

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

<b>Centralized Capacity Markets in Regional</b>	)	
<b>Transmission Organizations and</b>	)	<b>Docket No. AD13-7-000</b>
<b>Independent System Operators</b>	)	

**POST-TECHNICAL CONFERENCE COMMENTS OF THE  
NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

In response to the Commission’s October 25, 2013 *Notice Allowing Post-Technical Comments and Post-Technical Conference Questions for Comment* (“Notice”) and the November 27, 2013 *Notice of Extension of Time*, the New York Independent System Operator, Inc. (“NYISO”) respectfully submits these comments. As is expressly allowed by the Notice, the NYISO is not addressing every question posed by the Commission. Instead, the NYISO is limiting its comments to a relative handful of questions in order to emphasize three principal points. First, the Commission should not use this proceeding to require fundamental changes to the NYISO capacity market design or any changes to the NYISO’s energy and ancillary services markets. Second, the Commission should not direct the NYISO to adopt market design features from other Independent System Operator and Regional Transmission Organization (“ISO/RTO”) markets without, at a minimum, giving the NYISO a full opportunity, after seeking input from its stakeholders, to explain why such a feature is or is not well-suited to the NYISO’s specific circumstances. Third, the Commission should provide general policy guidance and facilitate efforts by ISOs/RTOs to make incremental improvements to their capacity markets. In addition, these comments address the Notice’s specific question regarding the NYISO’s triennial ICAP Demand Curve reset cycle.

These comments take no position on the questions posed by the Notice as they may relate to the PJM Interconnection, L.L.C. (“PJM”) or to ISO New England (“ISO-NE”). The NYISO is only responding from its own perspective and only as it pertains to the NYISO’s markets.

The NYISO’s assessment of issues on which the Commission sought input is informed by its own assessment of its market, input from its independent Market Monitoring Unit, Potomac Economics (“MMU”), and the analysis of FTI Consulting (“FTI”) in its 2013 report on its *Evaluation of the New York Capacity Market* (“FTI Report”).<sup>1</sup> The MMU has consistently found that the NYISO’s capacity, energy, and ancillary services markets work well and serve their intended purpose.<sup>2</sup> After FTI conducted its analysis of the NYISO’s capacity market it concluded that “[t]here are no critical flaws in the design of the New York ISO capacity market that the NYISO and its stakeholders are not currently addressing.”<sup>3</sup>

The chief issue identified by FTI was the need for additional capacity zones, which has been addressed by the NYISO. A New Capacity Zone, the G-J Locality, has been accepted by the Commission and is being implemented for the Capability Period beginning May 1, 2014. Another key recent enhancement to the NYISO’s market was the implementation of enhanced scarcity pricing rules in the summer of 2013.<sup>4</sup> As discussed below, these enhancements will send pricing signals as an incentive to address capacity requirements in a more targeted location

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<sup>1</sup> This FTI Report is available at:  
<[http://www.nyiso.com/public/webdocs/markets\\_operations/documents/Studies\\_and\\_Reports/Studies/Market\\_Studies/Final\\_New\\_York\\_Capacity\\_Report\\_3-13-2013.pdf](http://www.nyiso.com/public/webdocs/markets_operations/documents/Studies_and_Reports/Studies/Market_Studies/Final_New_York_Capacity_Report_3-13-2013.pdf)>.

<sup>2</sup> See, e.g., Potomac Economics, *2012 State of the Market Report for the New York ISO Markets* at i, 1-2 (April 2013) available at:  
<[http://www.nyiso.com/public/webdocs/markets\\_operations/documents/Studies\\_and\\_Reports/Reports/Market\\_Monitoring\\_Unit\\_Reports/2012/NYISO2012StateofMarketReport.pdf](http://www.nyiso.com/public/webdocs/markets_operations/documents/Studies_and_Reports/Reports/Market_Monitoring_Unit_Reports/2012/NYISO2012StateofMarketReport.pdf)>.

<sup>3</sup> *Id* at i.

<sup>4</sup> See *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,013(2013). The recent enhancements built on existing scarcity pricing rules that had worked well for years.

and with a more efficient timing signal than is practicable from the capacity market. Although these two examples substantially improve the NYISO's markets, the NYISO's capacity market can benefit from other enhancements, particularly in the area of market power mitigation measures (as discussed below).

