power Producers of New York, Inc.*, Docket No. ER13-405-000 (filed Jan. 7, 2013); *Request for Expedited Order Prohibiting Implementation of an Unapproved Contract for Reliability Must Run Service Subject to FERC Jurisdiction and Limited Answer of Independent Power Producers of New York, to Comments of the New York Independent System Operator, Inc.*, Docket No. ER13-405-000 (filed Jan. 25, 2013). *See also* Complaint at 27 (“That the Cayuga and Dunkirk Facilities are needed to address an identified system condition does not alter the fact that they are uneconomic . . .”). *See also* Younger Affidavit at PP 34-36 (acknowledging that the Existing RSSAs were executed in response to “system conditions”).

³³ *See Initial Answer of the New York Independent System Operator, Inc. Opposing Fast Track Processing*, Docket No. EL13-62-000 at 4 (filed May 13, 2013); *See also* Complaint at 21.

³⁴ Complaint at 41-42; *see also* Younger Affidavit at P 27.

Public Service Commission (“NYPSC”) proceeding. In fact, IPPNY affirmatively demurred when it had an opportunity to comment before the NYPSC.³⁵

Issues relating to the Dunkirk RSSAs have been pending before this Commission since July of 2012, while the Cayuga RSSA Proceeding commenced in November 2012.³⁶ IPPNY is a party in both of those proceedings. It filed a lengthy protest, which included another affidavit by Mr. Younger, in the Cayuga RSSA Proceeding. IPPNY acknowledges that its protest included arguments regarding the supposedly price-suppressive effects of the Cayuga RSSA Bidding Requirement that are very similar to those included in the Complaint.³⁷ TCR, the only IPPNY member to have mentioned Existing RSSAs issues in the stakeholder process, also filed comments filed in the Cayuga RSSA Proceeding. The NYISO stated four months ago that IPPNY should have first brought these concerns to the stakeholder process.

Accordingly, IPPNY became aware of the core issues addressed by the Complaint, and developed lengthy arguments concerning them, more than four months ago.³⁸ It had ample time to avail itself of the NYISO stakeholder process. IPPNY simply failed to do so.³⁹

³⁵ See IPPNY’s July 30, 2012 letter in NYPSC Case No. 12-E-OI36 at 3 <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C385A3B2-5E7C-4391-A4EB-8E0D0C8414CE}>. IPPNY also has not followed the usual course for challenging NYPSC determinations, which is under Article 78 of the New York Civil Practice Law and Rules.

³⁶ The proceeding to consider issues related to the Cayuga RSSA in Docket No. ER13-405 was initiated on November 16, 2012 and the RSSA was filed on January 3, 2013. The proceeding to consider issues related to the Dunkirk RSSAs in Docket No. ER12-2237 was initiated on July 12, 2012.

³⁷ See Complaint at 40 (“IPPNY and other parties have raised similar concerns about the impact of the offer requirements set forth in the Cayuga RSSA on prices in the NYCA ICAP Spot Market Auction in the ER13-405 proceeding . . .”).

³⁸ *Limited Comments of the New York Independent System Operator, Inc.* at 3, Docket No. ER13-405-000 (filed Jan. 22, 2013).

³⁹ As stated above at n.11, only one IPPNY member, TCR, has even attempted to raise anything related to “uneconomic retention” in the NYISO’s stakeholder process.

II. ANSWER

A. The Existing RSSAs Are Not Causing the “Uneconomic Retention” of Existing Resources or “Artificial Price Suppression” in the NYISO Capacity Markets

1. The Complaint is Based on Fundamentally Flawed Economic Assumptions

At its core, the Complaint is predicated on IPPNY’s economic assumption that the “uneconomic retention” of existing resources is the functional equivalent of the uneconomic entry of new resources.⁴⁰ IPPNY argues that uneconomic retention and entry cause the same harm, *i.e.*, artificial price suppression, and thus that mitigation measures must be added to the Services Tariff to prevent “uneconomic retention” from causing it.⁴¹ As noted above, the Commission does not appear to have ever previously approved mitigation measures aimed at the “uneconomic retention” of existing resources.

The Patton Affidavit explains that these arguments are based upon a “fundamentally flawed economic assertion – that the Cayuga and Dunkirk units are uneconomic and, therefore, will distort the capacity market if they are allowed to clear.”⁴² Dr. Patton emphasizes that this assertion “is simply false.”⁴³ As noted above, he states that an RSSA would only raise competitive concerns when there is not a legitimate reliability need for the capacity resource included in the RSSA or the reliability requirement motivating the RSSA is already fully captured by market requirements. The Cayuga and Dunkirk units do not fall into either of these categories.

⁴⁰ See Complaint at 21-26.

⁴¹ *Id.*

⁴² Patton Affidavit at P 17.

⁴³ *Id.*

Specifically, the Patton Affidavit states that in an ideal market, “market requirements should be fully consistent with the reliability requirements of the system.”⁴⁴ Such markets would set efficient prices and Market Participants would be able to make economic decisions, including investment and retirement decisions, that will satisfy the system’s reliability needs over both the short-term and long-term. The Patton Affidavit explains that no ISO/RTO market, including the NYISO’s markets, fully reflect all reliability requirements. Thus, no market today sets prices that fully reflect all system needs.⁴⁵

Relatively narrow local reliability needs associated with maintaining the security of the transmission system are particularly difficult to fully account for within existing organized markets. When such needs are not captured in a market’s requirements, the market will not set prices at a level that reflects the marginal costs of satisfying the need. Thus, a resource that contributes to satisfying the need may not receive revenues that reflect the full value that its services provide. In this situation, a capacity resource can appear to be “uneconomic” when, in fact, it is economic, but revenue inadequate, because the market requirements do not include the reliability needs.

Dr. Patton believes that both the Cayuga and Dunkirk units fall into this category.⁴⁶ As noted above in Section I.C, IPPNY does not dispute that both units have been found to be needed for system reliability.⁴⁷ This is the case even though the NYISO will be able to satisfy its market requirements without them. This suggests that the market revenues the units are receiving is

⁴⁴ *Id.* at P 18.

⁴⁵ *Id.* at P 19.

⁴⁶ *Id.* at P 20.

⁴⁷ *See also* Patton Affidavit at P 41 (noting that Mr. Younger’s “concerns would only potentially be valid if the reliability determinations supporting the RSSAs for these units were fallacious. I am aware of no evidence that may be the case and it has not been asserted by either Mr. Younger or IPPNY.”).

understated, that they would be revenue inadequate, and thus would reasonably be expected⁴⁸ to seek to mothball or retire.⁴⁹

The Patton Affidavit concludes that the mere fact that the Cayuga and Dunkirk units would be revenue inadequate but for the Existing RSSAs does not support the Complaint's assertion that they are uneconomic, or the many other arguments that are entirely dependent on that assertion.⁵⁰ Dr. Patton states the revenue inadequacy "makes the units no less economic and makes it no more justifiable to mitigate Dunkirk, Cayuga, or other units similarly situated that might receive an RSSA in the manner suggested by Mr. Younger."⁵¹

2. It Is Efficient and Reasonable for the Cayuga and Dunkirk Units that Are Covered by Existing RSSAs to Clear in the Capacity Market

The Complaint contends that it is inappropriate for RSSAs to require that capacity resources offer into the NYISO capacity markets at "*de minimus*" levels.⁵² According to IPPNY, capacity resources that would have exited the market but for an RSSA should instead have to offer at the level of their GFCs or, in the alternative, be excluded from the capacity market entirely.⁵³

⁴⁸ The NYISO notes that Mr. Younger is speculating when he suggests that the Cayuga and Dunkirk units would have necessarily permanently exited the market but for the Existing RSSAs. *See* Younger Affidavit at P 19. *See also* Younger Affidavit at P 62 (asserting that whether the Cayuga and Dunkirk RSSAs opted to mothball or retire was "a distinction without a difference.")

