

**PUBLIC VERSION - THIS FILING LETTER DOES NOT CONTAIN ANY  
PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT B  
CONTAINS HIGHLY SENSITIVE PROTECTED MATERIALS AND PRIVILEGED  
AND CONFIDENTIAL INFORMATION, AND IS SUBMITTED SEPARATELY.**

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

<b>Hudson Transmission Partners, LLC</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. EL12-98-002</b>
	)	
<b>New York Independent System Operator, Inc.</b>	)	

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

In accordance with Rule 213 of the Commission’s Rules of Practice and Procedure,<sup>1</sup> the NYISO respectfully submits this request for leave to answer and answer to the *Protest of Hudson Transmission Partners, LLC* (“Protest”) in this proceeding. For the reasons set forth in detail below, the Protest is manifestly both procedurally defective and devoid of substantive merit. The Commission should therefore deny all relief sought by Hudson Transmission Partners, LLC (“HTP”) and accept the NYISO’s February 21, 2014 *Initial Compliance Filing* (“February Filing”) in this proceeding without requiring any modifications or imposing any conditions.

**I. REQUEST FOR LEAVE TO ANSWER**

The Commission has discretion<sup>2</sup> to accept answers to protests and has frequently done so when they help to clarify complex issues, provide additional information, or are otherwise helpful to its decision-making process.<sup>3</sup> The Commission should accept the NYISO’s answer in

---

<sup>1</sup> 18 C.F.R. § 385.213 (2012).

<sup>2</sup> See 18 C.F.R. § 385.213(a)(2).

<sup>3</sup> See, e.g., *Southern California Edison Co.*, 135 FERC ¶ 61,093 at P 16 (2011) (accepting answers to protests “because those answers provided information that assisted [the Commission] in [its] decision-making process”); *New York Independent System Operator, Inc.*, 134 FERC ¶ 61,058 at P 24 (2011) (accepting the answers to protests and answers because they provided information that aided the

**PUBLIC VERSION -- THIS FILING LETTER DOES NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT B CONTAINS HIGHLY SENSITIVE PROTECTED MATERIALS AND PRIVILEGED AND CONFIDENTIAL INFORMATION, AND IS SUBMITTED SEPARATELY.**

this instance. The Protest is procedurally flawed and makes numerous incomplete, erroneous, and misleading claims. It also misstates relevant requirements of the NYISO's Market Administration and Control Area Services Tariff ("Services Tariff"). The Commission's consideration of the HTP Protest's contents could have consequences for HTP's merchant transmission facility (the "HTP Project") and other Market Participants.<sup>4</sup> Consequently, the Commission should allow the NYISO to answer the statements made in the HTP Protest in order to ensure that there is a complete and accurate record in this proceeding.

**II. THE PROTEST IS PROCEDURALLY DEFECTIVE**

HTP impermissibly seeks to re-litigate matters that were decided by the Commission in its Order on Complaint.<sup>5</sup> HTP has already sought rehearing of that order.<sup>6</sup> To the extent that the Protest repeats or reconfigures issues that HTP already raised, or makes new assertions that HTP could have included in its rehearing request, it is impermissibly making an untimely attempt to revise or supplement its pending request.<sup>7</sup> These issues include:

---

Commission in better understanding the matters at issue in the proceeding); *PJM Interconnection, LLC*, 132 FERC ¶ 61,217 at P 9 (2010) (accepting answers to answers and protests because they assisted in the Commission's decision-making process); and *New York Independent System Operator, Inc.*, 108 FERC ¶ 61,188 at P 7 (2004) (accepting the NYISO's answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding).

<sup>4</sup> Capitalized terms not otherwise defined herein shall have the meaning specified in the Services Tariff.

<sup>5</sup> *Hudson Transmission Partners, LLC, v. New York Independent System Operator, Inc.*, 145 FERC ¶ 61,156 (2013) (the "November Order").

<sup>6</sup> *Request for Rehearing and Clarification of Hudson Transmission Partners, LLC* (Dec. 23, 2013).

<sup>7</sup> *Houlton Water Company et al. v. Maine Public Service Company*, 60 FERC ¶61,141 (1992) (rejecting request to supplement a request for rehearing "as we have no authority to accept materials in support of rehearing if such materials are filed after the 30-day statutory deadline for submitting materials in support of rehearing.") See also *Public Service Company of New Hampshire*, 56 FERC ¶61,105, at p. 61,403 and n.16 (1991); *CMS Midland, Inc.*, 56 FERC ¶61,177, at p. 61,623 and nn.18-20 (1991); and *Southern Company Services, Inc.*, 57 FERC ¶61,093, at p. 61,344 and n.79 (1991).