## **I. COMMENTS**

### **A. The Commission Should Not Initiate Fundamental Changes to the NYISO's Capacity Market Design or Seek to Change its Energy or Ancillary Services Market Rules in this Proceeding**

The Notice asks a number of questions concerning the "definition of the capacity product" and "the relationship between the capacity and energy and ancillary services markets, both today and in the future as electric system needs change."<sup>5</sup> The FTI Report describes this relationship:

Electric system reliability depends not only on the nominal megawatts of physical generating capacity in the ground, and contracted demand response, it also depends on the characteristics and performance of those resources. Providing all of the 'missing money' through a capacity market introduces "missing incentives" with respect to capacity resource characteristics and performance. Capacity market designs such as those used by the New York ISO, PJM and ISO New England attempt to compensate for the 'missing performance incentives' with administrative rules, but these efforts are at best only partially successful.<sup>6</sup>

Scarcity pricing can provide a price signal targeted to a specific location, and in the case of the NYISO, at a 5 minute interval. Thus the energy and capacity markets work in concert to address reliability needs.

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<sup>5</sup> Notice at Questions p. 1.

<sup>6</sup> FTI Report at p. 32 citing "for example, William W. Hogan, "On an 'Energy Only' Electricity Market Design for Resource Adequacy" September 23, 2005; Scott M. Harvey and Scott Travers, "Market Incentives for generation Investment" December 2, 2008; Scott M Harvey, "Resource Adequacy Mechanisms: Spot Energy Markets and Their Alternatives" Center for Research in Regulated Industries, 19th Annual Western Conference, Monterey California June 28, 2006; Scott Harvey, "ERCOT Market Design, Capacity Markets, and Resource Adequacy" Gulf Coast Power Association Workshop, May 4, 2012."

The NYISO assessed the performance of its scarcity pricing mechanism during the summer of 2012 and determined that the mechanism worked as intended.”<sup>7</sup> The NYISO also committed to stakeholders to conduct a comprehensive shortage pricing review and with stakeholder input, “complete an evaluation, assessment, and prioritization of certain issues by Q2 2014.”<sup>8</sup> Those issues include the type and amount of the reserves procured in the specific locations. With the addition of a new G-J Locality (the accepted New Capacity Zone) effective for the start of the May 1, 2014 Capability Year, The NYISO’s capacity market will have three locational specific capacity demand curves to encourage price signals to address reliability needs. The NYISO’s capacity, energy, and ancillary services markets are working, and will continue to work, in concert. Therefore, as a general matter, the NYISO shares the view expressed by many panelists at the September 25, 2013 technical conference (“Conference”) that it would be best, at least at this time, to retain “the current design.”<sup>9</sup> That is, a capacity market design based on “procuring a single capacity product focused on meeting basic resource adequacy requirements, with any operational attributes needed to meet system requirements procured in the energy and ancillary services markets.”<sup>10</sup>

It appears that this view was broadly supported at the Conference, particularly by ISOs/RTOs and their independent market monitors.<sup>11</sup> No panelist at the conference expressed

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<sup>7</sup> See *New York Independent System Operator, Inc.*, Docket No. ER13-909-001; Informational Report, October 31, 2013.

<sup>8</sup> See NYISO presentation to Market Issues Working Group, January 8, 2014, *Comprehensive Shortage Pricing Review: Scarcity and Shortage Pricing*, available at: <[http://www.nyiso.com/public/webdocs/markets\\_operations/committees/bic\\_miwg/meeting\\_materials/2014-01-08/Comprehensive%20Shortage%20Pricing%20Review\\_MIWG\\_Jan%20FINAL.pdf](http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_miwg/meeting_materials/2014-01-08/Comprehensive%20Shortage%20Pricing%20Review_MIWG_Jan%20FINAL.pdf)>.

<sup>9</sup> Notice at Questions p. 1.

<sup>10</sup> *Id.*

<sup>11</sup> See Transcript of Technical Conference (Sept. 25, 2013) (“Tr.”) 18-19, 31, 35.

concern, and there is no reason for concern, that the existing “single capacity product”<sup>12</sup> model in New York is inconsistent with reliability or inimical to new technologies. Nor is there any reason for concern that ancillary services resources relied on to provide “needed operational characteristics”<sup>13</sup> in New York will face availability issues given the history of the NYISO’s markets.