⁴⁹ *See* Patton Affidavit at P 21. *See Dunkirk Power LLC, Filing of Unexecuted Cost of Service Agreement with National Grid for RMR Service*, Testimony of Alan R. Lovinger, Docket No. ER12-2237 at 7 (filed July 12, 2012); *Cayuga Operating Company LLC, Filing of Unexecuted Cost of Service Agreement with NYSEG for RMR Service*, Testimony of Navigant Consulting, Inc., Docket No. ER13-405 at 6 (filed Nov. 16, 2012).

⁵⁰ *See* Patton Affidavit at P 21.

⁵¹ *Id.* at P 22.

⁵² *See, e.g.*, Complaint at 4, 17, 21, 25-26, 30 and 33.

⁵³ Patton Affidavit at P 25.

The Patton Affidavit highlights the error underlying IPPNY's theory. In reality, it is efficient for the Cayuga and Dunkirk units that are covered by Existing RSSAs to clear.⁵⁴ Any tariff provision that would prevent them from doing so would be inefficient and unreasonable.⁵⁵ This is because, as described above, the units are economic from the perspective of satisfying NYISO reliability requirements.⁵⁶ Again, if the reliability needs satisfied by these units were reflected in capacity market prices, then they would both clear. In clearing to satisfy the local capacity need, the units would also contribute to satisfying the NYCA-wide capacity requirement that determines the Rest of State ("ROS") capacity price. As Dr. Patton notes, this is precisely why a new resource in New York City ("NYC") that clears at the higher NYC zonal capacity price will also lower the ROS capacity price.⁵⁷

3. The Complaint's Proposal to Require the Cayuga and Dunkirk Units to Offer Capacity at the Level of their GFCs Without Reference to RSSA Revenues Is Flawed and Would Require Units Covered by Existing RSSAs to Offer their Capacity at Inflated Prices

The Complaint asserts that the Existing RSSAs require (or are suspected to require) that the Cayuga and Dunkirk units offer at levels consistent with their GFCs, which the Cayuga RSSA indicates would be expected to be *de minimis*. It claims that that Cayuga RSSA Bidding Requirement has caused NYCA capacity market clearing prices to be artificially suppressed since the February ICAP Spot Market Auction.⁵⁸

The Patton Affidavit explains that these claims are erroneous because they are premised on the notion that a competitive offer for these units would reflect their GFCs but ignore RSSA

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at P 26.

⁵⁷ *Id.*

⁵⁸ Younger Affidavit at P 13.

revenues.⁵⁹ The Complaint claims that RSSA revenues should be excluded because “[a]llowing these out of market contract revenues to offset the unit’s GFCs for purposes of submitting an in-market offer for capacity would only serve to mask the uneconomic nature of the facility thereby providing a blueprint for how to suppress prices.”⁶⁰ Dr. Patton emphasizes that the error in this assertion stems back to the primary flaw in Mr. Younger’s economic reasoning, *i.e.*, his assumption that the Cayuga and Dunkirk units are uneconomic.

As Dr. Patton states, from an economic perspective,

[O]ffering at price levels consistent with a unit’s GFC is rational because if the unit does not clear at a price that would cover these costs, the unit should mothball or retire. This is not the case for Cayuga and Dunkirk. It is not economic for them to mothball because they are needed to satisfy the reliability needs of the system. Therefore, if a unit cannot mothball or retire, it would be unreasonable to submit capacity offers at its GFC (ignoring the RSSA revenue.)⁶¹

Additionally, “the true GFCs that must be recovered through the capacity market are simply the residual costs that are not covered by the combination of the NYISO’s Energy and Ancillary Services markets and the RSSAs. Since the purpose of the RSSAs is to cover the units’ GFCs, the residual GFCs remaining should be *de minimis* if the RSSAs are effective.”⁶² Requiring economic but revenue inadequate capacity resources to submit offers at GFC levels that ignore their RSSA revenues would effectively require them to submit inflated offers. The Patton Affidavit is very clear that any such requirement should be rejected.

⁵⁹ Patton Affidavit at P 29.

⁶⁰ Complaint at 36; *see also* Younger Affidavit at P 100.

⁶¹ Patton Affidavit at PP 30-31.

⁶² *Id.*

4. The Complaint's Arguments Regarding the Proposed Price Suppressive Impacts of the Existing RSSAs Are Irrelevant Because They Are Predicated on Invalid Economic Assumptions

The Complaint, and the Younger Affidavit, make lengthy arguments concerning the financial impacts of the supposed “artificial price suppression” that they blame on the Existing RSSAs. The Complaint claims that the Cayuga RSSA Bidding Requirement alone has caused NYCA spot market capacity clearing prices to be “artificially suppressed” at a level equal to “approximately \$7/kW-year to \$8/kW-year, all else equal.”⁶³ The Younger Affidavit notes that in the “four NYCA spot market auctions since the Cayuga RSSA became effective, the market clearing prices were \$2.65/kW-month, \$2.09/kW-month, \$1.50/kW-month and \$3.01/kW month respectively.”⁶⁴ It further contends that the Cayuga Bidding Requirement alone will cost Rest of State capacity suppliers more than \$77 million.⁶⁵ The Complaint and the Younger Affidavit claim that these losses will immediately and directly injure capacity suppliers, indirectly harm all Market Participants, and ultimately call the “sustainability” of the capacity markets into question.⁶⁶

The NYISO is not addressing these arguments other than to note that they would only be relevant to the extent that the Existing RSSAs are causing “artificial price suppression.” Because Dr. Patton has demonstrated that the Existing RSSA are not harming the markets there is no “impact” issue to discuss. The NYISO also notes that the Younger Affidavit did not use the correct clearing price for May 2013 of \$5.76/kW-month.⁶⁷

⁶³ Complaint at 4, 26, 41; Younger Affidavit at P 13.

⁶⁴ Younger Affidavit at P 49.

⁶⁵ *Id.* at P 27; *see also* Complaint at 41.

⁶⁶ *See* Complaint at 26, 39; Younger Affidavit at PP 8, 20, 28, 48, 98.

⁶⁷ *See* Younger Affidavit at P 49.

B. The Commission Need Not Address IPPNY's Concerns Regarding Possible Future RSSAs, New York State's Energy Highway Initiative, or Other Actions that New York State Might Pursue in the Future

Beyond its concerns with the Existing RSSAs the Complaint suggests⁶⁸ that there may be additional Future RSSAs that would exacerbate “artificial price suppression” and potentially “fragment,” “balkanize,” or even “unravel” the NYISO capacity markets.⁶⁹ The Complaint also states that while it is “focused on” issues associated with the “uneconomic retention” of existing resources pursuant to RSSAs that “the Commission should be aware that there are also a number of efforts underway in New York that threaten similar harm through subsidized new entry into the Rest of State region.”⁷⁰ The Complaint refers to the Governor’s “Energy Highway Initiative,” various pending NYPSC proceedings, and proposed state legislation, as examples of such future threats.⁷¹

IPPNY’s warnings that Future RSSAs may proliferate are not a sufficient basis for granting the Complaint. IPPNY’s argument that Future RSSAs would harm the market is a product of its flawed assumption that RSSAs with *de minimis* bidding requirements will necessarily result in “artificial price suppression.” But the Patton Affidavit is clear that RSSAs will not normally be anti-competitive and capacity resources that enter into them should normally be allowed to clear in the market and to offer their capacity at a price level that accounts for their RSSA revenues.⁷² The Patton Affidavit also rejects suggestions that RSSAs

⁶⁸ See Complaint at 28-32; See also Younger Affidavit at P 31 (“Thus, as a preliminary matter, I would note that while only two RSSAs are currently in place in New York there is a significant potential that more may become necessary.”).