**PUBLIC VERSION -- THIS FILING LETTER DOES NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT B CONTAINS HIGHLY SENSITIVE PROTECTED MATERIALS AND PRIVILEGED AND CONFIDENTIAL INFORMATION, AND IS SUBMITTED SEPARATELY.**

- HTP’s “renewal” of “the objections it has made throughout this proceeding” against the NYISO’s use of an allegedly unfiled, arbitrary, and unduly discriminatory, scaling factor . . . .”<sup>8</sup>
- HTP’s assertion that the scaling factor is impermissibly being applied “retroactively.”<sup>9</sup>
- HTP’s claims that it is somehow unreasonable or discriminatory to apply a scaling factor to merchant lines but not to generators<sup>10</sup> including its new, and inaccurate, claim (which could have been made at any time in this proceeding) that generators face greater arbitrage difficulties than merchant transmission lines because of gas-electric market coordination and other issues.<sup>11</sup>
- HTP’s claims that the “Analysis Reference Dates” used by the NYISO violated the Services Tariff.<sup>12</sup>
- HTP’s claims that the NYISO improperly treated the HTP Project as a “Category III” Examined Facility instead of a “Category I” facility.<sup>13</sup>
- HTP’s argument that the NYISO’s application of a scheduling factor violated Section 205 of the FPA and the Commission’s “rule of reason.”<sup>14</sup>

In addition, the Protest impermissibly raises issues that are beyond the scope of a compliance proceeding.<sup>15</sup> The November Order accepted the NYISO’s use of a scaling factor in

---

<sup>8</sup> Protest at 2, 11.

<sup>9</sup> Protest at 2.

<sup>10</sup> Protest at 2, 4, 11-12.

<sup>11</sup> Protest at 12. As a factual matter, there is no merit to HTP’s claim that generators face at least as much scheduling uncertainty as merchant transmission lines. For example, the NYISO’s market rules include functionality that allows generators to update and reflect their actual fuel costs in their real time bids.

<sup>12</sup> Protest at 5, 18-20.

<sup>13</sup> Protest at 6, 18-20.

<sup>14</sup> Protest at 11.

<sup>15</sup> HTP’s continued assertions of the alleged flaws in the process by which the HTP Project was evaluated pursuant to the BSM Rules (as defined below) are well beyond the scope of the February Filing. In addition, pursuant to Commission precedent, they are effectively requests for re-hearing. It is well-

**PUBLIC VERSION -- THIS FILING LETTER DOES NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT B CONTAINS HIGHLY SENSITIVE PROTECTED MATERIALS AND PRIVILEGED AND CONFIDENTIAL INFORMATION, AND IS SUBMITTED SEPARATELY.**

its determination of the HTP Project's net energy revenues, and as a component of its buyer-side capacity market power mitigation ("BSM") determination.<sup>16</sup> The November Order did not make that acceptance contingent on the Commission's review of the compliance filing. HTP's objections to the use of the scaling factor is thus beyond the scope of this compliance proceeding. The November Order also did not invite HTP or other parties to propose alternative scaling factors, or alternative methodologies to determine net energy revenues. Thus, the alternative proposal proffered in the Protest is beyond the scope of this proceeding.<sup>17</sup>

Accordingly, the Commission should reject all of HTP's arguments referenced above because their inclusion in the Protest was procedurally impermissible. Furthermore, because

---

established that compliance filings "must be limited to the specific directives ordered by the Commission." A party that "repeat[s] the same arguments" in its protest to a compliance filing that it has already made and that the Commission has already addressed in an order, as HTP does in the Protest, is essentially making a request for rehearing of the order "(and an untimely request for rehearing as well)." *Midwest Independent Transmission System Operator, Inc., PJM Interconnection, LLC, and New York System Operator, Inc.*, 119 FERC ¶ 61,179 at P 12, 13 (2007). *See, also, AES Huntington Beach, LLC*, 111 FERC ¶ 61,079 at P 60 & n.25 (2005) (changes rejected as outside scope of compliance filing) and *New York Independent System Operator, Inc.*, 136 FERC ¶ 61,192 at PP 27, 73 (2011) (agreeing that a protest to a compliance filing went beyond the scope of the compliance filing and effectively was a request for re-hearing).

<sup>16</sup> BSM exemption or Offer Floor determinations (in this instance, an Offer Floor determination) pursuant to the NYISO's application of its buyer-side capacity market power mitigation measures for New York City ("BSM Rules"). The BSM Rules are set forth in Section 23.4.5.7 of the Services Tariff. At the time that HTP initiated this proceeding, the BSM Rules applied only to new entry into New York City. Subsequently, the BSM Rules were revised to apply to additional Mitigated Capacity Zones. The subsequent changes to Section 23.4.5.7 are not relevant to Section II of this filing, which describes the scaling factor used in the HTP determination.