It is possible that “changes in technology and markets” may “drive new system needs in the future” in a way that might warrant changes to “existing methods for determining resource adequacy requirements . . . .” or other market design features. The NYISO is open to considering the effects of such changes, and examining adjustments to the market rules. At this time, however, the NYISO does not believe that major market rule revisions are necessary to address potential future developments. The NYISO also believes that major market rule revisions should not be imposed on any ISO/RTO because individual ISO/RTO markets may have unique facts and circumstances that warrant more individualized treatment.

As discussed below, there are improvements that could be made to the NYISO’s capacity market design but, at least at this time, they involve incremental modifications, not fundamental conceptual changes. The Commission should allow ISOs/RTOs to pursue incremental improvements on their own and, as discussed below, should consider taking steps to facilitate their implementation. In the NYISO context, focusing on near-term incremental improvements would bring more benefit to the markets and to customers than attempting to force more radical changes. Among other considerations, the latter approach would unnecessarily create the very market uncertainty that the Commission appears to be eager to avoid. This is especially true for

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<sup>12</sup> Notice at Questions p. 1

<sup>13</sup> *Id.*

the NYISO capacity markets, which are already approaching one major modification, *i.e.*, the introduction of the new G-J Locality.<sup>14</sup>

**B. The Commission Should Not Impose Capacity Market Design Elements from Other Markets on New York**

No panelist at the Conference supported the creation of a “standard capacity market design” although several expressed strong opposition to it.<sup>15</sup> Seeking to establish such a market design would be inconsistent with Commission precedent<sup>16</sup> and would be an unnecessary diversion for the Commission and stakeholders. There are valid and substantial differences between the three ISOs/RTOs that administer centralized capacity markets that justify their having material differences in their capacity market design.

Most significantly, the NYISO is a tightly integrated single state system, and the state’s investor owned utilities have divested essentially all of their generation resources. New York also has widespread retail competition for electricity supply. Other ISO/RTO regions have different characteristics. For example, PJM administers capacity markets that encompass a much larger multi-state region which includes a number of traditional vertically-integrated utilities and

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<sup>14</sup> The G-J Locality is a new capacity zone that encompasses NYISO Load Zones G, H, I, and J. *See Market Administration and Control Area Services Tariff*, Sect. 2.12 and *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,126 (2013).

<sup>15</sup> *See, e.g.*, Tr. at 280 (Susan Kelly of the APPA stating: “I’ll tell you what would terrify me, which is the mother of all rulemakings on standard capacity market design.”)

<sup>16</sup> *See New York Independent System Operator, Inc.*, 135 FERC ¶61,170 at P 89 (2011) (“[t]he Commission has never required that the three system operators adopt identical capacity market structures. Each uses different demand curves that are based on different sets of complex and interrelated assumptions.”) *See also, e.g., Remediating Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design*, 112 FERC ¶ 61,073 at P 7 (2005) (terminating the Commission’s standard market design proceeding because of, among other factors, “the continuing development of voluntary RTOs and ISOs.”); *Wholesale Competition in Regions with Organized Electric Markets* (Order No. 719), 125 FERC ¶ 61,071 (2008) (endorsing regional flexibility and regional differences in market design and emphasizing, at P 10, that “[a]bsent a single national power market, the development of regional markets is the best method of facilitating competition within the power industry, and the Commission has made sustained efforts to recognize and foster such markets.”)

non-retail access states. Thus, even though the NYISO and PJM both administer centralized capacity markets it would be unreasonable for the Commission to attempt to standardize those markets.

Similarly, the Commission should not conclude that a capacity market design element that works well in one market should be (or readily can be) transplanted to another.<sup>17</sup> For example, the Commission should not, as the Notice and its questions imply that the Commission might be contemplating, seek to identify a single “correct” forward period to be used in all centralized capacity markets. There are advantages and disadvantages to having longer or shorter forward periods, and the right answer may vary from one market to another depending on the circumstances of each.