⁶⁹ Complaint at 31-32.

⁷⁰ *Id.* at 18.

⁷¹ *Id.* at 18-20.

⁷² See Patton Affidavit at P 49 (“Further, to the extent that other units in the future receive RSSAs because they are the most economic means to satisfy a reliability need that is not reflected in the NYISO

will cause the capacity markets to “unravel.” Future RSSAs will only cause artificial price suppression if they do not address a legitimate reliability need or if the need that they address is already fully captured by capacity market requirements so that prices will account for the need. If the NYISO were to identify a Future RSSA that appeared to violate one of Dr. Patton’s criteria it would investigate and take any necessary action under its existing tariff authority.

IPPNY’s concerns about various pending or potential New York State initiatives should likewise not be addressed. IPPNY’s brief references to them are limited and conclusory and do not satisfy its burden of proof under the FPA. Even if the Commission thought there was merit in IPPNY’s concerns about New York State initiatives, Dr. Patton has refuted the underlying economic assumptions which IPPNY’s two proposed alternative tariff revisions were fashioned to address. Moreover, unlike its arguments regarding Existing RSSAs, IPPNY does not claim that pending or potential future New York State initiatives have been or are currently harming suppliers or the capacity markets. It simply claims that they may cause harm in the future.⁷³ At a minimum, for the reasons set forth in Section II.D below, the Commission ought to direct IPPNY to raise its concerns about these initiatives in the stakeholder process in the first instance.⁷⁴ By rejecting these aspects of the Complaint, the Commission would recognize the

market requirements, these units should similarly not be mitigated or otherwise prevented from selling capacity.”).

⁷³ This proceeding is distinguishable in many ways from the 2011 proceedings addressing the PJM Interconnection, L.L.C. (“PJM”) Minimum Offer Price Rule (“MOPR”) in which the Commission acted in response to certain initiatives by PJM states that allegedly would have artificially suppressed PJM capacity prices. The most important is that the “triggering event” that prompted Commission action in the 2011 MOPR proceedings was the enactment of legislation by New Jersey that would have imminently impacted PJM’s capacity auctions.

⁷⁴ The NYISO is aware that the Patton Affidavit indicates that Dr. Patton shares some of Mr. Younger’s concerns regarding potential future “initiatives that could offer public support to prompt investments that would not be economic for a private investor to undertake . . .,” *See* Patton Affidavit at PP 36, 40 but notes that Dr. Patton supports the NYISO’s position that such issues are outside the scope of this proceeding and that the Complaint should be denied. *See* Patton Affidavit at PP 15, 37, 42.

NYISO's existing authority to address any genuine market power issues that may arise rather than presuming, without any basis, that the NYISO would do nothing. To adopt a comprehensive set of mitigation rules, developed by a single class of Market Participants, to address potential problems that might potentially emerge in the future would be to err too far on the side of over-mitigation.

C. Because the Existing RSSAs Do Not Result in “Uneconomic Retention” Buyer-Side Market Power or “Artificial Price Suppression” in Commission-Jurisdictional Markets There Is No Need for Tariff Revisions or Other Commission Action

The Complaint asks that the NYISO be required, immediately upon the issuance of a Commission order, to “either (1) exclude uneconomic existing resources that would have exited the market but for out-of-market payments, including but not limited to payments under RMR-type agreements like the RSSAs, from the capacity market altogether, or (2) require capacity offers no lower than GFCs from such resources.” It would then allow the NYISO twenty days to file the necessary tariff revisions. The Complaint also requests that the NYISO be compelled to “ensure that RMR resources are only called upon to operate to the extent needed to address the reliability concerns underlying the RMR designation, and that RMR-type mechanisms remain in place for limited time periods and only until such time as longer-term generation or transmission solutions are put in place.”⁷⁵

For the reasons specified above, there is no basis for the Commission to grant any of the relief requested by IPPNY or to direct any other tariff revisions. The Patton Affidavit demonstrates that the Complaint's arguments regarding Existing RSSAs and Future RSSAs are

⁷⁵ Complaint at 5. *See also* Complaint at 36-37 and n. 141 (stating that because these tariff revisions are not as “time sensitive” as others unilaterally proposed by IPPNY that the NYISO should be afforded as long as ninety days to address them).

“utterly without merit.” It would be premature to impose tariff revisions to address assorted other unfinished or future New York State initiatives referenced in the Complaint.

The Commission has been clear that it will not “pass judgment on state policies and objectives” but will protect Commission-jurisdictional capacity markets from potential state efforts to use buyer-side market power to disrupt competitive market signals.⁷⁶ The Complaint attempts to present this proceeding as an instance where such Commission action is necessary. The Commission should reject that notion. The Complaint fails to show that “artificial price suppression” has taken, or is currently taking, place in the NYCA capacity markets. It does not show that there is an imminent threat of such harm occurring in the future or that the NYISO and/or the MMU would fail to utilize existing tools to mitigate actual future harms. Consequently, the Complaint should be denied in its entirety.

D. The Commission Should Discourage IPPNY from Attempting to Circumvent the NYISO Stakeholder Process

The Complaint’s substantive defects are addressed in Section II.A above and in the Patton Affidavit. Even if the Complaint had merit, however, IPPNY’s decision to file it without making an effort to first raise its concerns through the NYISO stakeholder process would violate Commission policy and precedent. It would also be contrary to agreements establishing the authority and governance of the NYISO that IPPNY’s members have executed.⁷⁷ It is true that the FPA does not expressly prohibit parties from filing complaints when they have ignored the policies and precedent endorsing the use of stakeholder processes. But the Commission should use the opportunity presented by the submission of a filing with deficiencies that could have

⁷⁶ See, e.g., *PJM Interconnection, L.L.C.* 143 FERC ¶ 61,090 at P 54 (2013) (citing *PJM Interconnection, L.L.C.* 137 FERC ¶ 61,145 at P 89 (2011)).

⁷⁷ See ISO Agreement §§ 7.01-7.13, 11.01, and 19.01.

been identified through stakeholder discussions, to remind IPPNY and others that it views attempts to bypass such discussions with disfavor.

The Commission has repeatedly discouraged attempts to make “end-runs” around ISO/RTO governance processes by proposing tariff changes that have not had the benefit of stakeholder vetting.⁷⁸ It does so because it recognizes that stakeholder discussions can help to improve the quality of tariff filings, better balance the interests of the various sectors impacted by proposed changes, and reduce the number and severity of disputed issues.⁷⁹ The NYISO’s “shared governance” arrangements arguably give stakeholders a greater role in shaping tariff revisions than they have in any other market. In particular, under the ISO Agreement, the NYISO’s tariffs may only be revised pursuant to Section 205 of the FPA if the revision has been approved by a super-majority of the stakeholder Management Committee and by the NYISO’s

⁷⁸ See, e.g., *ISO New England Inc.*, 130 FERC ¶ 61,145, at P 34 (2010) (“we encourage parties to participate in the stakeholder process if they seek to change the market rules...”); *ISO New England Inc.*, 125 FERC ¶ 61,154 at P 39 (2008) (directing that unresolved issues be addressed through the stakeholder process); *ISO New England*, 128 FERC ¶ 61,266 at P 55 (2009) (declining to grant a party’s specific request for relief because the Commission “will not ... circumvent that stakeholder process”); *New York Independent System Operator, Inc., New York Transmission Owners*, 126 FERC ¶ 61,046, at PP 53-54 (2009) (directing that a proposal be “presented to and discussed among ... stakeholders and filed as a section 205 proposal, not unilaterally presented to the Commission”); *New England Power Pool*, 107 FERC ¶ 61,135 at PP 20, 24 (2004) (declining to accept changes proposed for the first time in a FERC proceeding by an entity that participated in the stakeholder process because the “suggested revisions have not been vetted through the stakeholder process and could impact various participants”).