<sup>17</sup> In addition to the out-of-scope arguments discussed above, the Protest (at n. 15) also repeats prior attempts by HTP to imply that the number of determinations that the NYISO has conducted for the HTP Project somehow undermines the veracity of the NYISO's analysis. Such assertions are outside the scope of this proceeding because they have nothing to do with the substance of the February Filing. Moreover, they are factually incorrect because, as the NYISO has explained, the NYISO has not made six final determinations for the HTP Project. Rather, the NYISO made a series of initial informational determinations before issuing three final determinations, each of which was required either by the Services Tariff or by Commission Order. *See Request for Leave to Answer and Answer of the New York Independent System Operator, Inc.*, at n.9.

**PUBLIC VERSION -- THIS FILING LETTER DOES NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT B CONTAINS HIGHLY SENSITIVE PROTECTED MATERIALS AND PRIVILEGED AND CONFIDENTIAL INFORMATION, AND IS SUBMITTED SEPARATELY.**

these arguments are the basis of virtually all of the key elements of the Protest, and because it should have been clear to HTP that they were impermissible, it would not be unreasonable for the Commission to reject the entire Protest.

**III. THE PROTEST’S OBJECTIONS TO THE NYISO’S METHODOLOGY ARE UNSOUND AND ARE BASED IN LARGE PART ON SUBSTANTIVE MISSTATEMENTS AND ERRORS**

To the extent that the Protest’s arguments are not rejected on procedural grounds, they should be dismissed because they are completely devoid of substantive merit.<sup>18</sup> It bears emphasizing at the outset that the Protest lacks any kind of affidavit support or supporting analyses addressing the scaling factor information provided in the February Filing. By contrast, the scaling factor that the NYISO applied when making the BSM Rule determination for HTP Project was developed in close consultation with, and endorsed multiple times by, the MMU<sup>19</sup> and is supported by Affidavits of Daniel A. Jerke.<sup>20</sup> The Protest instead relies on conclusory assertions that the methodology that the NYISO applied was “arbitrary and unsupported.”<sup>21</sup> In reality, as the February Filing explained, the NYISO’s approach was reasonable, well-supported,

---

<sup>18</sup> The *Second Supporting and Confirming Affidavit of Daniel A. Jerke*, attached as Attachment A, confirms that the Protest’s objections to the NYISO’s methodology and the scaling factor applied to the HTP Project are unsound and based on substantive errors and misstatements.

<sup>19</sup> See, e.g., *Assessment of the Buyer-Side Mitigation Exemption Test for the Hudson Transmission Partners Project*, Potomac Economics, Ltd. at 8-9 (Nov. 6, 2012) available at <[http://www.nyiso.com/public/webdocs/products/icap/incity\\_mitigation/HTP\\_Report\\_11-6-Final.pdf](http://www.nyiso.com/public/webdocs/products/icap/incity_mitigation/HTP_Report_11-6-Final.pdf)>.

<sup>20</sup> See *Affidavit of Daniel A. Jerke to Answer of the New York Independent System Operator, Inc.* (Nov. 13, 2012); *Supplemental Affidavit of Daniel A. Jerke to the Request for Leave to Answer and Answer of the New York Independent System Operator, Inc.*, (Dec. 17, 2012), and Attachment E, the *Supporting and Confirming Affidavit of Daniel A. Jerke*, to the February Filing.

<sup>21</sup> See, e.g., Protest at 2.

**PUBLIC VERSION -- THIS FILING LETTER DOES NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT B CONTAINS HIGHLY SENSITIVE PROTECTED MATERIALS AND PRIVILEGED AND CONFIDENTIAL INFORMATION, AND IS SUBMITTED SEPARATELY.**

and endorsed by independent experts, and is consistent with the requirements of the Services Tariff.<sup>22</sup>

The Protest also states or implies numerous times that the NYISO has some bias against the HTP Project in particular, or merchant transmission lines in general, that was somehow expressed in the use of the scaling factor in the application of the BSM rules to the HTP Project.<sup>23</sup> Of course, neither the NYISO, nor the MMU, have any such bias and the Commission should ignore these kinds of insinuations as it has done throughout this proceeding. Similarly, the Commission should give no credence to the Protest's recitation of: (i) the inaccurate claim that the NYISO disregarded the "complexities" of establishing a scaling factor until it prepared the February Filing,<sup>24</sup> and (ii) HTP's mischaracterization of the number of times that the NYISO conducted a BSM Rule determination for the HTP Project.<sup>25</sup>

HTP's remaining arguments are disposed of in the subsections that follow.

---

<sup>22</sup> February Filing at 10-12.

<sup>23</sup> See *e.g.* Protest at 2 (alleging a bias against "merchant transmission facilities"); at 12 (alleging that the NYISO used "cherry picked data"); and at 14 (describing the NYISO's "selective use of data").