In particular, while a multi-year forward capacity auction may be suitable for other regions, there is ample evidence indicating that such auctions are not needed in New York at this time. The NYISO’s MMU has stated in this proceeding that a multi-year forward procurement mechanism is an “optional attribute” not an “essential attribute” of good capacity market design.<sup>18</sup> It has also explained that forward capacity auctions have “potential benefits and drawbacks” and that it would be “premature to determine” whether such a mechanism would be an improvement in the NYISO.<sup>19</sup> The NYISO’s Vice President, Market Structures testified that

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<sup>17</sup> For example, it would not be prudent or appropriate to adopt the suggestion of the American Wind Energy Association to impose a requirement that all ISOs and RTOs “use an Effective Load Carrying Capability/Loss of Load Probability (ELCC/LOLP) calculation to determine the capacity value of all resources, or at least variable generators.” The NYISO’s method of calculating ELCC/LOLP reflects the unique characteristics of its markets and its market participants. *Comments of American Wind Energy Association*, Docket No. AD13-7-000 (Dec. 9, 2013).

<sup>18</sup> Presentation of David B. Patton, Ph.D., President, Potomac Economics, *Resource Adequacy in Wholesale Electricity Markets: Principles and Lessons Learned*, Docket AD13-7-000 at 4, 8 (Sept. 25, 2013).

<sup>19</sup> *Id.* at 8. The MMU for the NYISO also emphasized that the existence of mandatory forward procurement mechanisms is not a substitute for bilateral contracting. *Id.*

the NYISO had recently been advised by FTI Consulting that there would be “no compelling benefits to implementing a forward capacity market at this time.”<sup>20</sup> The potential disadvantages of adopting a multi-year forward procurement in New York at this time include: (i) the possibility that it would increase costs out of proportion to reliability improvements; (ii) the absence of a guarantee that resources clearing in the forward market would be present to meet near-term needs; (iii) the fact that the NYISO’s current capacity market design already allows bilateral forward contracting; and (iv) the high likelihood that implementation would take too long to address near-term issues related to resource retirements.

In the same vein, the Commission should not impose PJM’s “Fixed Resource Requirement,” or other requirements related to self-supply of capacity, on the NYISO. The details of self-supply rules may be critical design features in other markets but would have a very different result in the NYISO given the absence of traditional large vertically integrated utilities with the ability to rely on their own resources to meet their capacity obligations.

The Commission should also recognize that there may be legitimate regional variations concerning the “role(s) of centralized capacity markets.” There may not be a single answer to the Commission’s question of whether the “centralized capacity markets” should “function as a mandatory market for procuring capacity or a residual market that entities only need to use to meet their resource adequacy obligations that they cannot otherwise meet through self-supply.”<sup>21</sup> For example, New York State had mandatory capacity requirements for decades preceding the launch of the NYISO, and the NYISO-administered “mandatory” capacity markets are a natural outgrowth of that history and the widespread divestiture of generation by the state’s traditional

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<sup>20</sup> See Docket No. AD13-7-000, Presentation of Rana Mukerji, Senior Vice President - Market Structures, NYISO, *Capacity Markets in RTO/ISOs: The NYISO Perspective* at 10 (Sept. 25, 2013); see also, FTI Report at xi-xiv, Section V (March 5, 2013) and Tr. 32.

<sup>21</sup> Notice at Questions p. 1.



integrated utilities. Other regions with different histories and characteristics might or might not be better suited to capacity market designs that serve only “residual” purposes.

**C. The Commission Should Provide Policy Guidance and Direct ISOs/RTOs to Make Compliance Filings to Propose Capacity Market Design Improvements Appropriate to Their Respective Markets**

**1. Suggested Next Steps**

The Notice states that “[c]onference panelists indicated that further direction from the Commission could help to inform the development of appropriate eastern RTO/ISO centralized capacity market design elements in the future.”<sup>22</sup> It sought input on “[w]hat Commission action would be an appropriate next step with respect to those markets.”<sup>23</sup>

As discussed above, the Commission should not seek to impose either a complete standardized capacity market design or individual market design features that appear to work in other markets of ISOs/RTOs. It should instead identify a limited number of potential key “best practices” that ISOs/RTOs with centralized capacity markets should consider adopting. These best practices could encompass tariff requirements, market design features, and other rules or practices.