⁷⁹ See, e.g., *California Independent System Operator, Inc.*, 143 FERC ¶ 61,087 at P 73 (2013) (directing the development of a “long-term solution through the stakeholder process” because it will allow the ISO “and the market participants to thoroughly evaluate the benefits and costs of various alternatives, and development the most efficient long-term solution”); *ISO New England Inc.*, 130 FERC ¶ 61,145 at P 34 (2010) (refusing to address stakeholder concerns that were the subject of ongoing stakeholder process and encouraging “parties to participate in the stakeholder process if they seek to change the market rules”); *Consolidated Edison Company of New York, Inc.*, 95 FERC ¶ 61,216 at 61,719 (“First, ConEd circumvented the NYISO stakeholder process by unilaterally filing revisions to the in-City mitigation measures. ConEd’s failure to use the NYISO stakeholder process has resulted in vigorous opposition to its proposal. We strongly encourage market participants to use the stakeholder process, especially in this type of situation, *i.e.*, where a market participant seeks to modify market measures that impact all market participants”).

independent Board of Directors.⁸⁰ While interested parties may ask that tariff changes be imposed under FPA Section 206, the Commission has been clear that such filings are disfavored when the NYISO stakeholder process has not been exhausted.⁸¹

IPPNY effectively acknowledges that the Complaint represents an end-run around the stakeholder process.⁸² IPPNY attempts to justify its conduct based on its supposed need for expedited Commission action, but that claim is baseless. As noted above, in Section I.D, IPPNY has been aware of the issues in this proceeding since last year and made multiple filings with the Commission in late 2012 and early 2013 concerning them. Thus, the only reason why “expedited action” would be needed with respect to the Existing RSSAs, even if IPPNY’s claims regarding them had economic merit, would be IPPNY’s own delay.

IPPNY claims that it “deferred” to the stakeholder process by narrowing the issues raised in the Complaint as much as possible and by only requesting “relief narrowly tailored to the immediate and ongoing threat to the capacity market”⁸³ Neither of these “defenses” is valid. It is unclear in what way the Complaint’s challenge to the Existing RSSAs, and any future RSSAs or other possible future state initiatives, or its requests for relief regarding them, could be said to be “limited.” The Complaint proposes two alternative tariff proposals in response to the supposed problems that the Existing RSSAs allegedly create. It is not “deference” to the stakeholder process to assert that stakeholders still have a right to litigate before the Commission

⁸⁰ See ISO Agreement § 7.01. The one exception to this requirement, which is not relevant here, is the rule allowing the NYISO to propose temporary tariff changes under Section 205 when “exigent circumstances” exist. See ISO Agreement § 19.01.

⁸¹ See, e.g., *Niagara Mohawk Power Corp. v. New York State Reliability Council and New York Independent System Operator, Inc.*, 114 FERC ¶ 61,098 at P 1 (2006) (“For the reasons described below, we will exercise our discretion and require that National Grid first exhaust its methods of resolving this dispute within Reliability Council and NYISO before filing a complaint with the Commission. Thus, we will dismiss the Complaint, without prejudice”).

⁸² Complaint at 37-38.

⁸³ *Id.* at 38.

after a complainant bypasses the process.⁸⁴ If IPPNY had truly meant to “defer” to the stakeholder process it would have tried to make use of it.

IPPNY also compares the unilateral action it took by filing the Complaint with an emergency action that the NYISO took in a supposedly “analogous situation.” The difference is that the NYISO acted to address an actual and immediate threat to the markets while IPPNY’s actions are predicated on fundamentally flawed economic assumptions. In addition, the NYISO and MMU are both independent, not-for-profit entities that the Commission has tasked with important market monitoring functions. Neither has any incentive to favor any individual stakeholder or class of stakeholders.⁸⁵ Thus, the NYISO’s and the MMU’s strong opposition to IPPNY’s tariff proposals should be accorded great weight.

IPPNY’s argument that the FPA’s mandate against unlawful rates cannot be overruled by stakeholder process considerations must also be rejected.⁸⁶ As stated above, the fact that an

⁸⁴ *Id.*

⁸⁵ See, e.g., *Niagara Mohawk Power Corp. v. FERC*, 452 F.3d 822, n.5 (D.C. Cir. 2006) (noting that “NYISO is an independent entity and is governed by a board of directors, none of whom is affiliated with market participants”); *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 5 (D.C. Cir. 2002) (noting that ISOs “have no financial stake in any power market participant”); *New York Indep. Sys. Operator, Inc.*, 133 FERC ¶ 61,072, PP 26-27 (2010) (finding that the NYISO operates “independent of any market participant or class of market participants”); *Cent. Hudson Gas & Elec. Co.*, 88 FERC ¶ 61,229 (1999) (confirming that NYISO had adopted rules requiring it to be independent from, and have no financial interests in the economic performance of, any market participant). See also *New York Independent System Operator, Inc.*, 129 FERC ¶ 61,164 (2009) (confirming NYISO’s compliance with Order No. 719’s stakeholder “responsiveness” requirements).

⁸⁶ See, e.g., *Braintree Elec. Light Dept. v. ISO New England, Inc.*, 128 FERC ¶ 61,008 at P 50 (2009) (“The Commission does not find reliance on the stakeholder process to be an impermissible delegation of authority. The Commission may refer, and has referred, a matter to a stakeholder process in any number of circumstances. In particular, a stakeholder process is appropriate when unresolved issues may be better addressed in a forum featuring broad stakeholder input, and where a solution can be better tailored to meet regional needs through broad input from interested participants that may not otherwise participate in a Commission proceeding. Because the Commission will ultimately review and act on any resulting proposal, there is no issue with respect to the delegation of Commission authority”); *El Segundo Power, LLC*, 95 FERC ¶ 61,159 at 61,157 (2001) (rejecting an argument that the “stakeholder process may adversely affect the Commission’s statutory responsibilities under the FPA finding that “the stakeholder process allows potentially affected parties to voice their concerns regarding a rate or term of service prior to the filing of the rate or term with the Commission. If consensus is not reached, then a

action is not prohibited does not mean that it cannot, or should not, be strongly disfavored.⁸⁷

IPPNY's assertion is simply a hollow justification for its choice to forego the process to attempt to avoid discussion and the need to accept compromise or changes to its preferred proposal.

If the Commission does not emphasize that IPPNY's unilateral action was inappropriate it risks undermining the integrity of the NYISO's stakeholder process. It would also provide an incentive for other stakeholders to disregard the process and to attempt their own end-runs around it. Thus, it would be both helpful and timely for the Commission to encourage IPPNY to attempt to work through the stakeholder process in the future.