<sup>24</sup> Specifically, the Protest repeats the false claim that HTP previously made in its answer to the NYISO's extension request that the NYISO did not adequately consider these "complexities" at the time of its earlier determinations for the HTP Project. Such claims are belied by both the substantive content of the February Filing and the MMU's support for the scaling factor that the NYISO applied to HTP (which presumably would have identified if relevant "complexities" were ignored). The fact that the NYISO sought more time, and stakeholder input, to help it meet the far more complex challenge of devising tariff rules to estimate net Energy and Ancillary Services revenues for BSM Rule determinations for all future merchant transmission lines, does not mean that the NYISO's evaluation of the HTP Project was uninformed.

<sup>25</sup> Protest at 7 n 15. See n 16, above, disposing of those misstatements.

**PUBLIC VERSION -- THIS FILING LETTER DOES NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT B CONTAINS HIGHLY SENSITIVE PROTECTED MATERIALS AND PRIVILEGED AND CONFIDENTIAL INFORMATION, AND IS SUBMITTED SEPARATELY.**

**A. THERE IS NO BASIS FOR HTP'S CLAIM THAT THE NYISO FAILED TO ACCOUNT FOR THE HTP PROJECT'S POTENTIAL NON-ENERGY MARKET REVENUES**

HTP claims that the "NYISO fails to take into account all sources of non-capacity market revenues that a merchant transmission facility may earn, in particular revenues from ancillary services and from financial hedging arrangements that allow customers to capture significant incremental revenue over and above that which would be earned from scheduling energy over the line."<sup>26</sup>

HTP's claim regarding Ancillary Services revenues<sup>27</sup> is wholly without merit for the reasons set forth in the confidential Attachment B hereto.<sup>28</sup> Furthermore, the February Filing addresses the November Order's compliance directive on the scaling factor. The scaling factor was applied solely to determine the HTP Project's projected net Energy revenues so consideration of HTP's assertion, although disposed of by confidential Attachment B, is beyond the scope of the Compliance Filing.<sup>29</sup> Likewise, the potential eligibility of other merchant lines to earn Ancillary Services revenues is irrelevant because the calculation of net Energy and

---

<sup>26</sup> Protest at 2.

<sup>27</sup> Protest at 12-13.

<sup>28</sup> The NYISO is submitting both a redacted and unredacted version of Attachment B. The body of this Answer does not contain any Confidential Information or Highly Sensitive Protect Material. The NYISO incorporated into the body of this Answer the information on this topic which is not Confidential Information and Highly Sensitive Protected Materials making the provision of a redacted version unnecessary. Therefore, a redacted version of Attachment B blacking out certain information is not provided.

<sup>29</sup> Attachment B also states the Ancillary Services revenue determination that was made as part of the NYISO's determination of Unit Net CONE.

**PUBLIC VERSION -- THIS FILING LETTER DOES NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT B CONTAINS HIGHLY SENSITIVE PROTECTED MATERIALS AND PRIVILEGED AND CONFIDENTIAL INFORMATION, AND IS SUBMITTED SEPARATELY.**

Ancillary Services revenues at issue in this compliance proceeding is specific to the HTP Project alone.<sup>30</sup>

HTP's claim regarding financial hedging revenues<sup>31</sup> is both legally and factually defective. As a legal matter, HTP's argument has no basis in the Services Tariff. The November Order held that the NYISO's application of the scaling factor was justified under Section 23.2.1. That provision specifies the projection of likely annual Energy and Ancillary Services in order to calculate Net CONE.<sup>32</sup> There is thus no tariff foundation for HTP's assertion that the NYISO must account for "all sources of non-capacity market revenues that a merchant transmission facility may earn,"<sup>33</sup> such as theoretically available hedging revenues. In addition to the factual reasons described below, the scaling factor, which is the sole subject of this compliance filing, was applied to the determination of net Energy revenues. Therefore, consideration of another possible revenue source even if reasonable and appropriate (and HTP's suggestion is neither) is beyond the scope of this filing.<sup>34</sup>

As a factual matter, the kind of hedging revenues that HTP's suggests it might earn are highly speculative and they do not represent an additional, incremental source of revenues. Instead, when taking a forward position as presented in HTP's "hedging example" ("HTP Hedging Example"),<sup>35</sup> one forgoes the ability to arbitrage the eventual, potentially higher, day-ahead prices in exchange for the financial certainty of locking in a spread ahead of time. The

---

<sup>30</sup> See February Filing at n. 24, 46.

<sup>31</sup> Protest at 13-14.

<sup>32</sup> November Order at P 83.

<sup>33</sup> Protest at 2.

<sup>34</sup> See *supra* n.15 above.

<sup>35</sup> Protest at 13-14. This example is not even supported by an affidavit or other information.