Some Conference panelists suggested that the Commission should define these best practices in a policy statement.<sup>24</sup> The NYISO has no objection to this approach in principle. It is concerned, however, that a policy statement would be insufficient as a practical matter to the extent that it would not enable the Commission to direct ISOs/RTOs to make compliance filings.

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<sup>22</sup> Notice at Questions p. 5.

<sup>23</sup> *Id.*

<sup>24</sup> Tr. 281, 284-85.

A few Conference panelists questioned the ability of ISO/RTO stakeholder processes to adequately address difficult capacity market design issues.<sup>25</sup> The NYISO's shared governance process has generally worked well for more than a decade. It has the potential to resolve controversial and consequential capacity market design questions. Nevertheless, it is true that the shared governance process has recently struggled to resolve certain capacity market design issues in New York. As of the date of this filing, the NYISO has unsuccessfully pursued certain incremental capacity market improvements through its stakeholder process for more than a year. Several of these potential changes involve enhancements to the NYISO's "buyer-side" capacity market power mitigation that the NYISO believes are justified. But the NYISO has not been able to secure the requisite super-majority of stakeholder support required under its shared governance model for the NYISO to submit these improvements to the Commission under Section 205 of the Federal Power Act ("FPA").<sup>26</sup> Some other, more recently proposed, enhancements may face similar obstacles. It may be that other ISOs/RTOs have faced, or will face, similar stakeholder support issues.

The NYISO attributes this difficulty in part to the ongoing and possibly anticipated litigation, which can impede productive stakeholder discussions. The recent lack of progress in addressing capacity market enhancements is also partially attributable to stakeholders' disparate views regarding the Commission's policies and priorities.

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<sup>25</sup> See, e.g., Tr. 276, 281.

<sup>26</sup> NYISO Agreement, Sect. 19.01. While the NYISO could make a "unilateral" filing to bring its desired improvements before the Commission under Section 206 of the FPA, such a filing would have to demonstrate that the existing NYISO capacity market design would be "unjust and unreasonable" without the improvements. By contrast, the NYISO believes that its contemplated incremental enhancements and clarifications would be accepted as "just and reasonable" if they were submitted through a compliance filing.

The Commission could facilitate ISO/RTO efforts to improve capacity markets by adopting a procedure that it previously used to explore gas-electric coordination issues in ISO/RTO markets. Specifically, in October 2006 the Commission issued its *Order Instituting Inquiries Into Gas-Electric Coordination Issues*.<sup>27</sup> That order initiated:

[I]nquiries pursuant to section 206 of the Federal Power Act (FPA) in the above referenced dockets to provide the parties in ISOs and RTOs with forums in which to examine whether scheduling and compensation mechanisms need to be revised to ensure that gas-fired generators can obtain gas when the gas-fired generation is necessary for reliability and that they are compensated appropriately when volatility in gas prices creates difficulty in recovering gas costs. Each of the RTOs and ISOs above must make a filing by January 16, 2007, either proposing necessary changes to their scheduling and compensation systems or explaining why such changes are unnecessary.<sup>28</sup>

Based on this precedent, the Commission could issue an order in this proceeding giving ISOs/RTOs a reasonable time, perhaps 180 days, to discuss a limited number of key Commission-identified best practices with their stakeholders. At the end of that time, the ISOs/RTOs would be required to each make respective compliance filings to either: (i) revise their tariff and market rules as necessary to implement some or all of the best practices; (ii) explain that they have already implemented, or are in the process of implementing, those practices; or (iii) explain that they already have, or are developing, alternative rules that are “consistent with or superior to” some or all of the best practices. The Commission could also take this approach by issuing a Notice of Proposed Rulemaking identifying a limited number of key best practices and directing the same actions by ISOs/RTOs.<sup>29</sup> Taking either action has the

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<sup>27</sup> *California Independent System Operator Corp., et al.*, 117 FERC ¶ 61,094 (2006). See also *California Independent System Operator Corp., et al.*, 120 FERC ¶ 61,206 (2007) (accepting ISO/RTO filings contending that no changes to their tariffs or practices were needed at that time and terminating proceedings).

<sup>28</sup> 117 FERC ¶ 61,094 at P 1.