III. COMMUNICATIONS

Communications regarding this proceeding should be addressed to:⁸⁸

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Ray Stalter, Director of Regulatory Affairs
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IV. COMPLIANCE WITH COMMISSION RULE 213(c)(2)(i)

Attachment 2 to this answer addresses the formal requirements of Commission Rule 213(c)(2) in order to ensure the NYISO's full compliance with them.

party may pursue its concerns with the Commission. We do not believe that there is any conflict between the stakeholder process and the Commission's discharge of its statutory obligations under the FPA.").

⁸⁷ See *supra* n.81.

⁸⁸ The NYISO has updated its contact list for this proceeding since it filed its Initial Answer and is therefore including the updated information here.

V. CONCLUSION

For the foregoing reasons, the NYISO respectfully requests that the Commission deny the Complaint, including its alternative proposals to revise the Services Tariff and each of its other requests for relief.

Respectfully submitted,

/s/ Ted J. Murphy
Counsel for the
New York Independent System Operator, Inc.

cc: Travis Allen
Michael A. Bardee
Gregory Berson
Anna Cochrane
Jignasa Gadani
Morris Margolis
David Morenoff
Michael McLaughlin
Daniel Nowak

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served on the Complainant and on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 30th day of May, 2013.

/s/ Ted J. Murphy _____

Ted J. Murphy

Hunton & Williams LLP

2200 Pennsylvania Avenue, NW

Washington, D.C. 20037-1701

(202) 955-1500

Attachment 1

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

Independent Power Producers)
of New York, Inc.,)
)
Complainant,)
)
v.)
)
New York Independent System Operator, Inc.)
)
Respondent.)

Docket No. EL13-62-000

**AFFIDAVIT OF
DAVID B. PATTON, PH.D.**

MAY 30, 2013

I. Qualifications and Purpose

1. My name is David B. Patton. I am an economist and the President of Potomac Economics. Our offices are located at 9990 Fairfax Boulevard, Fairfax, Virginia 22030. Potomac Economics is a firm specializing in expert economic analysis and monitoring of wholesale electricity markets. Potomac Economics serves as the Market Monitoring Unit (“MMU”) for the New York Independent System Operator (“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.
2. As the MMU for the NYISO, Potomac Economics is responsible for assessing the competitive performance of the markets that the NYISO administers, including the ICAP¹ market, and for assisting in the implementation of a monitoring plan to identify and remedy potential market design flaws and abuses of market power. This work has included preparing a number of reports that assess the performance of these markets and providing advice on numerous issues related to market design and economic efficiency. Prior to Potomac Economics becoming the MMU, I served as the independent Market Advisor to the NYISO.
3. I have worked as an energy economist for 22 years, focusing primarily on the electric utility and natural gas industries. I have provided strategic advice, analysis, and expert testimony in the areas of electric power industry restructuring, pricing, mergers, and market power. I have also advised Regional Transmission Organizations on transmission pricing, market design, and congestion management issues. With regard to competitive analysis, I have provided expert testimony and analysis regarding market power issues in a number of mergers and market-based pricing cases before the Federal Energy Regulatory Commission (“Commission”), state regulatory commissions, and the U.S. Department of Justice.
4. Prior to my experience as a consultant, I served as a Senior Economist in the Office of Economic Policy at the Commission, advocating on a variety of policy issues including

¹ Terms with initial capitalization not defined herein have the meaning set forth in the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”), and if not defined therein, then as defined in the NYISO’s Open Access Transmission Tariff (“OATT”).

transmission pricing and open-access policies, market design issues, and electric utility mergers. As a member of the Commission's advisory staff I worked on policies reflected in Order No. 888, particularly on issues related to power pool restructuring, independent system operators ("ISOs"), and functional unbundling. I also analyzed the competitive characteristics of alternative transmission pricing and electricity auctions proposed by ISOs.

5. Before joining the Commission, I worked as an economist for the U.S. Department of Energy. During this time, I helped to develop and analyze policies related to investment in oil and gas exploration, electric utility demand side management, residential and commercial energy efficiency, and the deployment of new energy technologies.
6. I have a Ph.D. in Economics and a M.A. in Economics from George Mason University, and a B.A. in Economics with a minor in Mathematics from New Mexico State University.
7. The purpose of this affidavit is to respond to the Affidavit of Mark D. Younger ("Younger Affidavit") that is included in the Complaint Requesting Fast Track Processing of the Independent Power Producers of New York, Inc. ("Complaint").

II. Background and Summary

8. I was a principal advocate of NYISO's adoption of buyer-side mitigation ("BSM") measures to address uneconomic entry. I continue to believe that BSM measures are essential because they prevent entities from artificially depressing prices below competitive levels by subsidizing the entry of uneconomic capacity. After their initial adoption more than five years ago, I have recommended a number of changes to address flaws in the measures or otherwise improve their effectiveness.
9. I am aware of the reliability determinations that have been made pertaining to the retirement of the Cayuga and Dunkirk units, as well as the issues and disputes regarding the Reliability Services Support Agreements ("RSSAs"). In particular, I have provided advice to the NYISO regarding the appropriate participation of these units in the capacity market.

10. The Younger Affidavit alleges that buyer-side market power is being exercised in the NYCA capacity market in the form of the “uneconomic retention” of existing resources. Mr. Younger claims that this is resulting in “artificially suppressed” capacity prices because of a provision in the RSSA between Cayuga Operating Company, LLC (“Cayuga”) and the New York State Electric & Gas Corporation (“NYSEG”) that requires Cayuga to offer the units’ “capacity value into the NYISO UCAP Auction at a *de minimis* price in compliance with NYISO market rules”² (“Cayuga RSSA Bidding Requirement”). Mr. Younger also expresses concerns regarding: (i) a similar bidding requirement that he believes may be included in RSSAs between Dunkirk Power, LLC (“Dunkirk”) and National Grid;³ and (ii) other RSSAs that may become necessary in the future and that may include similar bidding requirements.⁴ He predicts that the Cayuga RSSA Bidding Requirement could be extended until 2017 and anticipates that similar requirements might result in price suppression for as long as thirty years.^{5 6}
11. The Younger Affidavit argues that “[c]onsistent with the manner that the NYISO has defined competitive bids in the past, in other contexts, the NYISO should require uneconomic units retained on the system to address a system condition to offer their capacity at bids based on the unit’s GFCs.”⁷

² Younger Affidavit at P 8.

³ The Younger Affidavit states, and it is my understanding, that the currently effective Dunkirk RSSA will expire at the end of May 2013 and that a new Dunkirk RSSA has been filed with the NYPSC that would potentially remain in effect through May 31, 2015. *See* Younger Affidavit at P 35. It is also my understanding that the first Dunkirk RSSA was for two units rated at 100 MW each, and the second Dunkirk RSSA is only for one 100 MW unit. *See Petition of Dunkirk Power, LLC and NRG Energy, Inc. for Waiver of Generator Retirement Requirements, “Request for Approval of Reliability Support Services Agreement”* (March 5, 2013) available at <<http://documents.dps.ny.gov/public/MatterManagement/MatterFilingItem.aspx?FilingSeq=88630&MatterSeq=39463>>.

⁴ Younger Affidavit at P 31 (“Thus, as a preliminary matter, I would note that while only two RSSAs are currently in place in New York there is a significant potential that more may become necessary.”)

⁵ *Id.* at P 95.

⁶ *Id.* at P 43.

⁷ *Id.* at P 99.