**PUBLIC VERSION -- THIS FILING LETTER DOES NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT B CONTAINS HIGHLY SENSITIVE PROTECTED MATERIALS AND PRIVILEGED AND CONFIDENTIAL INFORMATION, AND IS SUBMITTED SEPARATELY.**

HTP Hedging Example in particular is also unrealistic, flawed, and misleading. The forward spread is much larger than the day-ahead spread,<sup>36</sup> which will not always be the case.<sup>37</sup> As a result, the profit in the HTP Hedging Example is derived primarily from the spread between forward contract and day-ahead market prices in PJM Interconnection, Inc. (“PJM”), rather than the spread between PJM and NYISO market prices. The former spread could theoretically be captured by any PJM market participant, regardless of whether it owned or had any other relationship with a merchant transmission line. In reality, such a profit opportunity would be visible to all market participants and cannot reasonably be expected to persist (as HTP’s example assumes it would) because of arbitrage by other traders. Therefore, HTP’s presentation of this profit opportunity as uniquely available to the HTP Project is misleading. Moreover, the mere fact that Market Participants, including HTP, have a theoretical potential to earn hedging revenues does not provide a reasoned basis for the hedging revenues to be part of the projected net Energy revenues. Accordingly, it is appropriate for the NYISO to not account for such theoretical revenues in making determinations for the HTP Project.

**B. THE NYISO’S USE OF A SINGLE SCALING FACTOR VALUE WAS JUST AND REASONABLE**

HTP alleges that the scaling factor the NYISO applied to determine the HTP Project’s net Energy revenues was flawed because it was a “single constant value that does not vary with the level of projected NYISO-PJM price spreads.”<sup>38</sup> The main problem with this argument is that

---

<sup>36</sup> The other side of the example presented by HTP is a situation where, having previously locked in a forward price spread, a much larger day-ahead spread must be forgone – the ability to capture those revenues is lost.

<sup>37</sup> A persistent spread between forward prices and day-ahead prices would reasonably be expected to be arbitrated by other traders.

<sup>38</sup> Protest at 3.

**PUBLIC VERSION -- THIS FILING LETTER DOES NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT B CONTAINS HIGHLY SENSITIVE PROTECTED MATERIALS AND PRIVILEGED AND CONFIDENTIAL INFORMATION, AND IS SUBMITTED SEPARATELY.**

the percentage of price spreads that can be realized is not, as HTP suggests, a function of the magnitude of each individual spread. It is instead a function of the consistency of the direction of the price spread; *i.e.*, higher or lower than the PJM price. As the February Filing explained, the NYISO looked to the average spreads between PJM and New York City (“NYC”; *i.e.*, Load Zone J) and PJM and Long Island (Load Zone K) as indicative of that consistency. The NYISO identified that the Long Island price exceeded the PJM price more frequently than the NYC price exceeded the PJM price. The Protest attempts to distort the NYISO’s approach by presenting it as an “admission” that the actual magnitude of the spread drives the percentage that is realizable but this is not the case.<sup>39</sup>

As a simple hypothetical example, if the Long Island price exceeds the PJM price 75% of the time, and the NYC price exceeds the PJM price 50% of the time, then (and based on that information alone) there would be a 3:1 chance of capturing a positive price spread between PJM and Long Island and an even chance of capturing such a spread between PJM and NYC. It is clear that in this example, the percentage of spreads that could realistically be expected to be captured (and thus the scaling factor) would be higher for PJM to Long Island. However, HTP’s argument implies that a larger price spread would be more likely to be captured than a smaller spread. HTP provides no basis for this claim, and even if it were factually accurate, it is not relevant to the application of a single scaling factor value. It is not even clear that the methodology proposed by HTP would result in higher revenues, which is the basis for HTP’s assertion.<sup>40</sup> Moreover, the scaling factor calculated by the NYISO was based on an aggregation

---

<sup>39</sup> Protest at 15.

<sup>40</sup> Presumably, if larger price spreads are more likely to be captured, then smaller price spreads are less likely to be captured. It is not immediately clear whether the overall result under the variable

**PUBLIC VERSION -- THIS FILING LETTER DOES NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT B CONTAINS HIGHLY SENSITIVE PROTECTED MATERIALS AND PRIVILEGED AND CONFIDENTIAL INFORMATION, AND IS SUBMITTED SEPARATELY.**

of data, thus if such a phenomenon were to exist, it is reasonable to presume it was reflected in the data used, and thus in the level of the scaling factor itself.

Even if HTP were right to claim that a “variable” scaling factor rule could be a reasonable alternative approach, which the NYISO does not concede, that would not mean that the scaling factor applied by the NYISO to determine the HTP Project’s net Energy revenues under the BSM Rules was not just and reasonable. Commission and judicial precedent is clear that more than one methodology (in this case, the scaling factor) could be just and reasonable and that it is not relevant whether a reasonable scaling factor methodology is more or less reasonable than potential alternatives.<sup>41</sup> Thus, there would be no legal basis for the Commission to require the NYISO to adopt HTP’s proposed methodology even if it believed that it was reasonable.