<sup>29</sup> In Order No. 681, for example, the Commission directed the ISOs and RTOs to change their tariffs to be consistent with the guidelines established by the Commission in that Order, or to make a

potential to help ISOs/RTOs move past existing litigation-related stakeholder deadlocks and resume constructive and collaborative efforts to make the capacity markets better.

In the case of market design enhancements that have features that are unique to a particular ISO/RTO, the Commission's guidance in this proceeding could facilitate efforts to achieve stakeholder support. For example, since the fall of 2010 the NYISO has been working to advance tariff revisions to its buyer-side market power mitigation rules to more clearly address projects that increase their capacity or repower an existing facility. New York State in general, and its two Mitigated Capacity Zones in particular (*i.e.*, New York City and the G-J Locality), have a limited number of sites which may be suitable to constructing new generation projects. There is a concern that the existing buyer-side mitigation rules may impose unnecessary barriers to certain types of new investment in the Mitigated Capacity Zones. The repowering component of the proposal would exempt from Offer Floor mitigation certain plants that are repowered. It contemplates the repowering of an existing economic unit and allowing the repowered facility to be exempt from an Offer Floor in an amount no greater than the exempt MW of the existing plant. The repowering exemption for qualifying projects, subject to the MW limitation, should not result in artificial price suppression or interfere with price signals for other economic investment. The repowering and increased capacity enhancements may facilitate investments in more up-to-date technologies (*e.g.*, with respect to operating reliability or environmental benefits) particularly in Mitigated Capacity Zones where sites suitable for power plant development are limited. Given that this issue has been under consideration for more than three years, specific Commission guidance on this initiative would be beneficial.

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filing explaining how their existing tariffs were already consistent with the guidelines. *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 496, *reh'g denied*, Order No. 681-A, 117 FERC ¶ 61,201 (2006), *clarified*, Order No. 681-B, 126 FERC ¶ 61,254 (2009).

## **2. Suggested “Best Practices”**

The NYISO believes that there are several “best practices” that the Commission should consider adopting at this time, three of which are discussed below. The NYISO reserves the right to comment on other best practices that may be proposed by other parties in this proceeding.

First, the NYISO believes that providing for a “Competitive Entry Exemption” from capacity market power mitigation rules applicable to capacity projects that are not receiving support outside of competitive markets unless the support is procured through a competitive and non-discriminatory mechanism should be a best practice. Such a rule has already been accepted in PJM. A similar rule has been considered in the NYISO stakeholder process, and the NYISO continues in its efforts to revise the proposal to secure the necessary super-majority support to authorize the NYISO to file a proposal under FPA Section 205. A Competitive Entry Exemption would allow capacity project developers that have a different view of future market developments than an ISO/RTO forecasts to enter in a competitive market environment. It could also establish clear parameters that would allow state-sponsored or state-mandated procurements to not be subject to mitigation measures if it is the result of a procurement that is competitive and non-discriminatory. New entrants that satisfy specified criteria defining truly competitive entrants are unlikely to serve as vehicles for artificial price suppression. Thus, the NYISO believes that some form of Competitive Entry Exemption that reflects the specific electricity market in New York would be an important improvement to the NYISO capacity market design. Having some form of regionally appropriate Competitive Entry Exemption should be a best practice for all ISOs/RTOs that administer “buyer-side” capacity market mitigation measures.

A second best practice should be exempting wind and solar renewable resources, and perhaps other kinds of renewable fuel resources from buyer-side capacity market power mitigation measures. An exemption for wind and solar resources already exists in PJM based on the Commission's finding that such resources are unlikely to be used to exercise buyer-side market power.<sup>30</sup> The NYISO does not have such an exemption but recently indicated its openness to establishing one for its newly established G-J Locality.<sup>31</sup> The NYISO also stated that it is willing to consider such an exemption in its New York City Locality, which is the only other part of the NYCA subject to buyer-side market power mitigation measures. The Commission should therefore make exemptions for wind and solar resources, and perhaps for other renewables, a best practice (absent an ISO/RTO specific justification for not having such an exemption).