12. This affidavit explains the only circumstances under which an RSSA would raise competitive concerns are circumstances where:
- There is not a legitimate reliability need for the resources; or
 - The reliability need motivating the RSSA is already fully captured by the capacity market requirements.
13. Neither of these two circumstances have been alleged by Mr. Younger or IPPNY in its Complaint. Hence, there is no legitimate basis to mitigate the alleged exercise of buyer-side market power that the Complaint attributes to the Cayuga Bidding Requirement and, potentially, to the Dunkirk RSSA.
14. This affidavit explains that the concerns that are raised by Mr. Younger are based on a flawed economic assertion that Cayuga and Dunkirk are not economic and a flawed notion of what constitutes a competitive capacity market offer from resources covered by a contract to address an identified reliability need (whether labeled a “reliability must-run” (“RMR”) contract or an RSSA.)
15. Accordingly, I agree with the NYISO that there has been, and currently is no exercise of buyer-side market power or “artificial price suppression” in the NYCA capacity market related to the “uneconomic retention” of existing resources. I also agree with the NYISO that there is no reason for the Commission to require revisions to the Market Administration and Control Area Services Tariff (“Services Tariff”) and that the Complaint should be rejected.

III. Responses to the Mr. Younger’s Arguments Regarding Cayuga and Dunkirk

A. Most of Mr. Younger’s Arguments are Premised on a Fundamentally Flawed Economic Assertions

16. Mr. Younger equates the allegedly price suppressive effects of “uneconomic retention” with those of uneconomic entry.⁸ He asserts that “the uneconomic retention of existing capacity generates the same harm” since “[i]n both cases, uneconomic capacity is being

⁸ *Id.* at PP 21-28.

used to suppress clearing prices thereby distorting the market signals and harming otherwise economic merchant resources that rely upon the NYISO markets for their revenues.”⁹

17. These arguments and all others in Mr. Younger’s affidavit are premised on a fundamentally flawed economic assertion – that the Cayuga and Dunkirk units are uneconomic and, therefore, will distort the capacity market if they are allowed to clear. This is simply false.
18. Ideally, the market requirements should be fully consistent with the reliability requirements of the system. This allows the markets to set prices efficiently that will facilitate decisions by participants that will satisfy the system’s reliability needs over both the short-term and long-term. These decisions include the decision to invest in new units or retire existing units.
19. However, it is well-recognized that none of the ISO/RTO-administered electricity markets fully reflect all reliability requirements, and therefore do not set prices that reflect the full needs of the system. One class of reliability needs that are particularly difficult to fully incorporate in the ISO/RTO market framework are relatively narrow local reliability needs associated with maintaining the security of the transmission system.
20. When reliability needs are not captured in the market requirements, the market will not set prices that reflect the marginal costs of satisfying the need. Hence, resources that contribute to satisfying the need will not receive revenues that reflect the value of these reliability services. This can cause the unit to appear to be “uneconomic” when, in fact, it is simply revenue inadequate because the market requirements do not include this reliability need. This appears to be the case for both the Cayuga and Dunkirk units.
21. Both units have been found to be needed for system reliability, notwithstanding the fact that NYISO will be able to satisfy its market requirements without the units.¹⁰ This

⁹ *Id.* at P 25.

¹⁰ *See Dunkirk Power LLC, Filing of Unexecuted Cost of Service Agreement with National Grid for RMR Service*, Testimony of Alan R. Lovinger at p. 7, Docket No. ER12-2237 (July 12, 2012); *Cayuga Operating Company LLC, Filing of Unexecuted Cost of Service Agreement with NYSEG*

suggests that the NYISO market requirements do not capture this reliability need and that the units' market revenues are understated as a result. In this circumstance, it is not surprising that the Cayuga and Dunkirk units would be revenue inadequate and, as a result, file proposals to mothball or retire. However, the fact that the units are revenue inadequate without the RSSAs certainly does not support Mr. Younger's assertion that they are uneconomic, nor the many other arguments that are directly premised on this flawed primary assertion.

22. If the planning need being satisfied by the Cayuga and Dunkirk were fully specified in the capacity market, these units would both clear and the price at their locations would generate revenue sufficient to keep them in operation if they were the lowest-cost means to satisfy the needs – hence, they would be revenue adequate and economic. The fact that the markets do not reflect this reliability need makes the units no less economic and makes it no more justifiable to mitigate Dunkirk or Cayuga in the manner suggested by Mr. Younger.
23. Issues related to the ability of wholesale electricity markets to capture the reliability needs of an ISO/RTO are not new. Prior to implementing locational capacity and forward reserve requirements six years ago, the ISO-NE markets did not reflect the need for capacity in chronically congested areas. For the reasons described above, this led to a large number RMR contracts in these areas. In 2006, more than 40 percent of the capacity in Connecticut was covered by RMR contracts, while such contracts covered 60 percent of the resources in Boston.
24. Obviously, these quantities are much larger than the quantities associated with the Cayuga and Dunkirk units, but the fundamental issues are the same. At the same time, ISONE operated a monthly capacity market. It would have been unreasonable and grossly inefficient to operate its capacity market in a manner that would result in ignoring the fact that the RMR resources are, in fact, satisfying the market-wide capacity needs. Such is the case here as well, albeit for a much smaller quantity of capacity.

for RMR Service, Testimony of Navigant Consulting, Inc. at p. 6, Docket No. ER13-405 (Nov. 16, 2012).

B. Cayuga and Dunkirk Should Clear in the NYISO Capacity Market

25. Despite Mr. Younger's arguments to the contrary, it is efficient for these units to clear in the NYISO capacity market. Any provisions imposed that would cause them not to clear would be unreasonable.
26. The reason these units should clear and the resulting effects on NYISO's capacity markets considered efficient and reasonable by the Commission is that the units are economic from the perspective of satisfying the NYISO's reliability requirements as described above. Again, if the reliability needs satisfied by these units were reflected in the capacity market, the units would both clear. In clearing to satisfy the local capacity need, the units would also contribute to satisfying the NYCA-wide capacity requirement that determines the Rest of State ("ROS") capacity price. This is precisely why a new resource in New York City ("NYC") that clears at the higher NYC zonal capacity price will also lower the ROS capacity price. This occurs because the capacity requirements are "nested" such that one megawatt of capacity in a local area will simultaneously contribute to satisfying both the local need and the broader market-wide needs.
27. Hence, Mr. Younger's claims that the NYCA capacity prices have been and will continue to be "artificially suppressed" are wholly without merit.

C. Mr. Younger's Notions Regarding Competitive Offer Levels and Going Forward Costs are Inconsistent with Economic Theory

28. The RSSAs require that Cayuga and Dunkirk offer at levels consistent with their going forward costs ("GFCs"), which the Cayuga RSSA indicates would be expected to be *de minimus*. Mr. Younger claims that that Cayuga RSSA Bidding Requirement "has caused the NYCA capacity market clearing prices to be artificially suppressed since the agreement was implemented which began with the February spot market auction."¹¹ Mr. Younger also argues that if the Dunkirk RSSA contains a similar bidding requirement then "that contract would likewise result in suppressed prices."¹²

¹¹ Younger Affidavit at P 13.

¹² *Id.* at P 14.