**C. THE ASSUMPTIONS AND DATA UTILIZED BY THE NYISO WERE JUST AND REASONABLE**

HTP contends that the NYISO wrongly calculated data from only a single facility (*i.e.*, the Linden VFT) for a supposedly inappropriate 18.5 month time period when NYISO-PJM spreads were “historically low.” It argues in particular that the NYISO should have considered data from the Neptune Regional Transmission System (“Neptune”) because it supposedly is

---

methodology would be higher revenues, or indeed, whether the revenues calculated under each methodology would differ at all.

<sup>41</sup> See *e.g.* *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,241 at P 62 (2006) (stating that “[u]nder the FPA, if we find that the Midwest ISO has successfully supported the justness and reasonableness of its proposal, we must approve it even if there are other just and reasonable ways...”); *California Independent System Operator Corporation*, 119 FERC ¶ 61,076 at P 14 (2007) (stating that “there can be more than one just and reasonable proposal, and the proposal under consideration will be selected unless it is found unjust and unreasonable”); *Oxy USA, Inc. v. FERC*, 64 F.3d 679 at 692 (D.C. Cir. 1995) (finding that, under the Federal Power Act, as long as the Commission finds a methodology to be just and reasonable, that methodology “need not be the only reasonable methodology, or even the most accurate one”).

**PUBLIC VERSION -- THIS FILING LETTER DOES NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT B CONTAINS HIGHLY SENSITIVE PROTECTED MATERIALS AND PRIVILEGED AND CONFIDENTIAL INFORMATION, AND IS SUBMITTED SEPARATELY.**

“technically and operationally identical” to the HTP Project, and that the NYISO should have looked to other time periods with price spreads more favorable to HTP.<sup>42</sup> Finally, HTP asserts that “the NYISO’s 18.5 month ‘Data Period’ introduces a further, and unjustified, downward bias, as it includes two Winter Capability Periods and only one Summer Capability Period, giving twice the weight to lower priced Winter months than to higher priced Summer months.”<sup>43</sup> HTP adds to that erroneous conclusion by asserting that it means that “the data that the NYISO used to calculate the scaling factor are not representative of either historical NYISO-PJM prices spreads or projected price spreads for the period after the Hudson Transmission Project entered service.”<sup>44</sup>

These arguments misstate the facts and the NYISO’s methodology, which are clearly stated in the February Filing. Contrary to HTP’s assertion, the February Filing explains that the NYISO excluded Neptune data because it was not reasonably representative of likely revenues for the HTP Project. It further specified that the LI and NYC markets are materially different from each other.

The February Filing also supported the NYISO’s basis for using the Linden VFT data and the Data Period thereof. The Data Period stopped in the month preceding the date when the Linden VFT began to operate bi-directionally.<sup>45</sup> Using data from a period of bi-directional

---

<sup>42</sup> Protest at 3.

<sup>43</sup> Protest at 3. The February Filing identifies the Data Period as beginning with the first date of Day-Ahead Market transaction schedules for the Linden VFT, *i.e.*, November 1, 2009, and ending, May 16, 2011. February Filing at 6-7.

<sup>44</sup> Protest at 3.

<sup>45</sup> The Linden VFT commenced commercial operations on November 1, 2009 and commenced bidirectional service on a commercial basis in June 2011. *See Complaint Requesting Fast Track Processing of Linden VFT, LLC* at 4, 5 (May 4, 2012) Docket No. EL12-64.

**PUBLIC VERSION -- THIS FILING LETTER DOES NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT B CONTAINS HIGHLY SENSITIVE PROTECTED MATERIALS AND PRIVILEGED AND CONFIDENTIAL INFORMATION, AND IS SUBMITTED SEPARATELY.**

operations (by the Linden VFT or other UDR facilities) would have been unreasonable because first, any and all revenues received from scheduling to PJM would not be representative of revenues available to the HTP Project, and second, the bi-directional operation of the Linden VFT would not be representative of the manner in which HTP was expected to operate.

HTP also argues that the NYISO's scaling factor methodology was skewed against the HTP Project because the calculation encompassed more higher-priced Summer Capability Period months than Winter months. This is fallacious because the scaling factor does not depend on absolute price levels, but rather, relative price levels. Higher-price months do not necessarily produce higher price spreads, and vice versa. HTP provided no evidence of a persistent or predictable difference between Summer and Winter Capability Period price spreads and would apparently have the Commission simply assume that they exist.

HTP also alleges that the NYISO has somehow "acknowledged" that "the NYISO tariff requires the exemption determination to be made at the same time as the Class Year Project Cost Allocation using the data available as of that date."<sup>46</sup> The NYISO has always maintained, and its position continues to be, that, under the Post-Amendment Rules, buyer-side mitigation determinations are made in relation to the Class Year Project Cost Allocation process, which is considered the go-forward date for the investment, so that the two events may coincide. HTP was a Type III Examined Facility studied concurrent with the Class Year 2010 projects, and was not evaluated under the Pre-Amendment Rules. HTP's attempts to misconstrue and distort the

---

<sup>46</sup> Protest at 19.