Third, the Commission should establish "best practice" guidance on how to better address the uncertainty inherent in the future revenue projections that ISOs/RTOs must make as part of their administration of capacity market mitigation measures.<sup>32</sup> There has been significant review, including in various proceedings, regarding the treatment of mothballed units, as compared to units that have announced a planned retirement, in buyer-side mitigation-related revenue forecasts.<sup>33</sup> There are also ongoing discussions in the NYISO stakeholder process

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<sup>30</sup> *PJM Interconnection, LLC et al.*, 135 FERC ¶ 61,022 at P 153 (2011).

<sup>31</sup> New York Independent System Operator, Inc., *Report Regarding Buyer-Side Mitigation Rules for Small Suppliers, Renewable Resources, and Special Case Resources in New Capacity Zones*, Docket No. ER12-360-000 at 4-5 (filed Oct. 4, 2013).

<sup>32</sup> Although there may be consistent guiding best practices across the eastern ISOs/RTOs, in response to the Commission's question, the NYISO does not believe that there is any one "ideal" approach to mothball and retirement notifications for purposes of the market, resource adequacy and reliability considerations.

<sup>33</sup> *See, e.g., New York Independent System Operator, Inc.*, 143 FERC ¶ 61,217 at P 111 (2013).

pertaining to uncertainty over revenue forecasts in physical withholding analyses.<sup>34</sup> There may be similar issues in other markets where Commission guidance would be helpful.

### **3. The NYISO's Triennial ICAP Demand Curve Reset Process**

Finally, in the context of its questions regarding “regulatory certainty” the Notice invites comments regarding the “the advantages and disadvantages of an RTO/ISO regularly revisiting certain market design elements, such as NYISO’s triennial reset of its capacity demand curve?”<sup>35</sup> The periodic reconsideration and reset of the ICAP Demand Curve parameters is essential to the efficiency of the NYISO’s capacity market. It provides for the ICAP Demand Curves to be set based on, and the price signals available therefrom, to be informed by economic and technological developments and current data such as inflation rates. It may be that a reset cycle longer than the NYISO’s current three-year cycle would strike a better balance between the need to avoid “stale” curves and the desire for greater regulatory certainty. A longer reset cycle might also reduce the resources that the NYISO, its stakeholders, and the Commission must devote to administrative litigation under the current triennial process.

However, given the importance of this issue to the NYISO-administered capacity markets the Commission should not impose a change to the duration of the reset cycle in this proceeding. At most, it should direct the NYISO to seek input from its stakeholders and to make a compliance filing if it determines that a new reset period is appropriate. Allowing time for the development of such a proposal would enable the NYISO to carefully consider the complex

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<sup>34</sup> See, e.g., NYISO presentation to the Market Issues Working Group (Dec. 16, 2013) *available at*: [http://www.nyiso.com/public/webdocs/markets\\_operations/committees/bic\\_miwg/meeting\\_materials/2013-12-16/MIWG\\_OutageStates\\_121613\\_Final.pdf](http://www.nyiso.com/public/webdocs/markets_operations/committees/bic_miwg/meeting_materials/2013-12-16/MIWG_OutageStates_121613_Final.pdf).

<sup>35</sup> Notice at 4.

implications for other issues, *e.g.*, the NYISO's procedures for evaluating and creating New Capacity Zones, which is tied to the triennial demand curve reset process.

## **II. COMMUNICATIONS**

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## **III. CONCLUSION**

For the reasons specified above, the NYISO respectfully requests that the Commission:

(i) refrain from using this proceeding to require major changes to the NYISO capacity markets or any changes to the NYISO's energy and ancillary services markets; (ii) not impose market design features from other markets on the NYISO; and (iii) provide guidance on a limited number of best practices for capacity market design and require ISOs/RTOs to make compliance filings to either implement the best practices or explain why changes to conform to some or all of them are not necessary in their individual regions.

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<sup>36</sup> Waiver of the Commission's regulations (18 C.F.R. § 385.203(b)(3) (2012)) is requested to the extent necessary to permit service on counsel for the NYISO in both Miami, FL and Washington, DC.



Respectfully submitted,

THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

/s/Gloria Kavanah

Senior Attorney

New York Independent System Operator, Inc.

Dated: January 8, 2014

## **CERTIFICATE OF SERVICE**

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

Dated at Rensselaer, NY this 8<sup>th</sup> day of January, 2014.

/s/ Joy A. Zimmerlin

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