29. These claims are erroneous because they are premised on the notion that a competitive offer for these units would reflect the units GFCs, while ignoring the RSSA revenues. Mr. Younger asserts that the “NYISO’s markets are designed around a concept of perfect competition where generators are expected to offer into the energy, ancillary service, and capacity markets, close to or below their respective GFC levels.”¹³ His estimates of the units’ GFCs do to include an offset for the RSSA payments.¹⁴ He explicitly argues that such contract payments be excluded from the definition of GFCs because “[a]llowing these out of market contract revenues to offset the unit’s GFCs for purposes of submitting an in market offer for capacity would only serve to mask the uneconomic nature of the facility thereby providing a blueprint for how to suppress prices.”¹⁵ Again, this erroneous assertion stems from the primary flaw in Mr. Younger’s economic reasoning that the Cayuga and Dunkirk units are fundamentally uneconomic.
30. From an economic perspective, offering at price levels consistent with a unit’s GFC is rational because if the unit does not clear at a price that would cover these costs, the unit should mothball or retire. This is not the case for Cayuga and Dunkirk. It is not economic for them to mothball because they are needed to satisfy the reliability needs of the system.
31. Therefore, if a unit cannot mothball or retire, it would be unreasonable to submit capacity offers at its GFC (ignoring the RSSA revenue.) However, the error in Mr. Younger’s reasoning can be easily remedied by incorporating the RSSA revenue in the units’ GFCs. In reality, the RSSAs exist primarily to cover the units’ GFCs so that they will remain in operation and satisfy the system’s reliability needs. Hence, the true GFCs that must be recovered through the capacity market are simply the residual costs that are not covered by the combination of the NYISO’s Energy and Ancillary Services markets and the RSSAs. Since the purpose of the RSSAs are to cover the units’ GFCs, the residual GFCs remaining should be *de minimus* if the RSSAs are effective.

¹³ *Id.* at P 46.

¹⁴ *Id.* at P 26, 33-35.

¹⁵ *Id.*

32. Therefore, requiring that the resources be offered at a *de minimus* offer level is nothing more than a requirement that they be offered competitively. Therefore, Mr. Younger's claims that such requirements will artificially suppress capacity prices should be given no weight, and his suggestions that the Commission mandate provisions that would compel the resources to be offered at inflated offer prices should be rejected.

D. Tariff Revisions Proposed in the Complaint

33. As noted above, the Younger Affidavit supports the Complaint's request that the Services Tariff be amended to require that "uneconomically retained" units be required to offer their capacity at a level based on their GFCs. Mr. Younger states that the NYISO's GFC rules should be applied to "uneconomic retention" mitigation in the same manner that it has applied in other contexts but with one "clarification."^{16,17} Specifically, Mr. Younger proposes that the Services Tariff definition of "GFC" be revised, as applied to "uneconomically retained units" to exclude "regulated, out of market revenue resulting from the RMR contracts"¹⁸
34. As an alternative, Mr. Younger suggests that the RSSA Units Not Be Allowed to Offer into the Capacity Market at all. The Younger Affidavit states that "given that RMR units rely on out of market payments to obtain revenues and are no longer competitive resources, it also would be correct to require RMR units to refrain from offering into the capacity market at all."¹⁹

IV. Responses to Mr. Younger's Arguments Regarding Other Potential Future Issues

A. Potential Developments Affecting the NYISO Capacity Market

35. The Younger Affidavit states that "[b]eyond the significant harm to the capacity markets currently being caused by these RSSA bidding requirements, New York State has been

¹⁶ The NYISO's GFC rules apply to supplier-side mitigation. *See* Services Tariff Attachment H Sections 23.2.2 (at definition of "Going Forward Costs"), 23.4.5.2, and 23.4.5.3.

¹⁷ *Id.* at PP 99-100.

¹⁸ *Id.* at P 100.

¹⁹ *Id.* at P 59.

engaged in an Energy Highway Initiative (“EHI”) over the past year.”²⁰ Mr. Younger also discusses other PSC initiatives, including the RFP for transmission and generation projects that may be necessary to prepare for the possible retirement of Indian Point.²¹

36. I share Mr. Younger’s concerns about publically funded projects and other initiatives that could offer public support to prompt investments that would not be economic for a private investor to undertake, although I have not undertaken a detailed analysis of the initiatives Mr. Younger cites in his affidavit. If public initiatives are justified to address unpriced reliability needs or legitimate externalities, the resultant investments should be the most economic alternatives. I understand that the Commission’s recent Order No. 1000 grants responsibilities to NYISO and its MMU that may help assure that this is true for certain public policy initiatives. Additionally, the proposals to replace the Dunkirk and Cayuga RSSAs over the long-term should also satisfy this criterion.
37. Although it is unclear how effective these processes will be in addressing potential uneconomic investment, the initiatives Mr. Younger cites are well beyond the scope of this proceeding. The Dunkirk and Cayuga RSSAs are the subject of this complaint and I find no evidence that they constitute an inappropriate intervention in the market.

B. The Effects of Reliability Needs not Reflected in the Markets

38. The Younger Affidavit argues that the Cayuga and Dunkirk facilities are being retained to address the results of a transmission security analysis based on an N-1-1 reliability standard.²² Mr. Younger asserts that this local reliability need “is not being represented in either the NYISO’s energy or capacity markets.”²³ Mr. Younger further argues further that “[t]reating these RMR units as if they were in merit for capacity market purposes...will fragment the NYCA capacity market into balkanized segments defined by the application of the N-1-1 or some otherwise undefined method of determining the local reliability

²⁰ *Id.* at P 16.

²¹ *Id.* at P 44.

²² *Id.* at P 90.

²³ *Id.* at P 91.

requirements on a case by case basis.”²⁴ He predicts that “[i]f the local reliability needs are not clearly represented in the markets, the end result will be an unraveling of the NYCA capacity market over time into a system managed by contracts on a case by case basis.”²⁵

39. In general, I agree with these concerns, although I do not agree with his dire warning that the capacity market is threatening to “unravel.” We have consistently raised concerns that the locational planning requirements are not accurately and completely reflected in the NYISO capacity markets. For the past two years, we have recommended in our State of the Market report that NYISO define locational capacity requirements that correspond to its full underlying reliability needs. If the NYISO must maintain a system to satisfy N-1-1 transmission security requirements, these requirements should be defined and priced.
40. As much as I may agree with Mr. Younger, however, this issue is irrelevant from the perspective of whether the Commission or NYISO should take action related to the Cayuga and Dunkirk RSSAs. Further, to the extent that other units in the future receive RSSAs because they are the most economic means to satisfy a reliability need that is not reflected in the NYISO market requirements, these units should similarly not be mitigated or otherwise prevented from selling capacity. Therefore, these arguments should be disregarded and the Complaint should be denied.

V. Conclusions

41. As described above, the concerns raised by Mr. Younger and IPPNY that Cayuga and Dunkirk units may artificially suppress capacity prices are premised on flawed economic reasoning. These concerns would only potentially be valid if the reliability determinations supporting the RSSAs for these units were fallacious. I am aware of no evidence that may be the case and it has not been asserted by either Mr. Younger or IPPNY. Therefore, I believe that both the concerns and the proposed remedies are utterly without merit and recommend that the Commission dismiss this complaint.
42. This concludes my affidavit.

²⁴ *Id.* at P 93.

²⁵ *Id.* at P 96.

ATTESTATION

I am the witness identified in the foregoing affidavit. I have read the affidavit and am familiar with its contents. The facts set forth therein are true to the best of my knowledge, information, and belief.



David B. Patton

May 30, 2013

Subscribed and sworn to before me
this 30th day of May, 2013



Notary Public

My commission expires: Nov. 30, 2013

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

Attachment 2

Attachment 2

Compliance with Commission Rule 213(c)(2)

A. Specific Admission and Denials of Material Allegations

In accordance with Commission Rule 213(c)(2)(i), to the extent practicable and to the best of the NYISO's knowledge and belief at this time, the NYISO admits or denies below the material factual allegations in the Complaint. To the extent that any fact or allegation in the Complaint is not specifically admitted below, it is denied. Except as specifically stated herein, the NYISO does not admit any facts in the form or manner stated in the Complaint.