**PUBLIC VERSION -- THIS FILING LETTER DOES NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT B CONTAINS HIGHLY SENSITIVE PROTECTED MATERIALS AND PRIVILEGED AND CONFIDENTIAL INFORMATION, AND IS SUBMITTED SEPARATELY.**

language of the February Filing cannot change the fact that the NYISO has provided clear record support for its position which has been accepted by the Commission.<sup>47</sup>

**IV. HTP'S PROPOSED ALTERNATIVE SCALING FACTOR METHODOLOGY IS FLAWED**

HTP argues that if a scaling factor is to be applied, “the NYISO should be directed to use all relevant data to develop a scaling factor that is a function of the projected zonal NYISO-PJM prices spreads, rather than using a single, constant, value. The result would be a curve rather than a single point, showing the relationship between increases in price spreads (*e.g.*, on the x-axis) and the resulting increase in the percentage of the spread that can be captured at a given level of the price spread (*e.g.*, by plotting the scaling factor on the y-axis. . . .”).<sup>48</sup>

As noted above, HTP's proposed alternative scaling factor methodology should be rejected because it is outside the scope of this proceeding. Even if this were not the case, it should be rejected because it is unsupported and substantively deficient.

It is not clear that HTP's proposal could be implemented, and, even if it could, it appears to be very unlikely to produce results that would be reasonable to expect. HTP proposes to have the scaling factor “vary with the level of the projected NYISO-PJM price spread.” Presumably in order to develop this “price spread-scaling factor curve” many scaling factor values would have to be estimated with some frequency, such as monthly, daily, or even hourly. A relationship between price spreads and scaling factors would then have to be estimated (the

---

<sup>47</sup> November Order at P 18.

<sup>48</sup> Protest at 4.

**PUBLIC VERSION -- THIS FILING LETTER DOES NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT B CONTAINS HIGHLY SENSITIVE PROTECTED MATERIALS AND PRIVILEGED AND CONFIDENTIAL INFORMATION, AND IS SUBMITTED SEPARATELY.**

“curve”). The curve would be used to determine the appropriate scaling factor for a given price spread.

This approach is flawed because, by estimating the scaling factor solely as a function of the price spread, it assumes all of the scaling factor observations are independent of each other. In doing so, it wholly neglects the time-dependent scheduling constraints embodied within the NYISO’s scaling factor calculation that are not independent on an hourly basis, but rather include scheduling uncertainties on an entire day-ahead basis. This flaw is most obvious when contemplating an hourly scaling factor but using longer time periods would not make the exercise practicable. Applying such a methodology would also ignore the entire purpose of the scaling factor, which is to account for this scheduling uncertainty that, as HTP itself has acknowledged, would make perfect arbitrage impossible.<sup>49</sup> By contrast, the NYISO’s scaling factor was estimated as a single value, using an appropriate data set at the time of its derivation, that reasonably approximates the amount of day-ahead and real-time revenues that could be realistically earned, as a percentage of the theoretical perfect-arbitrage day-ahead revenues. The manner in which it was calculated implicitly accounts for scheduling uncertainty, imperfect foresight, and the limitations that hinder merchant transmission facilities from achieving perfect arbitrage.

---

<sup>49</sup> See November Order at P 85 (“The Services Tariff directs NYISO to account for the “likely” projected energy revenues and even HTP agrees that perfect arbitrage is not possible; therefore, 100 percent of NERA’s model-based projected revenues for 2013-2016 is not a “likely” figure. Further, we reject HTP’s argument that the use of a scaling factor is foreclosed by the plain meaning of the tariff. The word “likely” requires NYISO to make a reasonable approximation of the energy revenues and because, as the parties agree, perfect arbitrage is not possible, some adjustment to the NERA model-based projected revenues is reasonable.”).

**PUBLIC VERSION -- THIS FILING LETTER DOES NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT B CONTAINS HIGHLY SENSITIVE PROTECTED MATERIALS AND PRIVILEGED AND CONFIDENTIAL INFORMATION, AND IS SUBMITTED SEPARATELY.**

Furthermore, the extrapolation of the variable scaling factor function proposed by HTP, developed using data from one time period to a different set of data representing a different time period, is inherently deficient as a substantive matter. This deficiency is due to the fact that the methodology would implicitly assume that the likelihood of capturing a price spread depends directly on the absolute level of the price spread itself, rather than on the system conditions underlying the spread. It is not reasonable to assume that a given set of system conditions would give rise to the same absolute price spreads in both the data to which the variable scaling factor function is to be applied and in the data from which the variable scaling factor had been derived. As an example, consider that a certain load level in NYC might require the dispatch of power plant X, a condition that has a 75% chance of causing the NYC price to appreciably exceed that of PJM. However, assume for a moment that the price of fuel for that plant is significantly different in the two data sets. In this example, the system conditions that give rise to the same 75% likelihood of a favorable price spread will likely result in two significantly different absolute price spreads, which would not be accurately captured by an extrapolated variable scaling factor methodology that depends on absolute price spreads alone. Thus, in the absence of supporting information, it cannot be confirmed that a well-conditioned relationship between the magnitude of price spreads and scheduling uncertainty exists, and as such, it is not reasonable to apply any methodology on such a relationship.

Moreover, even if HTP's proposed alternative scaling factor methodology was a reasonable option for the HTP Project, that would not mean that the methodology that the NYISO actually applied to it was unjust or unreasonable.<sup>50</sup>

---

<sup>50</sup> See n. 41 above.



**PUBLIC VERSION -- THIS FILING LETTER DOES NOT CONTAIN ANY PRIVILEGED OR CONFIDENTIAL INFORMATION. ATTACHMENT B CONTAINS HIGHLY SENSITIVE PROTECTED MATERIALS AND PRIVILEGED AND CONFIDENTIAL INFORMATION, AND IS SUBMITTED SEPARATELY.**

**V. CONCLUSION**

WHEREFORE, the NYISO respectfully requests that the Commission accept the February Filing without requiring and modifications or imposing any conditions and reject all relief sought the Protest for the reasons set forth above.

Respectfully Submitted

/s/Gloria Kavanah  
Gloria Kavanah  
Counsel to the  
New York Independent System Operator, Inc.

March 31, 2014

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

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused a public version of the foregoing document to be served on the official service list compiled by the Secretary in this proceeding, and have caused to be served the confidential version of the foregoing, which consists solely of Confidential Attachment B on individuals who are Reviewing Representatives for Highly Sensitive Protected Materials pursuant to paragraph 9(b) of the Protective Order issued in this docket.

Dated at Washington, DC, this 31<sup>st</sup> day of March, 2014.

/s/ Catherine Karimi  
Catherine Karimi  
Sr. Professional Assistant  
Hunton & Williams LLP  
2200 Pennsylvania Ave., NW  
Washington, DC 20037  
Tel: (202) 955-1500  
Fax: (202) 778-2201

## **ATTACHMENT A**

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

<b>Hudson Transmission Partners, LLC</b>	)	
<b>v.</b>	)	<b>Docket No. EL12-98-002</b>
<b>New York Independent System Operator, Inc.</b>	)	

**SECOND SUPPORTING AND CONFIRMING AFFIDAVIT OF DANIEL A. JERKE**

Mr. Daniel A. Jerke declares:

1. I have personal knowledge of the facts and opinions in this affidavit and if called to testify could and would testify competently to them.
2. A full description of my education, expertise, and responsibilities with the New York Independent System Operator, Inc. (the “NYISO”) is included in the affidavit filed in support of the NYISO’s answer to HTP’s<sup>1</sup> complaint on November 13, 2012.
3. I submit this affidavit in support of the NYISO’s March 31, 2014 *Answer to the Protest of Hudson Transmission Partners, LLC* (“Answer”) to the NYISO’s February 21, 2013 compliance filing (the “February Filing”).
4. In my first *Supporting and Confirming Affidavit* that supported the February Filing, I confirmed that the February Filing accurately described how the NYISO developed, analyzed, and applied the scaling factor. I also confirmed that, in my judgment, the NYISO’s decision to apply its chosen scaling factor to the HTP Project was reasonable and appropriate.

---

<sup>1</sup> Capitalized terms that are not otherwise defined herein shall have the meaning set forth in the February Filing.

5. With this affidavit, I support and confirm that, for the reasons the NYISO establishes in the Answer, the HTP Protest's objections to the NYISO's methodology and the scaling factor applied to the HTP Project are unsound and based on substantive errors and misstatements.
- a. First, HTP's claim regarding Ancillary Services revenues is wholly without merit.
  - b. HTP's claim regarding financial hedging revenues is unrealistic and misleading.
  - c. In my opinion, the use of a single value scaling factor was just and reasonable and wholly appropriate given the energy scheduling considerations it was designed to address.
  - d. It is my opinion that the assumptions and data that the NYISO used to develop the scaling factor methodology were appropriate and reasonable, and that it was appropriate to not use data of the Neptune project.
  - e. Finally, HTP's proposed alternative scaling factor methodology should be rejected because of its substantive deficiencies.

This concludes my affidavit.

## ATTESTATION

I am the witness identified in the foregoing Affidavit of Daniel A. Jerke dated March 31, 2014. 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.

/s/     Dan Jerke    

Daniel A. Jerke

Supervisor, ICAP Market Mitigation and Analysis

New York Independent System Operator, Inc.

March 31, 2014

Subscribed and sworn to before me  
this 31<sup>st</sup> day of March, 2014.

DIANE L. EGAN  
Notary Public, State of New York  
Qualified in Schenectady County  
No. 4924890  
Commission Expires March 21, 2018

    Diane L. Egan

## **ATTACHMENT B**