1. Denials

- The NYISO denies that prices in the NYCA capacity market have been, or currently are being, "artificially suppressed" by below cost capacity offers from resources that would have exited the market but for out-of-market revenues under RSSAs, or for any other reason. (Complaint at 1-2, 4, 20)
- The NYISO denies that the Commission must act to protect the market from the "artificial price suppression" supposedly caused by "de minimis" offer requirements in RSSAs by amending the Services Tariff. (Complaint at 2, 21)
- The NYISO denies that the Cayuga and Dunkirk units are "uneconomic" because they have RSSAs to retain them to address a reliability requirement. (Complaint at 4, 27)
- The NYISO denies that the considerations that previously led the Commission to decline to adopt buyer-side market power mitigation measures applicable to existing resources have changed, that "it is now clear that the retention of uneconomic resources in the Rest of State now poses an ongoing and substantial threat to the NYCA capacity market," and that "artificial price suppression through below-cost offers of capacity from uneconomic existing resources is now a fact in the Rest of State region" (Complaint at 4, 11, 20)
- The NYISO neither admits nor denies the Complaint's allegations and inferences regarding the content or nature of any bidding requirement that may be found in the Dunkirk RSSAs. That information is confidential. (Complaint at 4, 24, 28)
- The NYISO denies the Complaint's allegations regarding the level of the financial impact of the alleged artificial price suppression in the NYCA capacity market and its potential impacts on suppliers, other market participants, or the market itself. Because there has not been, and currently is, no artificial price suppression

attributable to the Existing RSSAs in the NYCA capacity market, the Complaint's attempts to quantify its impacts are incorrect and irrelevant. (Complaint at 4, 25-30)

- The NYISO denies the Complaint's predictions that the market will be harmed in the future by a proliferation of new RSSAs (Future RSSAs) that cause further artificial price suppression or that "New York consumers will be forced to support out-of-market payments to an ever-increasing number of resources in order to maintain reliability when otherwise economic resources are starved of revenues" (Complaint at 5)
- The NYISO denies that there is any need for Commission action in this proceeding to address New York State's Energy Highway Initiative or the other New York State initiatives described in Section III.C.3 of the Complaint. (Complaint at 18-20)
- The NYISO denies that the Commission must act to protect the "sustainability" of the market or to prevent it from "balkanizing," "fragmenting," or "unraveling" as a result of potential future RSSAs or other potential future New York State initiatives. (Complaint at 26, 31, 32, 39)
- The NYISO denies that the possibility that Existing RSSAs may remain in effect for several years presents a "grim prospect of years of artificial price suppression" that the Commission must address. (Complaint at 20)
- The NYISO denies that there is any need for expedited action or "immediate" remedies in this proceeding (and further denies that there is any need for any action or remedy). (Complaint at 20, 37, 39)
- The NYISO denies that the Existing RSSAs result in "uneconomic retention" that harms the market in the same way as uneconomic entry. (Complaint at 21-23)
- The NYISO denies that the Existing RSSAs are inconsistent with or "disrupt" the design of the NYISO-administered markets. (Complaint at 23, 27)
- The NYISO denies that using GFCs but ignoring RSSA revenues "as the proxy for a competitive bid is economically sound." (Complaint at 23-25)
- The NYISO neither admits nor denies the Complaint's statements regarding factors that supposedly distinguish the energy and capacity markets in support of its attempt to defend against points that IPPNY believes "some parties may argue." There is no need to consider such arguments because the Complaint is invalidated by its own flawed economic assertions and assumptions. (Complaint at 31-33)
- The NYISO denies that either of the Complaints proposed tariff revisions would be just and reasonable. (Complaint at 33-36)
- The NYISO denies that the Complaint has justified IPPNY's end-around the NYISO stakeholder process, is "limited in scope," showed "deference" to the stakeholder

process in any way, and seeks “relief narrowly tailored to the immediate and ongoing threat to the capacity market presented by below cost offers from uneconomic existing resources that would exit the market but for out-of-market payments.” (Complaint at 37-38)

- The NYISO denies that past emergency actions by the NYISO to address market power problems justify IPPNY’s end-run around the NYISO stakeholder process in any way. (Complaint at 38)
- As it did in its *Initial Answer*, the NYISO denies that fast-track processing is appropriate in this proceeding especially in light of Commission precedent establishing that complex filings that propose tariff revisions should not be fast-tracked and IPPNY’s own delays. (Complaint at 39)

2. Admissions

- The NYISO admits that a purpose of the NYISO-administered capacity markets is to send price signals that encourage the entry of new economic resources and prevents the premature exit of existing economic resources (but as noted above the NYISO denies that this principle supports the Complaint’s “uneconomic retention” theories). (Complaint at 2)
- The NYISO admits that the descriptions of IPPNY and the NYISO in Section II of the Complaint are correct. (Complaint at 6-7)
- The NYISO admits that Section III.A of the Complaint’s description of the existing buyer-side market power mitigation measures in New York City and the Commission orders establishing them is correct, including its observation that the Commission looked to the NYISO’s independent market monitoring unit to make recommendations regarding any possible future need to apply buyer-side market power mitigation to existing resources. (Complaint at 7-9)
- The NYISO admits that Section III.B of the Complaint’s high level description of the complaints in Docket Nos. EL11-42 and EL11-50 is accurate but denies its characterization of supposed failures or errors by the NYISO related to those proceedings. (Complaint at 9-11)
- The NYISO admits that Section III.C.1 of the Complaint’s description of the Dunkirk RSSAs and the NYPSC proceedings addressing them is accurate, including its acknowledgement that the Dunkirk RSSAs were and are needed for reliability reasons, but denies any suggestion that the Dunkirk RSSAs have, or have had, anti-competitive or price-suppressive effects. (Complaint at 11-14)
- The NYISO admits that Section III.C.2 of the Complaint’s description of the Cayuga RSSA and the NYPSC proceedings addressing it is accurate, including its implicit acknowledgement that the Cayuga RSSA was and is needed for reliability reasons,

but denies any suggestion that the Cayuga RSSA has, or has had, anti-competitive or price-suppressive effects. (Complaint at 14-18)

- The NYISO admits that the Cayuga and Dunkirk units appear to be “needed to address an identified system condition” (Complaint at 27)

B. Defenses

In accordance with Commission Rule 213(c)(2)(ii), the NYISO sets forth the following defenses:

- Complainant has failed to meet its burden of proof under Sections 206 and 306 of the FPA and Commission Rule 206. It has not shown that the current version of the Services Tariff is unjust or unreasonable, and therefore has not shown that it should be amended.
- Complainant’s theory that the “uneconomic retention” of existing resources under the Existing RSSAs has caused, and is causing, artificial price suppression equivalent to that potentially caused by uneconomic entry is based on multiple flawed economic assertions and assumptions and is therefore invalid.
- Complainant’s theory that Future RSSAs would cause artificial price suppression equivalent to that potentially caused by uneconomic entry unless the Services Tariff is modified is based on multiple flawed economic assertions and assumptions and is invalid.
- Complainant has violated Commission policy and precedent by attempting to make an end-run around the NYISO stakeholder process and attempting to impose its own unilaterally preferred tariff revisions.

C. Proposed Resolution Process

Commission Rule 213(c)(4) states that an answer “is also required to describe the formal or consensual process it proposes for resolving the complaint.” In compliance with that requirement, the NYISO requests that the Complaint be dismissed based solely on the basis of the pleadings in this proceeding.